

Matter for 'Know Your Ethics' – March, 2015 issue of the CA Journal

Q. Whether a member of the Institute in practice is liable for professional misconduct, if he does not follow the direction given, by the Council or an appropriate Committee or on behalf of any of them, to the incoming auditors not to accept the appointment as auditors, in the case of unjustified removal of the earlier auditors?

A. Yes, in exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949, the Council of the Institute has issued Council General Guidelines, 2008 which specify that a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he does not follow the direction given, by the Council or an appropriate Committee or on behalf of any of them, to the incoming auditors not to accept the appointment as auditors, in the case of unjustified removal of the earlier auditors.

Q. Whether a member of the Institute shall be deemed to be guilty of professional misconduct, if he includes in any statement, return or form to be submitted to the Council or any of its committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing to be false?

A. Yes, as per Clause (3) of Part-II of the Second Schedule to the Chartered Accountants Act, 1949 a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct if he includes in any statement, return or form to be submitted to the above authorities any particulars knowing them to be false.

Q. Is there any ceiling on the number of tax audit assignments that can be taken up by a member in practice?

A. Yes, in exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949, the Council of the Institute has issued Council General Guidelines, 2008 which specify that a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he accepts, in a financial year, more than the specified number of tax audit assignments under Section 44AB of the Income Tax Act, 1961 (The limit has been raised from 45 to 60 w.e.f. 2014-15)

Q. Whether a member in practice will be liable if he is grossly negligent in the conduct of his professional duties?

A. Yes, as per Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a member in practice shall be deemed to be guilty of professional misconduct, if he is grossly negligent in the conduct of his professional duties.

Q. Can a Chartered Accountant receive his professional fees in advance partly or in full?

A. Yes, as such there is no bar in the Chartered Accountants Act, 1949 or in the Chartered Accountants Regulations, 1988 as well as Code of Ethics, 2009 for taking the Professional fees in advance.

Q. Whether a member in practice will be liable if he fails to obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficiently material to negate the expression of an opinion?

A. Yes, as per Clause (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949, a member in practice shall be deemed to be guilty of professional misconduct, if he fails to obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficiently material to negate the expression of an opinion.

Q. Can a member act as an Insurance Surveyor?

A. As per Appendix (9) of the Chartered Accountants Regulations, 1988, a member of the Institute in practice is generally permitted to act as a Surveyor and Loss Assessor under the Insurance Act, 1938 provided they are otherwise eligible and can perform attest functions.

Q. Can a member in practice be Promoter/Promoter Director of the Company?

A. Yes, there is no bar for a member to be a promoter/signatory to the Memorandum and Articles of Association of any company. There is also no bar for such a promoter/signatory to be a Director Simplicitor of that company irrespective of whether the objects of the company include areas, which fall within the scope of the profession of chartered accountants. Therefore members are not required to obtain specific permission of the Council in such cases. There is also no bar on holding any number/percentage of shares in the company

Q. What should be the size of signboard for the office?

A. With regard to the size of the signboard for his office that a member can put up, it is a matter in which the members should exercise their own discretion and good taste. The size of the signboard should be reasonable. Use of glow signs or lights on large-sized boards as is used by traders or shopkeepers would not be proper. A member can have a name board at the place of his residence with the designation of a Chartered Accountant, provided it is a name plate or name board of an individual member and not of the firm.

Q. Can there be any sharing of fees between the widow or the legal representative of the proprietor of a single member firm and the purchaser of the goodwill of the firm on the death of the sole proprietor of the firm?

A. No, there could not be any sharing of fees between the widow or the legal representative of the proprietor of a single member firm and the purchaser of the goodwill of the firm on the death of the Sole proprietor of the firm. Payment of goodwill to the widow is permissible in such cases only for the goodwill of the firm and to enable such payments to be made in installments provided the agreement of the sale of goodwill contains such a provision. These payments even if they are spread over the specified period should not be linked up with participation in the earnings of the firm.

Q. What is the status of a Chartered Accountant who is a salaried employee of a Chartered Accountant in practice or a firm of such Chartered Accountants?

A. An associate or a fellow of the Institute who is a salaried employee of a Chartered Accountant in practice or a firm of such Chartered Accountants shall, notwithstanding such employment, be deemed to be in practice for the limited purpose of the training of articled assistants. He may hold Certificate of Practice but he is not entitled to do attest functions w.e.f. 1.4.2005.

Q. Can a member in practice be a sleeping partner in family business concern?

A. Yes, a member in practice can be a sleeping partner in a family business concern provided he takes specific and prior permission from the Council in terms of Regulation 190A of Chartered Accountants Regulations, 1988.

Q. Can a member publish a change in partnership or change in the address of practice and telephone numbers?

A. Yes, a member can publish a change in partnership or change in the address of practice and telephone numbers. Such announcements should be limited to a

bare statement of facts and consideration given to the appropriateness of the area of distribution of the newspaper or magazine and number of insertions.

Q. Can a Concurrent Auditor of a Bank also undertake the assignment of quarterly review of the same bank?

A. No, the Concurrent audit and the Assignment of quarterly review of the same entity cannot be taken simultaneously as the concurrent audit is a kind of internal audit and the quarterly review is a kind of statutory audit. It is prohibited in terms of the `Guidance Note of Independence of Auditors`.

Q. Can a member holding Certificate o Practice is entitled to own Agricultural land and continue agricultural activity?

A. Yes, member holding Certificate of Practice can own and hold agricultural land and continue agricultural activity.
