



PROFESSIONAL ETHICS

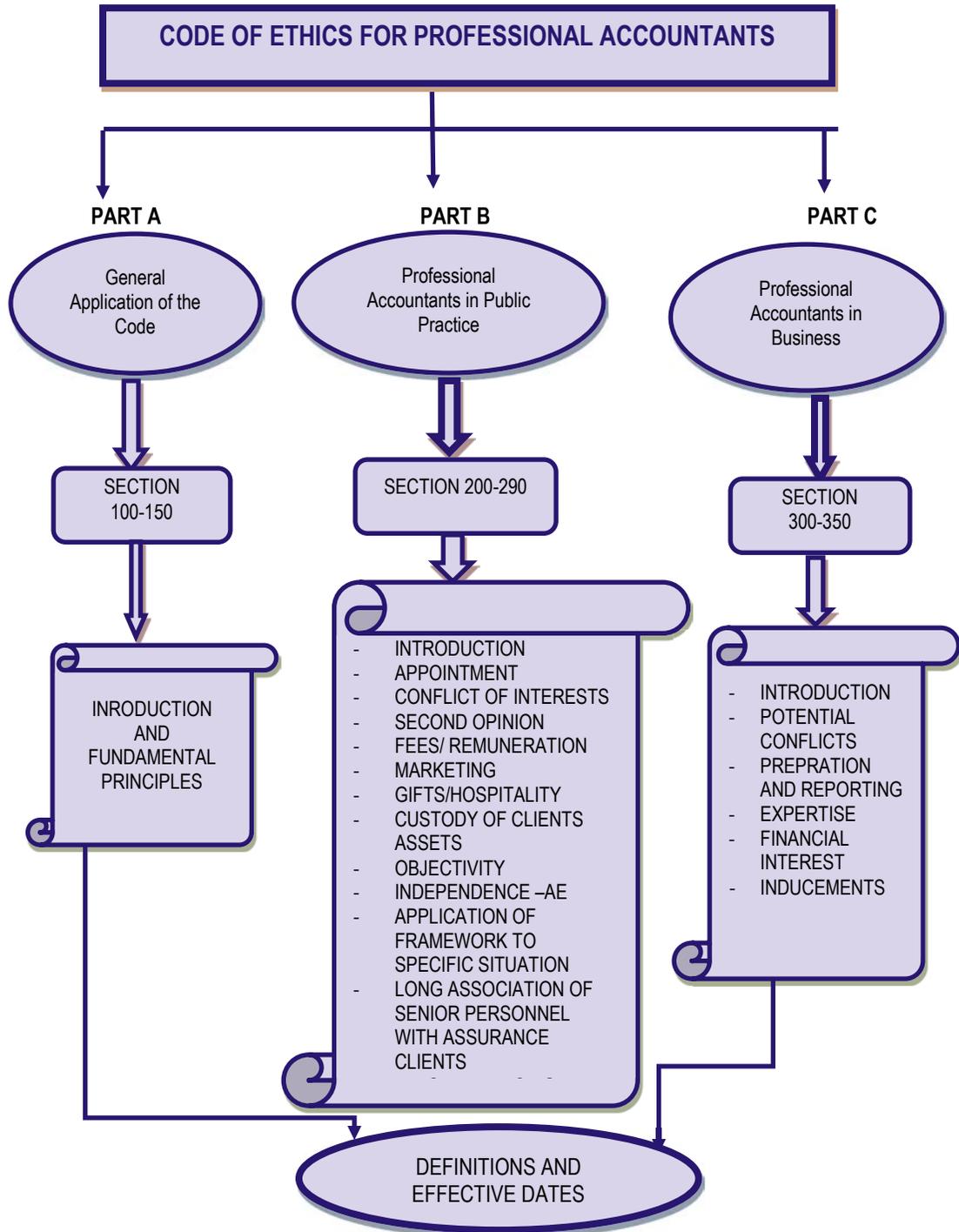


LEARNING OUTCOMES

After studying this chapter, you will be able to:

- ❑ Understand the Application of the Code of Ethics theoretically/practically.
- ❑ Gain the knowledge of Conceptual Framework applicable on Professional Accountants in Public Practice and Business.
- ❑ Learn the Application of Fundamental Principles of Professional Ethics by Professional Accountants while conducting Audit, Assurance and other services.
- ❑ Identifying threats and Safeguards measures while Compliance of Fundamental Principles of Professional Ethics.
- ❑ Determine and apply knowledge of Code of Ethics to your professional practice.

CHAPTER OVERVIEW



1. INTRODUCTION

The term “*Ethics*” means moral principles which govern a person’s behaviour or the conducting of an activity. It is the branch of knowledge that deals with moral principles, whereas “*Professional Ethics*” consist of personal, organizational and corporate standards of behaviour expected for professionals.



 A doctor lies to a patient about the serious condition of his health, thinking that disclosing the seriousness of health may cause more distress to the patient. This would be morally wrong as the doctor is hiding imperative information from the patient. However, here, improvement in health is given moral priority and hence it is justifiable to contravene other morals.

 A lawyer is responsible to his immediate client only. It doesn’t matter whether the client has committed an offence or not, the lawyer has to defend him before the court of law, whereas a Chartered Accountant, as an auditor, has the responsibility to highlight and bring to the knowledge of stakeholders about where the client has flawed. This implies that there can be different moral codes to different sections of society or professionals.

Chartered Accountants as professionals are engaged in building trust to vast variety of users, whether shareholders, government, banks, investors, employees or others, which imposes a public interest responsibility on their profession. Like other professionals, Chartered Accountants also have some set of code of ethics. **This Code of Ethics establishes ethical requirements for Professional Accountants.**

A Chartered Accountant, either in practice or in service, has to abide by these ethical behaviours. They are expected to follow the fundamental principles of professional ethics while performing their jobs. Service users of professionals should be able to feel secure that there exists a framework of professional ethics which governs the provision of those services. Any deviation from the ethical responsibilities brings the disciplinary mechanism into action against the Chartered Accountants.



Fig: Professional Ethics*

Code of Ethics– Its Necessity: Ethics are as old as human civilization. It is nothing but the laws or rules of acceptable behaviour. The whole foundation of any profession, particularly CA profession, is its credibility. The sole purpose of Code of Ethics is to ensure and uphold this credibility. The main ingredient of our profession is independence. An auditor needs to be independent while carrying out his audit. The provisions discussed in the same ensure that the independence of members of the Institute is not affected.

Our Institute’s Motto – ‘*Ya Esha Supteshu Jagrati*’ is adopted from Kathopanishad and it denotes ‘eternal vigilance’ – awakening when the world is asleep.

Many of our members perceive Code of Ethics as a burden. They are totally mistaken. On the contrary Code of Ethics seeks to protect the interests of the profession as a whole. It is a shield that enables us to command respect.



2. PART A: GENERAL APPLICATION OF THE CODE

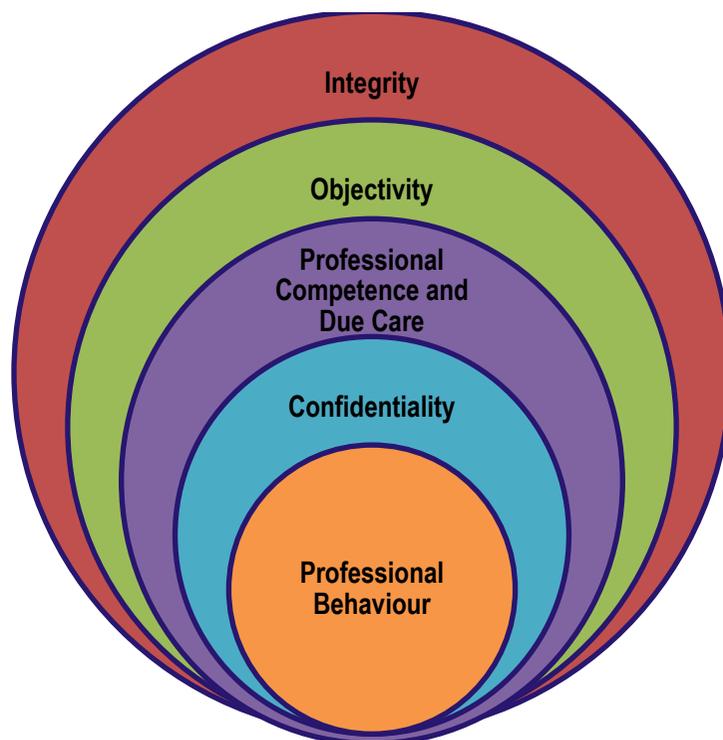
2.1 Introduction and Fundamental Principles - Section 100

1. A **Professional Accountant's** responsibility is not exclusively to satisfy the needs of an **individual client or employer** but also acting in the public interest. A professional accountant should **observe and comply** with the ethical requirements of this Code.
2. This Code is in three parts. **Part A** establishes the fundamental principles of professional ethics for Professional Accountants and provides a conceptual framework for applying those principles.
 - The conceptual framework provides guidance on fundamental ethical principles.
 - Professional accountants are required to apply this conceptual framework to identify **threats to compliance** with the fundamental principles, to evaluate their significance and, if such threats are other than clearly insignificant to **apply safeguards** to eliminate them or reduce them to an acceptable level such that compliance with the fundamental principles is not compromised.
3. **Parts B and C** illustrates how the conceptual framework is to be applied in specific situations. It provides examples of safeguards that may be appropriate to address threats to compliance with the fundamental principles and also provides examples of situations where safeguards are not available to address the threats and consequently the activity or relationship creating the threats should be avoided.
 - Part B applies to **professional accountants in public practice**.
 - Part C applies to **professional accountants in business**.

Professional accountants in public practice may also find the guidance in Part C relevant to their particular circumstances

2.1.1 Fundamental Principles

In order to achieve the objectives of the Accountancy profession, professional accountants have to observe a number of prerequisites or fundamental principles. The fundamental principles as discussed in Code of Ethics of ICAI, to be complied, are given below:



(a) Integrity – Section 110

1. The principle of integrity imposes **an obligation** on all professional accountants to be **straightforward and honest** in both Professional and Business relationships.
2. Professional Accountant should **not be associated** with reports, returns, communications or other information where they believe that the information:
 - (a) Contains a materially false or misleading statement;
 - (b) Contains statements or information furnished recklessly; or
 - (c) Omits or obscures information required to be included where such omission or obscurity would be misleading.

However, a professional accountant will **not be considered to be in breach** of matters mentioned above in paragraph 2 if the professional accountant provides a modified report in respect of such above mentioned matter.

(b) Objectivity- Section 120

1. The principle of objectivity imposes an obligation on all Professional Accountants **not to compromise** their professional or business judgment because of **bias, conflict of interest or the undue influence of others**.
2. Relationships that bias or unduly influence the professional judgment of the professional accountant should be avoided.

(c) Professional Competence and Due Care – Section 130

1. The principle of professional competence and due care imposes the following obligations on professional accountants:
 - (a) To maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service; and
 - (b) To act diligently in accordance with applicable technical and professional standards.
2. Competent professional service requires the exercise of **sound judgment** in applying professional knowledge and **skill in the performance** of such service. Professional competence may be divided into two separate phases:
 - (a) Attainment of professional competence; and
 - (b) Maintenance of professional competence.
3. The maintenance of professional competence requires a **continuing awareness and an understanding** of relevant technical professional and business developments. Which to perform competently within the professional environments.
4. Diligence encompasses the **responsibility** to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.
5. Professional accountant should take steps to ensure that those working under the professional accountant's authority in a **professional capacity** have appropriate training and supervision.

