

Know Your Ethics

Ethical Issues in Question-Answer Form*



Q. Whether a member not in practice can use any other description?

- A. A member not in practice may use, as per the provisions of Section 7 of the Chartered Accountants Act, 1949 the designation of “chartered accountant”. However, if he chooses to use the designation of “chartered accountant”, he shall not use any other description, whether in addition, or in substitution thereof.

However, such a member is not prohibited from adding any other description or letters to his name, if entitled thereto, to indicate membership of such other Institute of accountancy, whether in India or elsewhere, as may be recognised in this behalf by the Council, or any other qualification that he may possess.

Q. Can a Chartered Accountant in practice allow any person to practice in his name as a Chartered Accountant?

- A. No, Clause (1) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 prohibits a Chartered Accountant in practice to allow any person to practice in his name as a Chartered Accountant unless such person is also a Chartered Accountant in practice and is in partnership with or employed by him.

Q. Can a Chartered Accountant in practice pay to any person any share, commission or brokerage in the fees or profits of his professional business?

- A. No, Clause (2) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 prohibits a Chartered Accountant from paying or allowing any share, commission or brokerage in the fees or profits of his professional business, to any person

other than a member of the Institute or a partner or a retired partner or the legal representative of the deceased partner or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

Q. Can a Chartered Accountant in practice share his fees with the Government in respect of Government Audit?

- A. The Institute came across certain Circulars/ Orders issued by the Registrar of various State Co-operative Societies wherein it has been mentioned that certain amount of audit fee is payable to the concerned State Govt. and the auditor has to deposit a percentage of his audit fee in the State Treasury by a prescribed challan within a prescribed time of the receipt of Audit fee.

In view of the above, the Council considered the issue and while noting that the Government is asking auditors to deposit such percentage of their audit fee for recovering the administrative and other expenses incurred in the process, the Council decided that as such there is no bar in the Code of Ethics to accept such assignment wherein a percentage of professional fees is deducted by the Government to meet the administrative and other expenditure.

Q. Can the goodwill of a proprietary firm of Chartered Accountant, after his death be sold/transferred to another eligible member of the Institute?

- A. Yes, the Council of the Institute considered the issue whether the goodwill of a proprietary firm

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of Chartered Accountant can be sold /transferred to another eligible member of the Institute, after the death of the proprietor concerned and came to the view that the same is permissible. Accordingly, the Council passed the following resolution with a view to mitigate the hardship generally faced by the families after the death of such proprietors, subject to following conditions:

- (a) in respect of cases where the death of the proprietor concerned occurred on or after 30.8.1998.

Provided such a sale is completed/effected in all respects and the Institute's permission to practice in deceased's proprietary firm name is sought within a year of the death of such proprietor concerned. In respect of these cases, the name of the proprietary firm concerned would be kept in abeyance (i.e. not removed on receipt of information about the death of the proprietor as is being done at present) only up to a period of one year from the death of proprietor concerned as aforesaid.

- (b) in respect of cases where the death of the proprietor concerned occurred on or after 30.8.1998 and there existed a dispute as to the legal heir of the deceased proprietor.

Provided the information as to the existence of the dispute is received by the Institute within a year of the death of the proprietor concerned. In respect of these cases, the name of proprietary firm concerned shall be kept in abeyance till one year from the date of settlement of dispute.

- (c) in respect of cases where the death of the proprietor concerned had occurred on or before 29th August, 1998 (irrespective of the time lag between the date of death of the proprietor concerned and the date of sale/transfer of goodwill completed/to be completed).

Provided such a sale/transfer is completed/effected and the Institute's permission to practice in the deceased's proprietary firm name is sought for by 28th August, 1999 and also further provided that the firm name concerned is still available with the Institute.

It may be noted that the sale of goodwill of a Chartered Accountancy Firm is not allowed except as stated above.

Q. Can a Chartered Accountant in practice enter into partnership with a practicing Chartered Accountant of a recognized foreign professional body for sharing fee of their partnership within India?

- A. Yes, Clause (4) of Part-I of First Schedule to the Chartered Accountants Act, 1949 permits partnership between members of the Institute and the members of the recognized foreign professional bodies either by the Central Government or the Council of the Institute by virtue of either under Section 29(2) of the Chartered Accountants Act, 1949 or under Regulation 53B (2) of the Chartered Accountants Regulations, 1988 provided they share fees of the partnership business both within India and outside India.

Q. Can a practicing Chartered Accountant secure any professional business through the services of a person who is not his employee or partner?

- A. No, Clause (5) of Part-I of First Schedule to the Chartered Accountants Act, 1949 prohibits a practicing Chartered Accountant from securing any professional business, either through the services of a person who is not an employee of such Chartered Accountant, or who is not his partner.

Q. Whether a member in practice, engaged in Coaching/teaching activities in accordance with general and specific permission of the Council, may advertise such Coaching / teaching activities?

- A. A member in practice, engaged in Coaching/teaching activities in accordance with general and specific permission of the Council should abstain from advertisement of such Coaching / teaching activities, as it may amount to indirect solicitation, as well as solicitation by any other means, and may therefore be violative of the provisions of Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949. The Announcement dated. 18.5.2017 issued by ICAI may be referred in this regard. ■

* Contributed by the Ethical Standards Board of ICAI