Where appropriate should make clients, employers or other users of the professional services **aware of limitations** inherent in the services to avoid the misinterpretation of an Expression of Opinion

(d) Confidentiality- Section 140

1. The principle of confidentiality imposes an **obligation** on professional accountants to refrain from:
 - (a) Disclosing outside the firm or employing organization **confidential information** without proper and specific authority or unless there is a legal or professional right or duty to disclose; and
 - (b) Using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.
2. Maintain confidentiality even in a social environment. The Professional Accountant should be alert to the possibility of inadvertent disclosure, particularly in circumstances involving long association with a business associate or a close or **immediate family** member.
3. Maintain confidentiality of information disclosed by a **prospective client** or employer.

4. Consider the need to maintain confidentiality of information within the firm or employing organization.
5. Take all **reasonable steps** to ensure that staff under the professional accountant's control and persons from whom advice and assistance is obtained.
6. Comply with the principle of confidentiality continues even after the **end of relationships** between a professional accountant and a client or employer.
7. The following are circumstances where professional accountants are or may be required to disclose confidential information or when such disclosure may be appropriate:
 - (a) Disclosure is **permitted by law and is authorized by the client** or the employer;
 - (b) Disclosure is **required by law**,



-  Production of documents or other provision of evidence in the course of legal proceedings.
-  Disclosure to the appropriate public authorities of infringements of the law that come to light.

- (c) There is a **professional duty or right to disclose**, when not prohibited by law:
 - (i) To comply with the quality review;
 - (ii) To respond to an inquiry or investigation;
 - (iii) To protect the professional interests of a professional accountant in legal proceedings; or
 - (iv) To comply with technical standards and ethics requirements.
8. **In deciding whether to disclose confidential information, professional accountants should consider the following points:**

(a) Whether the interests of all parties, including third parties whose interests may be affected, could be harmed if the client or employer consents to the disclosure of information by the professional accountant;

(b) Whether all the relevant information is known and substantiated, to the extent it is practicable; and

(c) The type of communication that is expected and to whom it is addressed; in particular that the parties to whom the communication is addressed are appropriate recipients.

(e) **Professional Behaviour- Section 150**

1. Imposes an **obligation** on professional accountants to comply with relevant laws and regulations and avoid any action that may bring discredit to the profession.
2. In marketing and promoting themselves and their work, professional accountants should not bring the profession **into disrepute**. Professional accountants should be honest and truthful and should not:
 - (a) Make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; or
 - (b) Make disparaging references or unsubstantiated comparisons to the work of others.

2.2 Part B: Professional Accountants In Public Practice

2.2.1 Introduction – Section 200

This Part of the Code illustrates how the **conceptual framework contained in Part A is to be applied** by professional accountants in public practice. The examples in the following sections are not intended nor interpreted as an exhaustive list of all circumstances experienced by a professional accountant in public practice that may create threats to compliance with the fundamental principles.

A professional Accountant in public practice **should not engage** in any business, occupation or activity that impairs integrity, objectivity or the good reputation of the profession and as a result would be incompatible with the rendering of professional services.

2.2.2 Threats and Safeguards

A. Threats: Compliance with the fundamental principles may potentially be threatened by range of circumstances. Many threats fall into the following categories:



The nature and significance of the threats may differ depending on whether they arise in relation to the provision of services to a **financial statement audit client, a non-financial statement audit assurance client or a non-assurance client**.



Circumstances that may create self-interest threats

A **financial interest** in a client or jointly holding a financial interest with a client.

- Undue dependence** on total fees from a client.
- Having a **close business relationship** with a client.
- Concern about the **possibility of losing** a client.
- Potential employment** with a client.
- Contingent fees** relating to an **assurance engagement**.

A **loan to or from** an assurance client or any of its directors or officers

Examples of circumstances that may create self-review threats

1. The discovery of a **significant error during a re-evaluation** of the work of the professional accountant in public practice.
2. Reporting on the **operation of financial systems** after being involved in their design or implementation.
3. Having prepared the **original data** used to generate records that are the subject matter of the engagement.
4. A member of the **assurance team** being, or having recently been, a **director or officer** of that client.
5. A member of the assurance team being, or having recently been, employed by the client in a position to exert direct and significant influence over the subject matter of the engagement.
6. Performing a service for a client that **directly affects** the subject matter of the assurance engagement.

Examples of circumstances that may create advocacy threats:

Promoting shares in a **listed entity** when that entity is a financial statement audit client.

Acting as an advocate on behalf of an assurance client in **litigation or disputes** with third parties.

Examples of circumstances that may create familiarity threats

1. A member of the engagement team having a **close or immediate family relationship** with a director or officer of the client.

2. A member of the engagement team having a close or immediate family relationship with an employee of the client who is in a position to exert direct and significant influence over the subject matter of the engagement.
3. A former partner of the firm being a director or officer of the client or an employee in a position to exert direct and significant influence over the subject matter of the engagement.
4. Accepting **gifts or preferential treatment** from a client, unless the value is clearly insignificant.
5. Long association of senior personnel with the assurance client.

Examples of circumstances that may create intimidation threats
1. Being threatened with dismissal or replacement in relation to a client engagement.
2. Being threatened with litigation .
3. Being pressured to reduce inappropriately the extent of work performed in order to reduce fees.

Specific circumstances give rise to unique threats to compliance with one or more of the fundamental principles. Such unique threats obviously cannot be categorized. In either professional or business relationships, a professional accountant in public practice should always be on the alert for such circumstances and threats.

B. Safeguards that may eliminate or reduce threats to an acceptable level fall into two broad categories:

- (a) Safeguards created by the profession, legislation or regulation; and
- (b) Safeguards in the work environment
 - **Work environment safeguards** comprise firm-wide safeguards and engagement specific safeguards. A professional accountant in public practice should exercise judgment to determine how to best deal with an identified threat.
 - **Firm-wide safeguards in the work environment may include:**
 1. Leadership of the firm that stresses the importance of compliance with the fundamental principles.
 2. Leadership of the firm that establishes the expectation that members of an assurance team will act in the public interest.
 3. Policies and procedures to implement and monitor quality control of engagements.

4. Documented policies regarding the identification of threats to compliance with the fundamental principles, the evaluation of the significance of these threats and the identification and the application of safeguards to eliminate or reduce the threats, other than those that are clearly insignificant, to an acceptable level
 5. For firms that perform assurance engagements, documented **independence** policies regarding the identification of threats to independence, the evaluation of the significance of these threats and the evaluation and application of safeguards to eliminate or reduce the threats, other than those that are clearly insignificant, to an acceptable level.
 6. Documented internal policies and procedures requiring compliance with the fundamental principles.
 7. Policies and procedures that will enable the identification of interests or relationships between the firm or members of engagement teams and clients.
 8. Policies and procedures to monitor and, if necessary, manage the reliance on revenue received from a single client.
 9. Using different partners and engagement teams with separate reporting lines for the provision of non-assurance services to an assurance client.
 10. Policies and procedures to prohibit individuals who are not members of an engagement team from inappropriately influencing the outcome of the engagement.
 11. Timely communication of a firm's policies and procedures, including any changes to them, to all partners and professional staff, and appropriate training and education on such policies and procedures.
 12. Designating a member of senior management to be responsible for overseeing the adequate functioning of the firm's quality control system.
 13. Advising partners and professional staff of those assurance clients and related entities from which they must be independent.
 14. A disciplinary mechanism to promote compliance with policies and procedures.
 15. Published policies and procedures to encourage and empower staff to communicate to senior levels within the firm any issue relating to compliance with the fundamental principles that concerns them.
- **Engagement-specific safeguards in the work environment may include:**
 1. Involving an **additional professional accountant** to review the work done or otherwise advise as necessary

2. Consulting an **independent third party**, such as a committee of independent directors, a professional regulatory body or another professional accountant.
3. **Discussing ethical issues** with those charged with governance of the client.
4. Disclosing to those charged with governance of the client the nature of services provided and extent of fees charged.
5. Involving another firm to perform or re-perform part of the engagement.
6. **Rotating** senior assurance team personnel.

2.3 PART C: PROFESSIONAL ACCOUNTANTS IN BUSINESS

Introduction – Section 300

1. This Part of the Code illustrates the application of conceptual framework contained in Part A to **Professional Accountants in Business**.
2. The examples presented in the following sections are intended to illustrate how the conceptual framework is to be applied and **are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances** experienced by a professional accountant in business that may create threats to compliance with the principles. Consequently, it is not sufficient for a professional accountant in business merely to comply with the examples; rather, the framework should be applied to the particular circumstances faced



3. MEMBERSHIP OF THE INSTITUTE

On acceptance of application by the Council, the applicant's name shall be entered in the Register and a certificate of membership in the appropriate Form shall be issued to the applicant.

Particulars of the Register: Section 19 of the Act provides the particulars to be included in the Register about every member of the Institute, namely-

his full name, date of birth, domicile, residential and professional address;	
date of entry of name in the Register;	his qualifications;
whether he holds a COP; and	any other prescribed particulars.

3.1 Disabilities for the Purpose of Membership

Section 8 of the Chartered Accountants Act, 1949 enumerates the circumstances under which a person is debarred from having his name entered in or borne on the Register of Members, as follows:

- (i) If he has not attained the age of 21 years at the time of his application for the entry of his name in the Register; or

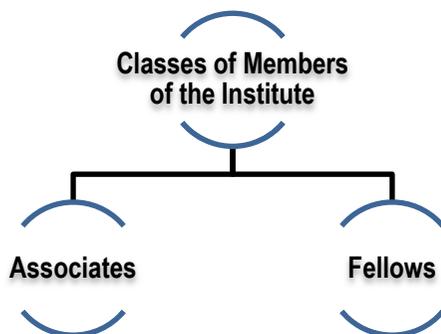
- (ii) If he is of unsound mind and stands so adjudged by a competent court; or
- (iii) If he is an undischarged insolvent; or
- (iv) If he, being a discharged insolvent, has not obtained from the court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part; or
- (v) If he has been convicted by a competent Court whether within or without India, of an offence involving moral turpitude and punishable with transportation or imprisonment or of an offence, not of a technical nature, committed by him in his professional capacity unless in respect of the offence committed he has either been granted a pardon or, on an application made by him in this behalf, the Central Government has, by an order in writing, removed the disability; or
- (vi) If he has been removed from membership of the Institute on being found on inquiry to have been guilty of professional or other misconduct;

It may be noted that a person who has been removed from membership for a specified period, shall not be entitled to have his name entered in the Register until the expiry of such period.

In addition, failure on the part of a person to disclose the fact that he suffers from any one of the disabilities aforementioned would constitute professional misconduct. The name of the person, who is found to have been subject at any time to any of the disabilities aforementioned, can be removed from the Register of Members by the Council.

3.2 Types of Members of the Institute

Section 5 of the Chartered Accountants Act, 1949 provides the division of members of the Institute. The members shall be divided into two classes designated as Associates and Fellows.



Associate Member: Any person, whose name has been entered in the Register, shall be deemed to have become an Associate of the Institute and shall also be entitled to use the letters A.C.A. after his name to indicate that he is an Associate Member of the Institute.

Fellow Member: The name of following types of members shall be entered into the

Register as a Fellow of the Institute, on payment of such fees along with the application made and granted in the prescribed manner-

- (i) An associate member who has been in continuous practice in India for at least 5 years,
- (ii) A member who has been an associate for a continuous period of not less than 5 years and who possess such qualifications as may be prescribed by the Council with a view to ensuring

that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of 5 years as a Chartered Accountant.

The abovementioned members shall be entitled to use the letters F.C.A. after his name to indicate that he is a Fellow Member of the Institute.

3.3 Removal of Name from the Register

As per section 20 of the Act, the Council may remove, from the Register, the name of any member of the Institute in the following cases-

- (i) who is dead; or
- (ii) from whom a request has been received to that effect; or
- (iii) who has not paid any prescribed fee required to be paid by him; or
- (iv) who is found to have been subject at the time when his name was entered in the Register, or who at any time thereafter has become subject, to any of the disabilities mentioned in Section 8, or who for any other reason has ceased to be entitled to have his name borne on the Register.

The Council shall remove the name of any member from the Register in respect of whom an order has been passed under this Act removing him from membership of the Institute.

If the name of any member has been removed from the Register for non-payment of prescribed fee as required to be paid by him, then, on receipt of an application, his name may be entered again in the Register on payment of the arrears of annual fee and entrance fee along with such additional fee, as may be determined by the Council.

3.4 Restoration of Membership

In addition to the provisions of the section 20 of the Chartered Accountants Act, 1949 (as discussed in above Para), Regulation 19 of the Chartered Accountants Regulations, 1988, as well states that the name of the member may be restored by the Council in the Register on an application, in the appropriate Form, received in this behalf whose name has been removed from the Register for non-payment of prescribed fee as required to be paid by him, if he is otherwise eligible to such membership, on his paying the arrears of annual membership fee, entrance fee and additional fee determined by the Council under the Act.

However, the effective date in case of restoration of cancelled membership, in different situations, shall be in the following manner:

Application for restoration and requisite fees are made within the same year of removal	• Restoration shall be with effect from the date on which it was removed from the Register.
Removal of name under the orders of the Board of Discipline or the Disciplinary Committee or the Appellate Authority or the High Court	• Restoration shall be in accordance with such orders.
In other cases	• Restoration shall be with effect from the date on which the application and fee are received.

3.5 Penalty for Falsely Claiming to be a Member etc.

Section 24 of the Chartered Accountants Act, 1949 provides that any person who-

- (i) not being a member of the Institute;
 - (a) represents that he is a member of the Institute; or
 - (b) uses the designation Chartered Accountant;
- (ii) being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practices as a Chartered Accountant,

shall be punishable on first conviction with fine which may extend to ₹ 1000, and on any subsequent conviction with imprisonment which may extend to 6 months or with fine which may extend to ₹ 5,000, or with both.

The provision may be understood with a case, where, the Court of Additional Chief Judicial Magistrate had by its judgement found the accused guilty under Section 24(i)(a) & (b) of the Chartered Accountants Act, 1949 and Section 465 of the Indian Penal Code. The Court imposed a fine on the accused and in the event of his failure to pay the fine, sentenced to rigorous imprisonment for three months. (Case of Prem Batra decided on 18.7.1989)



4. CHARTERED ACCOUNTANTS IN PRACTICE

A practicing Chartered Accountant is a person who is a member of the Institute and is holding Certificate of Practice; and includes such members of the Institute who are deemed to be in Practice in accordance with the provisions of the Chartered Accountants Act, 1949.

4.1 Significance of the Certificate of Practice

A member who is not in practice is precluded from accepting engagement to render services of any of the types normally prescribed for a Chartered Accountant, even though for doing so, he does not require special qualifications. The Council of the institute is of view that-

- (i) Once the person concerned becomes a member of the Institute, he is bound by the provisions of the Chartered Accountants Act and its Regulations. If and when he appears before the Income-tax Tribunal as an Income-tax representative after having become a member of the Institute, he could so appear only in his capacity as a Chartered Accountant and a member of the Institute. Having, as it were, brought himself within the jurisdiction of the Chartered Accountants Act and its Regulations, he could not set them at naught by contending that even though he continues to be a member of the Institute and has been punished by suspension from practice as a member, he would be entitled, in substance, to practice in some other capacity.
- (ii) A member of the Institute can have no other capacity in which he can take up such practice, separable from his capacity to practice as a member of the Institute.”

Therefore, in nutshell, a Chartered Accountant whose name has been removed from the membership for professional and/or other misconduct, during such period of removal, will not appear before the various tax authorities or other bodies before whom he could have appeared in his capacity as a member of this Institute.

Case Study

A Chartered Accountant in practice has been suspended from practice for a period of 6 months and he had surrendered his Certificate of Practice for the said period. During the said period of suspension, though the member did not undertake any audit assignments, he undertook representation assignments for income tax whereby he would appear before the tax authorities in his capacity as a Chartered Accountant.

Solution

Undertaking Tax Representation Work: A chartered accountant not holding certificate of practice cannot take up any other work because it would amount to violation of the relevant provisions of the Chartered Accountants Act, 1949.

In case a member is suspended and is not holding Certificate of Practice, he cannot in any other capacity take up any practice separable from his capacity to practices as a member of the Institute. This is because once a person becomes a member of the Institute; he is bound by the provisions of the Chartered Accountants Act, 1949 and its Regulations.

If he appears before the income tax authorities, he is only doing so in his capacity as a chartered accountant and a member of the Institute. Having bound himself by the said Act and its Regulations made there under, he cannot then set the Regulations at naught by contending that even though he continues to be a member and has been punished by suspension, he would be

entitled to practice in some other capacity.

Conclusion: Thus, in the instant case, a chartered accountant would not be allowed to represent before the income tax authorities for the period he remains suspended. Accordingly, in the present case he is guilty of professional misconduct.

4.2 Cancellation and Restoration of Certificate of Practice

Regulation 10 provides that a Certificate of Practice (COP) shall be liable for cancellation, if:

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| (i) | the name of the holder of the certificate is removed from the Register; or |
| (ii) | the Council is satisfied, after giving an opportunity of being heard to the person concerned, that such certificate was issued on the basis of incorrect, misleading or false information, or by mistake or inadvertence; or |
| (iii) | a member has ceased to practise; or |
| (iv) | a member has not paid annual fee for certificate of practice till 30 th day of September of the relevant year. |

Where a COP is cancelled, the holder shall surrender the same to the Secretary.

Further, Regulation 11 on restoration of COP states that, on an application made in the approved Form and on payment of such fee, the Council may restore the COP with effect from the date on which it was cancelled, to a member whose certificate has been cancelled due to non-payment of the annual fee for the COP and whose application, complete in all respects, together with the fee, is received by the Secretary before the expiry of the relevant year.

4.3 Members - Deemed to be in Practice

Every member of the Institute is entitled to designate himself as a Chartered Accountant. There are two classes of members, those who are in practice and those who are otherwise occupied. In Section 2(2) of the Act, the term deemed "to be in practice" has been defined as follows:

"A member of the Institute shall be deemed "to be in practice" when individually or in partnership with Chartered Accountants in practice, or in partnership with members of such other recognised professions as may be prescribed, he, in consideration of remuneration received or to be received-

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| (i) | engages himself in the practice of accountancy; or |
| (ii) | offers to perform or performs service involving the auditing or verification of financial transactions, books, accounts or records, or the preparation, verification or certification of financial accounting and related statements or holds himself out to the public as an accountant; or |
| (iii) | renders professional services or assistance in or about matters of principle or detail relating to accounting procedure or the recording, presentation or certification of financial |

facts or data; or

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| (iv) renders such other services as, in the opinion of the Council, are or may be rendered by a Chartered Accountant in practice; |
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and the words “to be in practice” with their grammatical variations and cognate expressions shall be construed accordingly.

Explanation - 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 or firm consisting of one or more chartered accountants and members of any other professional body having prescribed qualifications shall, notwithstanding such employment, be deemed to be in practice for the limited purpose of the training of Articled Assistants”.

Pursuant to Section 2(2)(iv) above, the Council has passed a resolution permitting a Chartered Accountant in practice to render entire range of “Management Consultancy and other Services”.

The expression “Management Consultancy and other Services” shall not include the function of statutory or periodical audit, tax (both direct taxes and indirect taxes) representation or advice concerning tax matters or acting as liquidator, trustee, executor, administrator, arbitrator or receiver, but shall include the following-

(i) Financial management planning and financial policy determination.*
(ii) Capital structure planning and advice regarding raising finance.*
(iii) Working capital management.*
(iv) Preparing project reports and feasibility studies.*
(v) Preparing cash budget, cash flow statements, profitability statements, statements of sources and application of funds etc.
(vi) Budgeting including capital budgets and revenue budgets.
(vii) Inventory management, material handling and storage.
(viii) Market research and demand studies.
(ix) Price-fixation and other management decision making.
(x) Management accounting systems, cost control and value analysis.
(xi) Control methods and management information and reporting.
(xii) Personnel recruitment and selection.

* Consideration of “tax implications” while rendering the services at (i), (ii), (iii) and (iv) above will be considered as part of “Management Consultancy and other services”.

(xiii) Setting up executive incentive plans, wage incentive plans etc.
(xiv) Management and operational audits.
(xv) Valuation of shares and business and advice regarding amalgamation, merger and acquisition.
(xvi) Business Policy, corporate planning, organisation development, growth and diversification.
(xvii) Organisation structure and behaviour, development of human resources including design and conduct of training programmes, work study, job-description, job evaluation and evaluation of workloads.
(xviii) Systems analysis and design, and computer related services including selection of hardware and development of software in all areas of services which can otherwise be rendered by a Chartered Accountant in practice and also to carry out any other professional services relating to EDP.
(xix) Acting as advisor or consultant to an issue, including such matters as: <ul style="list-style-type: none"> (a) Drafting of prospectus and memorandum containing salient features of prospectus. Drafting and filing of listing agreement and completing formalities with Stock Exchanges, Registrar of Companies and SEBI. (b) Preparation of publicity budget, advice regarding arrangements for selection of (i) ad-media, (ii) centres for holding conferences of brokers, investors, etc., (iii) bankers to issue, (iv) collection centres, (v) brokers to issue, (vi) underwriters and the underwriting arrangement, distribution of publicity and issue material including application form, prospectus and brochure and deciding on the quantum of issue material (In doing so, the relevant provisions of the Code of Ethics must be kept in mind). (c) Advice regarding selection of various agencies connected with issue, namely Registrars to Issue, printers and advertising agencies. (d) Advice on the post issue activities, e.g., follow up steps which include listing of instruments and dispatch of certificates and refunds, with the various agencies connected with the work. <p><i>Explanation</i> - For removal of doubts, it is hereby clarified that the activities of broking, underwriting and portfolio management are not permitted.</p>
(xx) Investment counselling in respect of securities [as defined in the Securities Contracts (Regulation) Act, 1956 and other financial instruments.] (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).
(xxi) Acting as registrar to an issue and for transfer of shares/other securities. (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).

(xxii) Quality Audit.
(xxiii) Environment Audit.
(xxiv) Energy Audit.
(xxv) Acting as Recovery Consultant in the Banking Sector.
(xxvi) Insurance Financial Advisory Services under the Insurance Regulatory & Development Authority Act, 1999, including Insurance Brokerage.

Pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949, read with Regulation 191 of Chartered Accountants Regulations, 1988 a member shall be deemed to be in practice if he, in his professional capacity and neither in his personal capacity nor in his capacity as an employee, acts as a liquidator, trustee, executor, administrator, arbitrator, receiver, adviser or representative for costing, financial or taxation matters or takes up an appointment made by the Central Government or a State Government or a court of law or any other legal authority or acts as a Secretary unless his employment is on a salary-cum-full-time basis.

It is necessary to note that a person is deemed to be in practice not only when he is actually engaged in the practice of accountancy but also when he offers to render accounting services whether or not he in fact does so. In other words, the act of setting up of an establishment offering to perform accounting services would tantamount to being in practice even though no client has been served.

It may also be noted that a member of the Institute is deemed to be in practice during the period he renders 'service with armed forces'.

The above provisions need to be correlated with the provisions of section 144 of the Companies Act, 2013 which prohibits an auditor of the company from rendering certain services directly or indirectly to the company or its holding company or its subsidiary company.

(Students may refer Chapter 6 'The Company Audit' of the Study Material for detailed understanding of provisions on section 144 of the Companies Act, 2013)

Case Study

Mr. A, a practicing Chartered Accountant agreed to select and recruit personnel, conduct training programmes for and on behalf of a client.

Solution

Providing Management Consultancy and Other Services: Under Section 2(2)(iv) of the Chartered Accountants Act, 1949, a member of the Institute shall be deemed "to be in practice" when individually or in partnership with Chartered Accountants in practice, he, in consideration of remuneration received or to be received renders such other services as, in the opinion of the Council, are or may be rendered by a Chartered Accountant in practice. Pursuant to Section 2(2)(iv) above, the Council has passed a resolution permitting a Chartered Accountant in practice

to render entire range of “Management Consultancy and other Services”.

The definition of the expression “Management Consultancy and other Services” includes Personnel recruitment and selection. Personnel Recruitment and selection includes, development of human resources including designing and conduct of training programmes, work study, job description, job evaluation and evaluations of work loads.

Conclusion: Therefore, Mr. A is not guilty of professional misconduct.

4.4 Companies not to Engage in Accountancy

Section 25 of the Chartered Accountants Act, 1949 provides that:

- (1) No company, whether incorporated in India or elsewhere, shall practise as chartered accountants.

Here, the term “company” shall include any limited liability partnership which has company as its partner for the purpose of this section.

- (2) If any company contravenes this provision then, without prejudice to any other proceedings which may be taken against the company, every director, manager, secretary and any other officer thereof who is knowingly a party to such contravention shall be punishable with fine which may extend on first conviction to ₹ 1,000 and on any subsequent conviction to ₹ 5,000.

In addition, as per section 141(2) of the Companies Act, 2013, where a firm (including a limited liability partnership) is appointed as an auditor of a company, then, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

On thoroughly studying the provisions of both the Acts, the LLPs, though allowed to be appointed as an auditor in accordance with the Companies Act, 2013, however, it can't be engaged into practice, if it has company as its partner, as per the Chartered Accountants Act, 1949.

Therefore, in short, the LLP not having any company as its partner, can be engaged into practicing and thus take audit assignments.

4.5 Member in Practice Prohibited from using a Designation Other Than Chartered Accountant

- (i) The member of the Institute are now permitted to use the word 'CA' as prefix before their name irrespective of the fact that they are in practice or not.
- (ii) Under Section 7 of the Chartered Accountants Act, 1949 a member in practice cannot use any designation other than that of a Chartered Accountant, nor can he use any other description, whether in addition thereto or in substitution therefor, but a member who is not in practice and does not use the designation of a Chartered Accountant may use any other description. Nevertheless a member in practice may use any other letters or description indicating membership of Accountancy Bodies which have been approved by the Council or

of bodies other than Accountancy Institutes so long as such use does not imply adoption of a designation and/or does not amount to advertisement or publicity.

For example, though a member cannot designate himself as a Cost Accountant, he can use the letters A.I.C.W.A. after his name, when he is a member of that Institute.

“It is improper for a Chartered Accountant to state on his professional documents that he is an Income-tax Consultant, Cost Accountant, Company Secretary, Cost Consultant or a Management Consultant”.

“Member are allowed to appear before the various authorities including Company Law Board, Income Tax Appellate Tribunal, Sales Tax Tribunal where the law has permitted the same, so far as the designation “Corporate Lawyer” is concerned, the Council was of the view that as per the existing provisions of law, a Chartered Accountant in practice is not entitled to use the designation “Corporate Lawyer”.

Further, the members are not permitted to use the initials ‘CPA’ (standing for Certified Public Accountant) on their visiting cards”.

“Members of the Institute in practice who are otherwise eligible may also practice as Company Secretaries and/or Cost Accountants. Such members shall, however, not use designation/s of the aforesaid Institute/s simultaneously with the designation “Chartered Accountant”.

4.6 Maintenance of Branch Offices

In terms of Section 27 of the Act, if a Chartered Accountant in practice or a Firm of Chartered Accountants has more than one office in India, each one of such offices should be in the separate charge of a member of the Institute. Failure on the part of a member or a firm to have a member in charge of its branch and a separate member in case of each of the branches, where there is more than one, would constitute professional misconduct.

However, exemption has been given to members practicing in hill areas subject to certain conditions. The conditions are:

(1)	Such members/firm be allowed to open temporary offices in a city in the plains for a limited period not exceeding 3 months in a year.
(2)	The regular office need not be closed during this period and all correspondence can continue to be made at the regular office.
(3)	The name board of the firm in the temporary office should not be displayed at times other than the period such office is permitted to function as above.
(4)	The temporary office should not be mentioned in the letterheads, visiting cards or any other documents as a place of business of the member/firm.
(5)	Before commencement of every winter it shall be obligatory on the member/firm to inform the Institute that he/it is opening the temporary office from a particular date and after the

office is closed at the expiry of the period of permission, an intimation to that effect should also be sent to the office of the Institute by registered post.

It is necessary to mention that the Chartered Accountant in-charge of the branch of another firm should be associated with him or with the firm either as a partner or as a paid assistant. If he is a paid assistant, he must be in whole time employment with him.

However, a member can be in-charge of two offices if they are located in one and the same Accommodation. In this context some of the Council's decisions are as follows:

- (1) With regard to the use of the name-board, there will be no bar to the putting up of a name-board in the place of residence of a member with the designation of Chartered Accountant, provided it is a name-plate or a name-board of an individual member and not of the firm.

Case Study

Mr. X & Mr. Y, partners of a Chartered Accountant Firm, one in-charge of Head Office and another in-charge of Branch at a distance of 80 kms from the municipal limits, *puts up a name-board of the firm in both premises and also in their respective residences.*

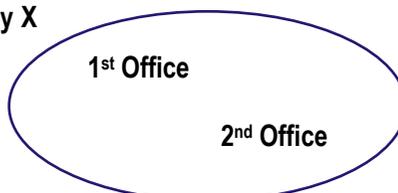
Putting Name Board of the Firm at Residence: The council of the Institute has decided that with regard to the use of the name-board, there will be no bar to the putting up of a name-board in the place of residence of a member with the designation of chartered accountant, provided, it is a name-plate or board of an individual member and not of the firm.

In the given case, partners of XY & Co., put up a name board of the firm in both offices and also in their respective residences.

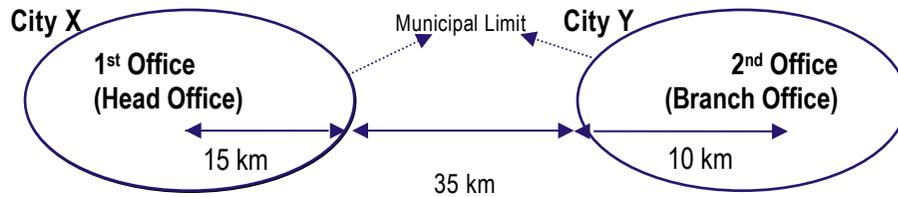
Conclusion: Thus, the chartered accountants are guilty of misconduct. Distance given in the question is not relevant for deciding.

- (2) The exemption may be granted to a member or a firm of Chartered Accountants in practice to have a second office without such second office being under the separate charge of a member of the Institute, provided-
- (a) the second office is located in the same premises, in which the first office is located or,
 - (b) the second office is located in the same city, in which the first office is located or,

City X



- (c) the second office is located within a distance of 50 km. from the municipal limits of a city, in which the first office is located.



Effective distance from 1st Office = 35 km + 10 km = 45 km

A member having two offices of the type referred to above shall have to declare, which of the two offices is his main office, which would constitute his professional address.

Case Study

Mr. K, Chartered Accountant in practice as a sole proprietor at Chennai has an office in the suburbs of Chennai. Due to increase in the income tax assessment work, he opens another office near the income tax office, which is within the city and at a distance of 30 kms. from his office in the suburb. For running the new office, he has employed a retired Income Tax Commissioner who is not a Chartered Accountant.

Solution:

Maintenance of Branch Office in the Same City: As per section 27 of the Chartered Accountants Act, 1949 if a chartered accountant in practice has more than one office in India, each one of these offices should be in the separate charge of a member of the Institute. However, a member can be in charge of two offices if the second office is located in the same premises or in the same city, in which the first office is located; or the second office is located within a distance of 50 kms from the municipal limits of a city, in which the first office is located.

In the given case, Mr. K, Chartered Accountant in practice as a sole proprietor at Chennai has an office in suburbs of Chennai, and due to increase in the work he opened another branch within the city near the income tax office. He also employed a retired income tax commissioner to run the new office and the second office is situated within a distance of 30 kilometers from his office in the suburb.

Conclusion: In view of above provisions, there will be no misconduct if Mr. K will be in-charge of both the offices. However, he is bound to declare which of the two offices is the main office.

4.7 KYC Norms for CA in Practice

The financial services industry globally is required to obtain information of their clients and comply with Know Your Client Norms (KYC norms). Keeping in mind the highest standards of Chartered Accountancy profession in India, the Council of ICAI thought it necessary to issue such norms to be observed by the members of the profession who are in practice.

In light of this background, the Council of ICAI approved the following KYC Norms which are mandatory in nature and shall apply in all assignments pertaining to attest functions.

The KYC Norms approved by the Council of ICAI are given below:

<p>1. Where Client is an Individual/ Proprietor</p> <p>A. General Information</p> <ul style="list-style-type: none">➤ Name of the Individual➤ PAN No. or Aadhar Card No. of the Individual➤ Business Description➤ Copy of last Audited Financial Statement <p>B. Engagement Information</p> <ul style="list-style-type: none">➤ Type of Engagement
<p>2. Where Client is a Corporate Entity</p> <p>A. General Information</p> <ul style="list-style-type: none">➤ Name and Address of the Entity➤ Business Description➤ Name of the Parent Company in case of Subsidiary➤ Copy of last Audited Financial Statement <p>B. Engagement Information</p> <ul style="list-style-type: none">➤ Type of Engagement <p>C. Regulatory Information</p> <ul style="list-style-type: none">➤ Company PAN No.➤ Company Identification No.➤ Directors' Names & Addresses➤ Directors' Identification No.

3. Where Client is a Non-Corporate Entity

A. General Information

-  Name and Address of the Entity
-  Copy of PAN No.
-  Business Description
-  Partner's Names & Addresses (with their PAN/Aadhar Card/DIN No.)
-  Copy of last Audited Financial Statement

B. Engagement Information

-  Type of Engagement



5. CHARTERED ACCOUNTANTS IN SERVICE

In accordance with the definitions provided under the Code of Ethics, a Professional Accountant in Service or Chartered Accountant in Service means a professional accountant employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not for profit sector, regulatory bodies or professional bodies, or a professional accountant contracted by such entities.

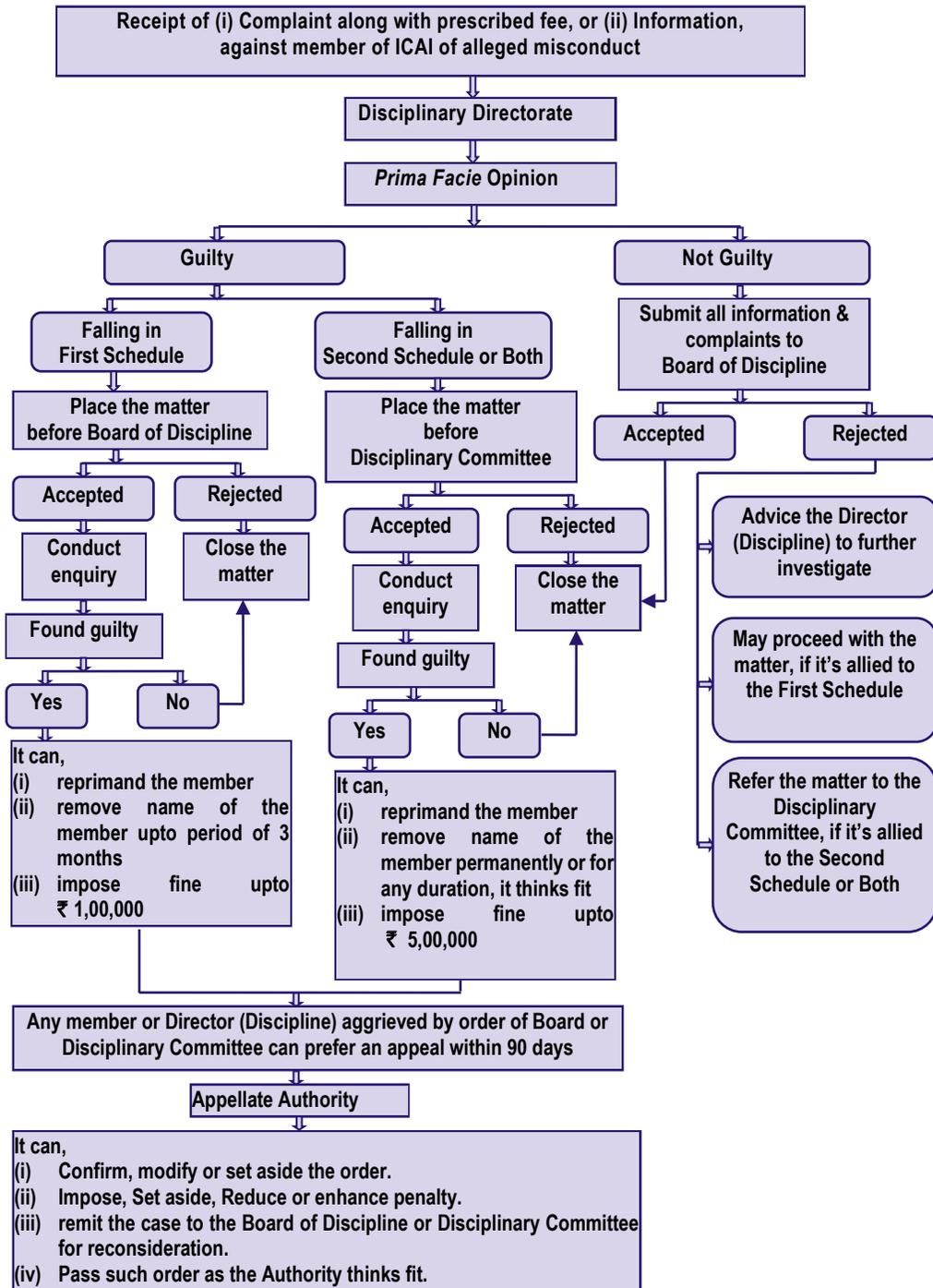


6. DISCIPLINARY PROCEDURE

Provisions of the Chartered Accountant, Act, 1949 regarding:

- (i) Disciplinary Directorate,
- (ii) Board of Discipline,
- (iii) Disciplinary Committee,
- (iv) Appellate Authority and procedure in enquiries for disciplinary matters relating to misconduct of the members of the Institute are as hereunder:

Flow Chart of Discipline Procedure Mechanism



[For detailed knowledge with respect to Disciplinary Procedure, students are advised to refer Chartered Accountants Act, 1949 produced under Annexure 2 at the end of this Chapter.]



7 TYPES OF MISCONDUCT-PROFESSIONAL OR OTHER

According to section 22 of the Act, for the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

A member is liable to disciplinary action under Section 21 of the Chartered Accountants Act, if he is found guilty of any Professional or Other Misconduct.

7.1 Professional Misconduct

Professional misconduct has been defined in part I, II and III of the First Schedule; and part I and II of the Second Schedule. A member who is engaged in the profession of accountancy whether in practice or in service should conduct/restrict his action in accordance with the provisions contained in the respective parts of the schedules. If the member is found guilty of any of the acts or omissions stated in any of the respective parts of the Schedule, he/she shall be deemed to be guilty of professional misconduct.

7.2 Other Misconduct

Other misconduct has been defined in part IV of the First Schedule and part III of the Second Schedule. These provisions empower the Council to inquire into any misconduct of a member even it does not arise out of his professional work. This is considered necessary because a chartered accountant is expected to maintain the highest standards of integrity even in his personal affairs and any deviation from these standards, even in his non-professional work, would expose him to disciplinary action. For example, a member who is found to have forged the will of a relative, would be liable to disciplinary action even though the forgery may not have been done in the course of his professional duty.

Other misconduct would also relate to conviction by a competent court for an offence involving moral turpitude punishable with transportation or imprisonment to an offence not of a technical nature committed by the member in his professional capacity. [See section 8(v) of the Act].

Some illustrative examples, where a member may be found guilty of “Other Misconduct”, under the aforesaid provisions rendering, himself unfit to be member are:

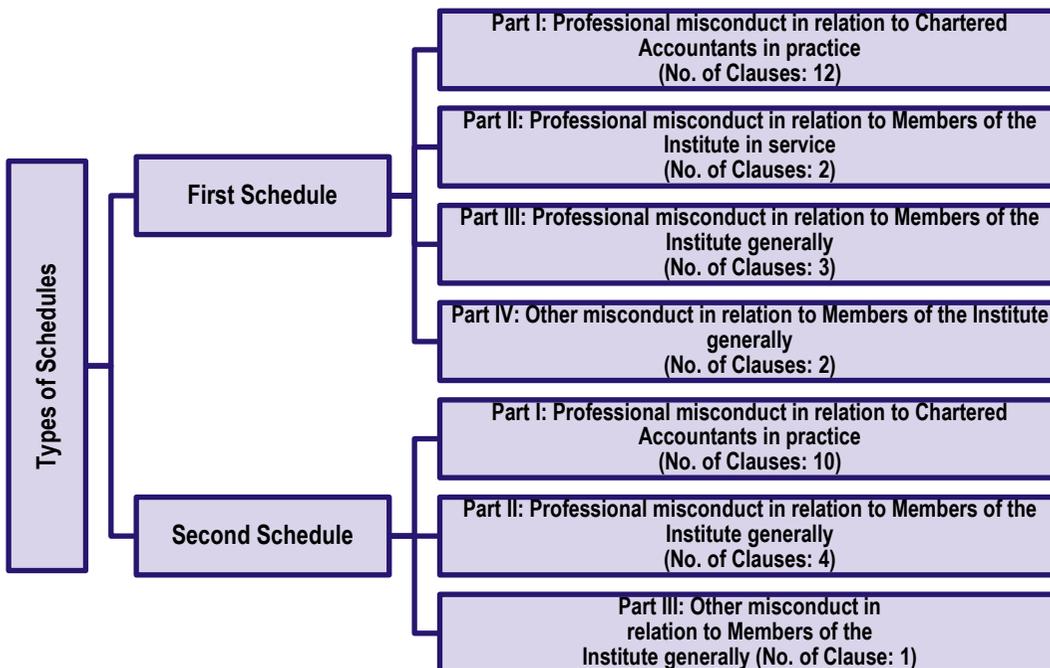
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|-------|--|
| (i) | Where a chartered accountant retains the books of account and documents of the client and fails to return these to the client on request without a reasonable cause. |
| (ii) | Where a chartered accountant makes a material misrepresentation. |
| (iii) | Where a chartered accountant uses the services of his articled or audit assistant for purposes other than professional practice. |
| (iv) | Conviction by a competent court of law for any offence under Section 8 (v) of the Chartered Accountants Act 1949. |

(v)	Misappropriation by office-bearer of a Regional Council of the Institute, of a large amount and utilisation thereof for his personal use.
(vi)	Not replying within a reasonable time and without a good cause to the letter of the public authorities.
(vii)	Where certain assessment records of income tax department belonging to the client of Chartered Accountant were found in the almira of the bed-room of the chartered accountant.
(viii)	Where a chartered accountant had adopted coercive methods on a bank for having a loan sanctioned to him.

8. SCHEDULES TO THE ACT

Acts or omissions which comprise professional misconduct within the meaning of Section 22 of the Chartered Accountants Act are defined in two Schedules viz. the First Schedule and the Second Schedule. The First Schedule is divided into four parts, Part I of the First Schedule deals with the misconduct of a member in practice which would have the effect generally of compromising his position as an independent person. Part II deals with misconduct of members in services. Part III deals with the misconduct of members generally and Part IV deals with other misconduct in relation to members of the institute generally.

The Second Schedule is divided into three parts. Part I deals with misconduct in relation to a member in practice, Part II deals with misconduct of members generally and Part III deals with other misconduct in relation to members of the Institute generally.



The implications of the different clauses in the schedules are discussed below:

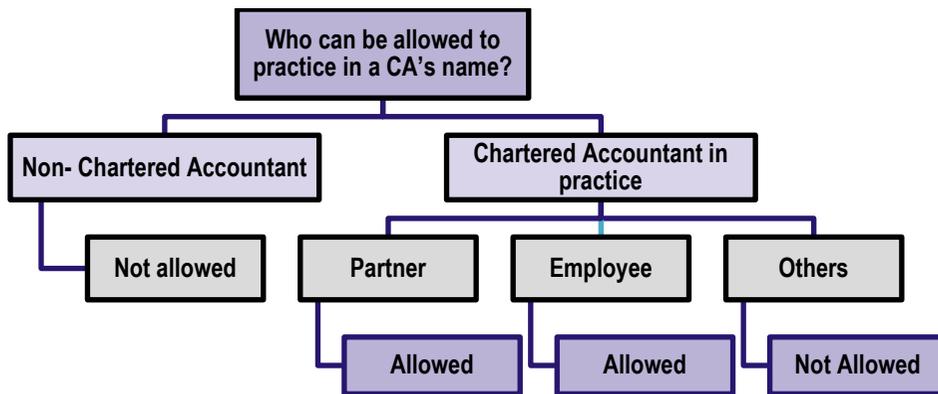
8.1 THE FIRST SCHEDULE

Where the Director (Discipline) is of the opinion that member is guilty of any professional or other misconduct mentioned in the First Schedule; he shall place the matter before the Board of Discipline.

PART I - Professional Misconduct in relation to Chartered Accountants in Practice

A Chartered Accountant in practice is deemed to be guilty of professional misconduct if he:

Clause (1) allows 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.



The above clause is intended to safeguard the public against unqualified accountant practicing under the cover of qualified accountants. It ensures that the work of the accountant will be carried out by a Chartered Accountant who may be his partner, or his employee and would work under his control and supervision.

Clause (2) pays or allows or agrees to pay or allow, directly or indirectly, 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 a deceased partner, or a member of any other professional body or with such other persons having such qualification as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

Explanation - In this item, "partner" includes a person residing outside India with whom a chartered accountant in practice has entered into partnership which is not in contravention of item (4) of this Part.

It is in order for a member to share his fees or profits with another member of the Institute and/or a firm of Chartered Accountants. A practicing Member of the Institute can share fees or profits arising out of his professional business with such members of other professional bodies or with such other persons having such qualifications as may be prescribed from time to time by the Council.

The Council has prescribed [**Regulation 53A(1)** of the Chartered Accountants Regulations, 1988] the professional bodies, which are as under:-

- (a) The Institute of Company Secretaries of India established under the Company Secretaries Act, 1980.
- (b) The Institute of Cost & Works Accountants of India established under the Cost & Works Accountants Act, 1959.
- (c) Bar Council of India established under the Advocates Act, 1961.
- (d) The Indian Institute of Architects established under the Architects Act, 1972.
- (e) The Institute of Actuaries of India established under the Actuaries Act, 2006.

Further, the Council has also prescribed [Regulation 53A(3) of the Chartered Accountants Regulations, 1988] the persons qualified in India, which are as under:

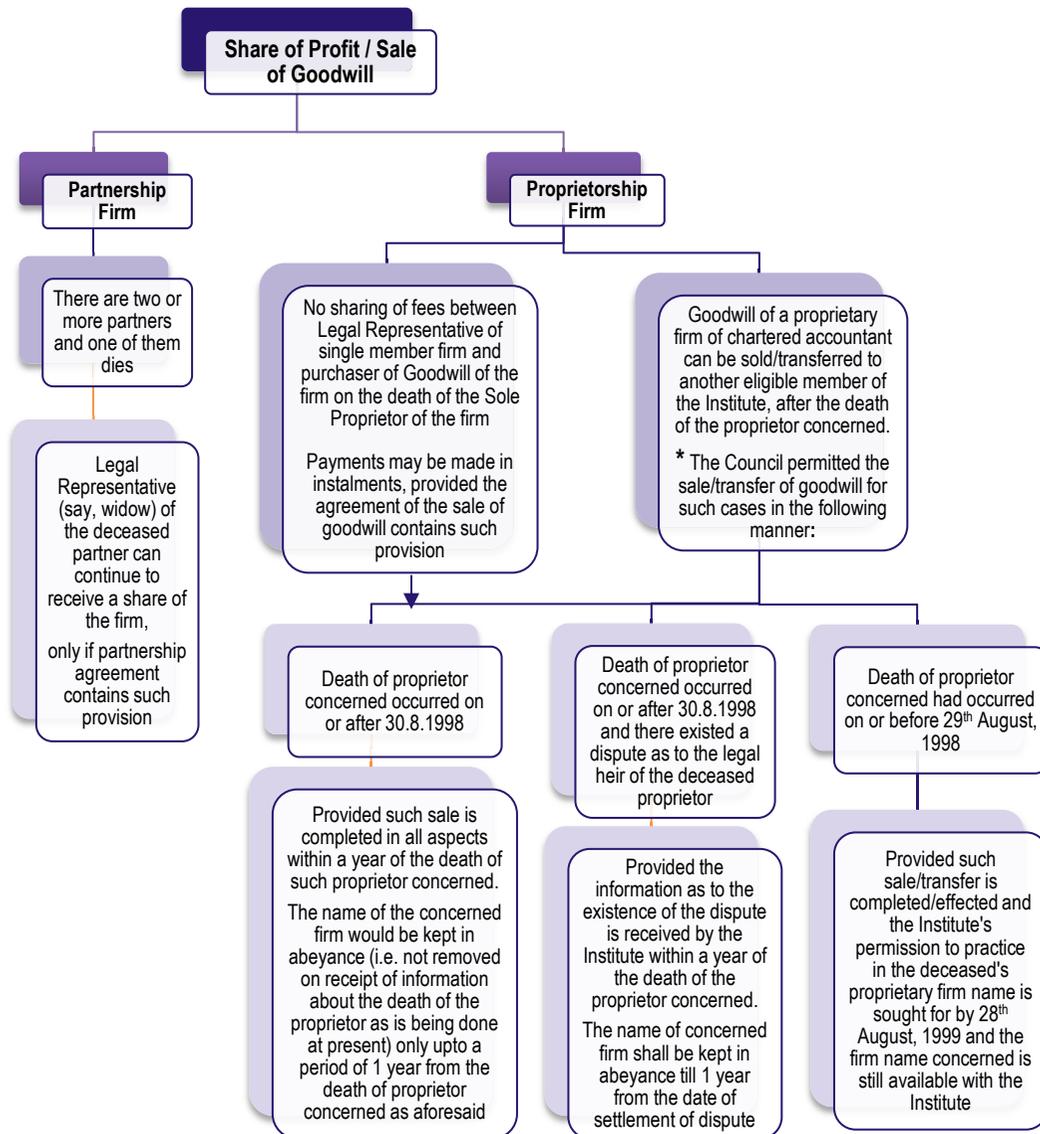
- (i) Company Secretary within the meaning of the Company Secretaries Act, 1980;
- (ii) Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959;
- (iii) Actuary within the meaning of the Actuaries Act, 2006;
- (iv) Bachelor in Engineering from a University established by law or an Institution recognised by law;
- (v) Bachelor in Technology from a University established by law or an institution recognised by law;
- (vi) Bachelor in Architecture from a University established by law or an institution recognised by law;
- (vii) Bachelor in Law from a University established by law or an institution recognised by law;
- (viii) Master in Business Administration from Universities established by law or technical institutions recognised by All India Council for Technical Education.

The Institute came across certain Circulars/Orders issued by the Registrars of various State Co-operative Societies wherein it has been mentioned that certain amount of audit fee is payable to the concerned State Government 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. 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 fee is deducted by the Government to meet the administrative and other expenditure.

Considering the case where a Chartered Accountant gave 50% of the audit fees received by him to the complainant, who was not a Chartered Accountant, under the nomenclature of office allowance

and such an arrangement continued for a number of years, it was held by the Council that in substance the Chartered Accountant had shared his profits and, therefore, was guilty of professional misconduct under the clause. It is not the nomenclature to a transaction that is material but it is the substance of the transaction, which has to be looked into.

Treatment of Goodwill –



* In case of a partnership firm when all the partners die at the same time, the above Council decision would also be applicable.

Case Study

Mr. Qureshi, Chartered Accountant, in practice died in a road accident. His widow proposes to sell the practice of her husband to Mr. Pardeshi, Chartered Accountant, for ₹ 5 lakhs. The price also includes right to use the firm name - Qureshi and Associates. Can widow of Qureshi sell the practice and can Mr. Pardeshi continue to practice in that name as a proprietor?

Solution

Sale of Goodwill: With reference to Clause (2) of Part I to the First Schedule to Chartered Accountants' Act, 1949, the Council of the Institute of Chartered Accountants of India had an occasion to consider whether the goodwill of a proprietary concern of chartered accountant can be sold to another member who is otherwise eligible, after the death of the proprietor.

It lay down that the sale is permitted subject to certain conditions discussed in above diagram. It further resolved that the legal heir of the deceased member has to obtain the permission of the Council within a year of the death of the proprietor concerned.

Conclusion: Thus, in a given case and on the facts, the widow of Mr. Qureshi, who has sold the practice for ₹ 5 lakhs is nothing but sale of goodwill. Thus, the act of Mrs. Qureshi is permissible and Mr. Pardeshi can continue to practice in that name as a proprietor.

Clause (3) accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute.

Provided that nothing herein contained shall be construed as prohibiting a member 'from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this part.

Just as a member cannot share his fees with a non-member, he is also not permitted to receive and share the fees of others except for sharing with Member of such professional body or other person having such qualification as may be prescribed (Regulation 53A of the Chartered Accountants Regulations, 1988) by the Council for the purpose of Clause (2), (3) and (5) of Part I of First Schedule. Such a restriction is necessary so that a Chartered Accountant who is often required to engage or to recommend for engagement by his clients, the services of the members of other professions, cannot share the fees received by other persons who are otherwise not permitted by the Council in terms of provision of this clause.

Clause (4) enters into partnership, in or outside India, with any person other than Chartered Accountant in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (v) of sub-section (1) of section 4 or whose qualifications are recognized by the Central Government or the Council for the purpose of permitting such partnerships.

The Council has prescribed Regulation 53A(3) (as discussed under clause (2) of this part) and Regulation 53B of the Chartered Accountants Regulations, 1988 for the persons qualified and the professional bodies.

The Regulation 53B prescribes the membership of following professional bodies for entering into partnership:

- (a) Company Secretary, member, The Institute of Company Secretaries of India, established under the Company Secretaries Act, 1980;
- (b) Cost Accountant, member, The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959;
- (c) Advocate, member, Bar Council of India established under the Advocates Act, 1961;
- (d) Engineer, member, The Institution of Engineers, or Engineering from a University established by law or an institution recognized by law.
- (e) Architect, member, The Indian Institute of Architects established under the Architects Act, 1972;
- (f) Actuary, member, The Institute of Actuaries of India, established under the Actuaries Act, 2006.

Some of the decisions of the Council under this clause are given below:

Where a Chartered Accountant had engaged himself as a partner in two business firms and Managing Director in two Companies and was also holding Certificate of Practice without obtaining permission of the Institute. Held that he was guilty of professional misconduct inter alia under Clauses (4) and (11). (*Harish kumar in re:- Pages 286 of Vol. VIII (2) of Disciplinary cases – Council's decision dated 1st to 3rd August, 2001*)

The Respondent was a Taxation Advisor of a group of Companies. During search and seizure under Section 132 of The Income Tax Act, 1961 of the group and also of the Chartered Accountant, the Complainant found that the Respondent was colluding with this group in evasion of tax. The Respondent had signed two sets of financial statements of the same auditee, for the same financial year. The two financial statements showed different figures of contract receipts, net profits and balance sheet. He was grossly negligent in the conduct of his professional duties. The Respondent admitted that he was managing partner/partner in two partnership firms where there were other partners who were not Chartered Accountants. Held, the respondent is guilty under Clause (4) of Part I of First Schedule and under Clauses (5), (6) & (7) of Part I of Second Schedule. [*Assistant Director of Income Tax (investment), Calicut v. P Subramanian. Council Decision of 281st Meeting held in October, (2008)*].

Case Study

Mr. P, a Chartered Accountant in practice entered into a partnership with Mr. L, an advocate for sharing of fees for work sent by one to the other. However, due to some disputes, the partnership was dissolved after 1 month without any fees having been received.

Partnership with an Advocate: As per Clause (4) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a chartered accountant will be guilty of professional misconduct if he enters into partnership with any person other than a chartered accountant in practice or a person resident without India who but for his residence abroad would be entitled to be registered as a member under Clause (v) of Sub-section (1) of Section 4 or whose qualification are recognized by the Central Government or the Council for the purpose of permitting such partnership.

However, Regulation 53B of the Chartered Accountants Regulations, 1988 permits a Chartered Accountant in practice to enter into partnership with other prescribed Professionals which includes an Advocate, a member of Bar Council of India.

In the instant case, Mr. P, a chartered accountant, has entered into partnership with Mr. L, an advocate.

Conclusion: Thus, he would not be guilty of professional misconduct as per Clause (4) of Part I of First Schedule read with Regulation 53B.

Clause (5) Secures either through the services of a person who is not an employee of such Chartered Accountant or who is not his partner or by means which are not open to a Chartered Accountant, any professional business.

Provided that nothing herein contained shall be construed as prohibiting any agreement permitted in terms of item (2), (3) and (4) of this part.

“A man must stand erect, and not to be kept erect by others”, is a dictum by Marcus Aurelius which though applicable for a man in every walk of life is more so in the case of a professional life. He must seek work not through any agency, but by the respect, that he is able to command for his professional talent and skill and by the confidence he is able to inspire by his reputation. All forms of canvassing on that account are regarded unethical and are prohibited. The decision of the Council under this clause is given below:

A Chartered Accountant wrote various letters to officers of different Army Canteens giving details about him and his experience, his partner & office and the norms for charging audit fees. He was held guilty for violation of Clauses (5) & (6). (Jethanand Sharda vs. Deepak Mehta – Council’s decision dated 1st to 4th July, 1998 – Page 61 of Volume VIII(2) of Disciplinary Cases).

Clause (6) Solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.

Provided that nothing herein contained shall be construed as preventing or prohibiting -

- (i) Any Chartered Accountant from applying or requesting for or inviting or securing professional work from another chartered accountant in practice; or
- (ii) A member from responding to tenders or enquiries issued by various users of professional services or organizations from time to time and securing professional work as a consequence.

However, as per the guideline issued by the Council of the Institute of Chartered Accountants of India, a member of the Institute in practice shall not respond to any tender issued by an organization or user of professional services in areas of services which are exclusively reserved for chartered accountants, such as audit and attestation services. However, such restriction shall not be applicable where minimum fee of the assignment is prescribed in the tender document itself or where the areas are open to other professionals along with the Chartered Accountants.

Further, Keeping in view the broad purview of Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, an advertisement of Coaching /teaching activities by a member in practice 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.

In view of the above, such members are advised to abstain from advertising their association with Coaching / teaching activities through hoardings, posters, banners and by any other means, failing which they may be liable for disciplinary action, as per the provisions of Chartered Accountants Act, 1949 and Rules/Regulations framed thereunder. However, it may be noted that subject to the above prohibition, such members may put, outside their Coaching/teaching premises, sign board mentioning the name of Coaching/teaching Institute, contact details and subjects taught therein only. As regards the size and type of sign board, the Council Guidelines as applicable to Firms of Chartered Accountants would apply.

It is an elaboration of the principle propounded in the preceding clause enjoining that for securing professional work the help of others should not be sought. This clause further enjoins on a member not to solicit professional work by means of advertisement, circular, personal communication or interview or by any other means. The members should not adopt any indirect methods to adventure their professional practice with a view to gain publicity and thereby solicit clients or professional work. Such a restraint must be practiced so that members may maintain their independence of judgment and may be able to command the respect of their prospective clients.

In the early years of their professional career, members may find this restraint inconvenient and irksome. A question may arise in their minds as to how they would be able to find professional work if they are not permitted to advertise or solicit work.

A little reflection would show that professional work cannot be secured either by advertisement or by circulars or by solicitation. It can only be obtained by a member gradually building confidence in his ability and integrity. The service tendered by an accountant is of a personal and intimate nature and its value can be appraised only by personal contact and experience. A public advertisement is likely to lead to an impression that the professional person is over anxious to win confidence, which however will have the opposite effect. The satisfaction of clients would be the best advertisement, which would lead to other clients. Unabashed advertisement would affect the public esteem in which the profession is held and would act to the disadvantage of its members. An advertisement is not a key to success in the profession. It is the quality service, which attracts and retains the clients.

Consequent to amendment made by Chartered Accountant (Amendment) Act, 2006 in Clause (6) of Part I of the First Schedule, **Ban on Solicitation** is **relaxed** in the following situation of client or professional work:

- | | |
|------|--|
| (i) | If work or professional work occurs within the fraternity; or |
| (ii) | If professional work is secured from responding to tenders, or enquiries issued by various users of professional services or organization. |

Some forms of soliciting work which the Council has prohibited are discussed below:

- (a) **Advertisement and note in the press** – Members should not advertise for soliciting work or advertise in a manner which could be interpreted as soliciting or offering to undertake professional work. They are also not permitted to use the less open method of circulating letters to a small field of possible clients. Personal canvassing or canvassing for clients of previous employer through the help of the employees are also not permitted. The **exceptions** to the above rule are:
- (i) A member may request another Chartered Accountant in practice for professional work.
 - (ii) a member may advertise changes in partnerships or dissolution of a firm, or of any change in 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.
 - (iii) a member is also permitted to issue a classified advertisement in the journal/ newsletter of the Institute intended to give information for sharing professional work on assignment basis or for seeking partnership or salaried employment of an accountancy nature, provided it only contains the accountant's name, address or telephone number, fax number, e-mail address.
- (b) **Application for empanelment for allotment of audit and other professional work** – The Government departments, government companies/Corporations, courts, co-operative societies and banks and other similar institutions prepare panels of chartered accountants for allotment of audit and other professional work. Where the existence of such a panel is within the knowledge of a member, he is free to write to the concerned organization with a request to place his name on the panel. **However, it would not be proper for the Chartered Accountant to make roving enquiries by applying to any such organization for having his name included in any such panel.** It is permissible to quote fees on enquiries being received from such bodies, which maintain such panel.
- (c) **Publication of Name or Firm Name by Chartered Accountants in the Telephone or other Directories published by Telephone Authorities or Private Bodies** – The Council has held that it would not be proper for a chartered accountant to have entries made in a Telephone Directory either by making a special request or by means of an additional payment. The

Council has also considered the question of permitting entries in respect of chartered accountants and their firms under specified groups in telephone/trade directories brought out by government and non-government agencies. It has decided to permit such entries subject to certain restrictions.

- (d) **Responding to Tenders, Advertisements and Circulars** – It is not prohibited to the members to respond to tenders and requests made by users of professional work.
- (e) **Publication of Books or Articles** – A member is not permitted to indicate in a book or an article, published by him, the association with any firm of Chartered Accountants.
- (f) **Issue of greeting cards or invitations** – The Council does not approve of the issue of greeting cards or personal invitations by members indicating their professional designation, status and qualification etc. However, the Council is of the view that the designation “Chartered Accountant” as well as the name of the firm may be used in greeting cards, invitations for marriages and religious ceremonies and any invitation for opening or inauguration of office of the members, change in office premises and change in telephone numbers, provided that such greeting cards or invitations etc. are sent only to clients, relatives and close friends of the members concerned.
- (g) **Soliciting professional work by making roving inquiries** – It is not permissible for a member to address letters or circulars to persons who are likely to require services of a Chartered Accountant since it would tantamount to advertisement.
- (h) **Seeking work from professional colleagues** – The issue of an advertisement or a circular by a Chartered Accountant, seeking work from professional colleagues on any basis whatsoever except as provided above would be in violation of this Clause.
- (i) **Scope of Representation which an auditor is entitled to make under Section 225(3) Companies Act, 1956 (now section 140(4)(iii) of the Companies Act, 2013)** – The right to make representation does not mean that an auditor has any prescriptive right or a lien to an audit. The wording of his representation should be such that apart from the opportunity not being abused to secure needless publicity, it does not tantamount directly or indirectly to canvassing or soliciting for his continuance as an auditor. The letter should merely set out in a dignified manner how he has been acting independently and conscientiously through the term of office and may, in addition, indicate if he so chooses his willingness to continue as auditor if re appointed by the shareholders.
- (j) **Acceptance of original professional work by a member emanating from the client Introduced to him by another member** – The Council has decided that a member should not accept the original professional work emanating from a client introduced to him by another member. If any professional work of such client comes to him directly, it should be his duty to ask the client that he should come through the other member dealing generally with his original work.

- (k) **Giving public Interviews** – While giving any interview or otherwise furnishing details about themselves or their firms in public interviews or to the press or at any forum, the members should ensure that it should not result in publicity. Due care should be taken to ensure that such interviews or details about the members or their firms are not given in a manner highlighting their professional attainments.
- (k) **Members and/or firms who publish advertisements under Box numbers** – Members/Firms are prohibited from inserting advertisements for soliciting clients or professional work under box numbers in the newspapers. This practice is in violation of this clause.
- (m) **Website** –

The Council at its 212th meeting held in January, 2001 approved the detailed guidelines for posting the particulars on Website by Chartered Accountant(s) in practice and firm(s) of Chartered Accountants in practice. Subsequently, the Council at its 235th meeting held in July, 2003 amended sub-paras (8) & (20) of the said guidelines. Thereafter, the Council at its 242nd meeting held in April, 2004* and its 345th Meeting held in August, 2015 again revised the said guidelines. The amended guidelines issued by the Council are as under:

- (1) The Chartered Accountants and/or Chartered Accountants' Firms would be free to create their own Website subject to the overall guidelines laid down by the Council hereunder. The actual format of the Website is not being prescribed nor any standard format of the Website is being given to provide independence to the Members. There is no restriction on the colours which may be used in the Website.
- (2) Individual Members would also be permitted to have their Webpages in their trade name or individual name.
- (3) The Chartered Accountants and/or Chartered Accountants' Firms would ensure that their Websites are run on a "pull" model and not a "push" model of the technology to ensure that any person who wishes to locate the Chartered Accountants or Chartered Accountants' firms would only have access to the information and the information should be provided only on the basis of specific "pull" request.
- (4) The Chartered Accountants and/or Chartered Accountants' Firms should ensure that none of the information contained in the Website be circulated on their own or through E-mail or by any other mode or technique except on a specific "pull" request.
- (5) The Chartered Accountants would also not issue any circular or any other advertisement or any other material of any kind whatsoever by virtue of which they solicit people to visit their Website. The Chartered Accountants would, however, be permitted to mention their Website address on their professional stationery.

* The Council at its 345th Meeting amended the para 6(ix) of the Guidelines

(6) The following information may be allowed to be displayed on the Firms/Members' Websites:

- (i) Member/Trade/Firm name.
- (ii) Year of establishment.
- (iii) Member/Firm's Address (both Head Office and Branches)
 - Tel. No(s)
 - Fax No(s)
 - E-mail ID(s)
- (iv) Nature of services rendered (to be displayable only on specific "pull" request)
- (v) Partners

Partners Name	Year of Qualification	Other Qualification(s)	Tel Off. – Direct Res. Mobile E-mail address	Area of Experience (to be displayable only on Specific "pull" request)

(vi) Details of Employees –

Professional	Others	Name	Designation	Area of Experience (to be displayable only on Specific "pull" request)

- (vii) Job vacancies for the Chartered Accountant/firm of Chartered Accountants (including articleship).
- (viii) No. of articled clerks. (to be displayable only on specific "pull" request).
- (ix) Nature of assignments handled (to be displayable only on specific "pull" request). Names of clients and fee charged cannot be given.

Note*: Disclosure of names of clients and/or fees charged, on the website is permissible only where it is required by a regulator, whether or not constituted under a statute, in India or outside India, provided that such disclosure is only to the extent of requirement of the regulator. Where such disclosure of names of clients and/or fees charged is made on the website, the member/ firm shall ensure that it is mentioned on

* The amendment shown in bold was made pursuant to the decision taken by the Council at its 345th Meeting held on 14th -16th August, 2015

the website [in italics], below such disclosure itself, that “This disclosure is in terms of the requirement of [name of the regulator] having jurisdiction in [name of the country/area where such regulator has jurisdiction] vide [Rule/ Directive etc. under which the disclosure is required by the Regulator].

- (7) Since Chartered Accountants in practice/firms of Chartered Accountants are not permitted to use logo with effect from 1st July, 1998, they cannot use logo on Website also.
- (8) Display of Passport size photograph is permitted.
- (9) The members may include articles, professional information, professional updation and other matters of larger importance or of professional interest.
- (10) The bulletin boards can be provided.
- (11) The chat rooms can be provided which permit chatting amongst members of the ICAI and between Firms and its clients. The confidentiality protocol would have to be observed.
- (12) The members/firms can provide on line advice to their clients who specifically request for the advice whether free of charge or on payment.
- (13) The listing on suitable search engine should be permitted. However, the field of search should be restricted only to the field of “Chartered Accountants” or “CA” or “Indian CA”, “Indian CPA”, “Indian Chartered Accountant” or any permutation or combination related thereto. The Websites would be subjected to the guidelines contained herein and normally would not be vetted by the Institute of Chartered Accountants of India (ICAI). ICAI at its sole discretion may vet any of the Websites created by its members or individual Chartered Accountant or firms of Chartered Accountants and would have powers to direct deletion of certain portions and/or issue specific directions. In addition, necessary action can be taken in accordance with the Chartered Accountants Act, 1949 and the Regulations framed thereunder, in case there is any violation of the above guidelines.
- (14) The details in the Website should be so designed that it does not amount to soliciting client or professional work. In case any content or technical feature of Website is against the professional Code of Conduct and Ethics as well as the restrictions contained in the schedules to the Chartered Accountants Act, 1949 or against the guidelines or directions issued by ICAI from time to time, appropriate action will be initiated by the ICAI in terms of its disciplinary mechanism either suo-motuo or on complaint as provided under the Chartered Accountants Act, 1949.
- (15) The Website should ensure adequate secrecy of the matters of the clients handled through Website,

- (16) A number of Chartered Accountants Societies or other bodies are creating data-bases of Chartered Accountants or Chartered Accountants' Firms and are offering listing to Chartered Accountants. Such listing would be permitted with or without payment. In case a Chartered Accountant or Chartered Accountants' Firm is a member of a professional body or association or Chamber of Commerce and they offer listing to the members or firm, the same would be permitted.
- (17) The Institute of Chartered Accountants of India will regularly inform the aforesaid guidelines to the members and the Chartered Accountants' Firms to ensure the strict compliance of the guidelines. The guidelines may be revised from time to time.
- (18) No Advertisement in the nature of banner or any other nature will be permitted on the Website.
- (19) The Website should be befitting the profession of Chartered Accountants and should not contain any information or material which is unbecoming of a Chartered Accountant.
- (20) The Website may provide a link to the Website of ICAI, its Regional Councils and Branches and also the Website of Govt./Govt. Departments/Regulatory authorities/other Professional Bodies, such as, American Institute of Certified Public Accountants (AICPA), the Institute of Chartered Accountants of England & Wales (ICAEW) and The Canadian Institute of Chartered Accountants (CICA).
- (21) The address of the Website can be different from the name of the firm. But it should not amount to soliciting clients or professional work or advertisement of professional attainments or services. The Website address should be as near as possible to the individual name/trade name, firm name of the Chartered Accountant in practice or firm of Chartered Accountants in practice. The Ethical Standards Board (ESB) of ICAI will decide in case there is any difficulty.
- (22) The Website should mention the date upto which it is updated and the information should not be at material variance from the information as per the ICAI's records.

The website address of the member be obtained on annual basis in the annual form required to be filed by the member while paying fee and the same be taken as entry on record & the website address of the member be provided to members as part of the membership record. If the member chose not to give his website address, it did not prevent the Institute to take suitable action against him in case his noncompliance with the guidelines.

A number of non-Chartered Accountants' firms, corporate including banks, finance Companies and newspapers have set up their own Websites providing advisory services on taxation and other areas where Chartered Accountants are rendering professional service. Some of such Websites may request Chartered Accountants or Chartered Accountants' firms to provide consultation and advice

through their Websites. This would be permitted subject to the condition that on the Website, contact address of the Chartered Accountant concerned is not provided nor such Website will contain any material which advertises professional achievements or status of such Chartered Accountant except making a statement that they are Chartered Accountants. The name of Chartered Accountants' firm with suffix "Chartered Accountants" would not be permitted.

Some of the decisions of the Council/High Courts on this clause are given below:

Solicitation – Where a chartered accountant firm issued a letter of authority in favour of two other chartered accountants to accept and carry out audits of Co-operative Societies on its behalf and they (the two chartered accountants) issued circulars of which the firm was not aware - Held, that the firm was not guilty of professional misconduct. [*V.B. Kirtane (1958)*] But the person, in whose favour the letter of authority was given in the above case, was held guilty. [*MR Walke (1958)*]

A chartered accountant sent a printed circular to a person unknown to him offering his services in profit planning and profit improvement programmes. The circular conveyed the idea that it was meant for strangers only. Held, the chartered accountant was guilty of professional misconduct under the clause as he used the circulars to solicit clients and professional work. [*B.S.N. Bhushan (1965)*]

A chartered accountant wrote several letters to Assistant Registrars/ Registrars of Co-operative Societies, Government of West Bengal requesting for allotment of audit work and to enroll his name on panel of auditors. Held he was guilty of professional misconduct under the clause. The activities of the chartered accountant went much beyond the instructions of the Council to the effect that roving enquiries should not be made with the Government Department for empaneling the name unless it had been ascertained in advance that specific panel was being maintained. It was also held that an auditor of co-operative societies under a license granted by co-operative department was not its employee and, therefore, he could not solicit work. [*Chief Auditor of Co-operative Societies, West Bengal vs. B.B. Mukherjee (1967)*]

A chartered accountant, inspite of the previous reprimand, sent letters to registrar Co-operative societies, Calcutta, stating that no allotment of audit was made to him and requested to take action immediately and oblige. Held he was guilty of professional misconduct under the clause. [*D.N. Das Gupta, Chief auditor of Co-operative Societies, West Bengal vs. B.B. Mukherjee (1969)*]

A Chartered Accountant approached the principal of a secondary school through a third person known to the principal for his appointment as auditor of that school. Further, the chartered accountant misrepresented to the previous Auditor that he had been offered appointment as auditor of the school and enquired whether he had any objection to his accepting the same though it was a fact that the appointment of chartered accountant was not made, the chartered accountant was guilty of professional misconduct under the clause. It was further held that writing letter by the Chartered Accountant to the previous auditor offering his services to audit the accounts of school was not wrong as it was an offer to professional colleague and not to a prospective client. [*M. L. Agarwal (1973)*]

A member was found guilty of professional misconduct under Clauses (6) and (7) Part I of the First Schedule for having issued circular letter regarding change of address of his firm to persons who were not in professional relationship with him and for having written to the shareholders thanking them for appointing him as auditor. He was reprimanded by the Council under Section 21(4), on an appeal made by the Council having regard to the ethical requirement about publicity by the members of the Institute as laid down in the "Code of Conduct". [*K.K. Mehta vs. M.K. Kaul (1975)*]

An advertisement was published in a newspaper containing the member's photograph wherein he was congratulated on the occasion of the opening ceremony of his office. He was found guilty by the Council and later, by High Court of violating the Clause (soliciting work by advertisement). The following observations of the High Court may be relevant.

- (a) The advertisement which had been put in by the member is a noticeable one and the profession of Chartered Accountancy should maintain high standards of integrity, professional ethics and efficiency.
- (b) If soliciting of work is allowed the independence and forthrightness of a Chartered Accountant in the discharge of duties cannot be maintained and therefore some discipline must be maintained by the profession. [*G.P. Agrawal (1982)*]

A member who got an advertisement published in a newspaper offering his "services in matters of Accounts, Income Tax, Labour laws, Law matters and Management Services was found guilty in terms of this clause as also under Clause (7). [*Anil K. Garg (1987)*]

A member had an advertisement published in a newspaper regarding inauguration of his professional office. It was held that having regard to:

- (i) the nature of the advertisement;
- (ii) the function organised on that occasion;
- (iii) the persons invited;
- (iv) the medium used;
- (v) the names of various concerns which had conveyed their good wishes;
- (vi) the advertisement having been released by the Respondent himself and he had solicited professional work by advertisement, he was found guilty in terms of this clause. [*Shashindra S. Ostwal (1988)*]

A member wrote a letter to a Company in standard format highlighting his expertise in sales tax matters and had requested for a draft of ₹ 200/- if his knowledge of the Sales tax matters has been found worthwhile. The member was found guilty in terms of this Clause. [*K.A. Gupta (1989)*]

Where a Chartered Accountant had visited personally the clients for securing the appointment as auditors of the Institutions. Held that he was guilty under Clause (6) of Part I of First Schedule. [*J.S. Bhati Vs. M.L Aggarwal. (1991)*]

Where a Chartered Accountant had addressed an undated but signed letter to-a Bank requesting for empanelment of his firm as auditor along with the particulars of his firm showing the past experience and other details of the firm; and a Member of Parliament had also sent a letter to the Bank recommending the name of the said Chartered Accountant's firm for immediate empanelling for Internal Audit/Inspection Audit/Management Audit, Expenditure Audit. Held that the member was guilty under Clause (6) of Part I of the First Schedule. [*Naresh C. Aggarwal (1992)*]

Where a Chartered Accountant had sent a letter on the letterhead of his firm to a non-member introducing himself as a chartered accountant giving details of services rendered by him and the schedule of his fees for rendering various kinds of services. Held that he was guilty under the clause. [*Vijay Kumar Goel (1994)*]

Where a Chartered Accountant had written a letter to a Co-operative Society wherein he had mentioned that he had been authorised by the Registrar of Societies to conduct the statutory audit of the Societies and requested it to contact him. Held that it tantamount to solicitation of the audit and he had violated the provisions of the clause. [*M. V. Lonkar (1996)*]

Illustrations:

1. Mr. S, a Chartered Accountant published a book and gave his personal details as the author. These details also mentioned his professional experience and his present association as partner with M/s RST, a firm.

Soliciting Professional Work: Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 refers to professional misconduct of a member in practice if he solicits client or professional work either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means. Therefore, members should not adopt any indirect methods to advertise their professional practice with a view to gain publicity and thereby solicit clients or professional work. Such a restraint must be practiced so that members may maintain their independence of judgement and may be able to command the respect of their prospective clients. While elaborating forms of soliciting work, the Council has specified that a member is not permitted to indicate in a book or an article, published by him, the association with any firm of chartered accountants. In this case, Mr. S a Chartered Accountant published the book and mentioned his professional experience and his association as a partner with M/s RST, a firm of chartered accountants.

Conclusion: Mr. S being a chartered accountant in practice has committed the professional misconduct by mentioning that at present he is a partner in M/s. RST, a chartered accountants firm.

2. M/s XYZ, a firm of Chartered Accountants created a website "www.xyzindia.com". The website besides containing details of the firm and bio-data of the partners also contains the passport size photographs of all the partners of the firm.

Hosting Details on Website: As per detailed guidelines of the ICAI laid down in Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a chartered

accountant of the firm can create its own website using any format subject to guidelines. However, the website should be so designed that it does not solicit clients or professional work and should not amount to direct or indirect advertisement. The guidelines of the ICAI to allow a firm to put up the details of the firm, bio-data of partners and display of a passport size photograph.

Conclusion: In the case of M/s XYZ, all the guidelines seem to have been complied and there appears to be no violation of the Chartered Accountants Act, 1949 and its Regulations.

3. The offer document of a listed company in which Mr. D, a practising Chartered Accountant is a director mentions the name of Mr. D as a director along with his various professional attainments and spheres of specialisation.

The Council of the ICAI has in a communication to members stated that if a public company, in which a chartered accountant in practice is a director, issues a prospectus or gives any announcement that gives descriptions about the Chartered Accountant's expertise, specialisation and knowledge in any particular field, it shall constitute a misconduct under Clauses (6) and (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949. The Council has further stated that in such cases the member concerned has to take necessary steps to ensure that such prospectus or public announcements or public communications do not advertise his professional attainments and also that such prospectus or public announcements or public communications do not directly or indirectly amount to solicitation of clients for professional work by the members.

Conclusion: Thus, in the instant case, Mr. D would be held to be guilty of professional mis-conduct and liable for disciplinary action.

4. M/s LMN, a firm of Chartered Accountants responded to a tender from a State Government for computerization of land revenue records. For this purpose, the firm also paid ₹ 50,000 as earnest deposit as part of the terms of the tender.

Responding to Tenders: Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 lays down guidelines for responding to tenders, etc. As per the guidelines if a matter relates to any services other than audit, members can respond to any tender. Further, in respect of a non-exclusive area, members are permitted to pay reasonable amount towards earnest money/security deposits.

Conclusion: In the instance case, since computerization of land revenue records does not fall within exclusive areas for chartered accountants, M/s LMN can respond to tender as well as deposit ₹ 50,000 as earnest deposit and shall not have committed any professional misconduct.

5. Mr. Honest, a Chartered Accountant in practice, wrote two letters to M/s XY Chartered Accountants a firm of CAs; requesting them to allot him some professional work. As he did not have a significant practice or clients he also wrote a letter to M/s ABC, a firm of Chartered Accountants for securing professional work. Mr. Clever, another CA, informed ICAI regarding Mr. Honest's approach to secure the professional work. Is Mr. Honest wrong in soliciting professional work?

Securing Professional Work: Clause (6) of Part I of the First Schedule to the Chartered

Accountants Act, 1949 states that a Chartered Accountant in practice shall be deemed to be guilty of misconduct if he solicits clients or professional work either directly or indirectly by a circular, advertisement, personal communication or interview or by any other means. Provided that nothing herein contained shall be construed as preventing or prohibiting any Chartered Accountant from applying or requesting for or inviting or securing professional work from another chartered accountant in practice.

Such a restraint has been put so that the members maintain their independence of judgment and may be able to command respect from their prospective clients.

Conclusion: In the given case, Mr. Honest wrote letters only to other Chartered Accountants, M/s XY and M/s ABC requesting them to allot some professional work to him, which is not prohibited under Clause (6) as explained above. Thus, Mr. Honest is not wrong in soliciting professional work.

Clause (7) Advertises his professional attainments or services, or uses any designation or expressions other than the Chartered Accountant on professional documents, visiting cards, letter heads or sign boards unless it be a degree of a University established by law in India or recognized by the Central Government or a title indicating membership of the Institute of Chartered Accountants or of any other institution that has been recognized by the Central Government or may be recognized by the Council.

Provided that a member in practice may advertise through a write up, setting out the service provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council.

This clause prohibits advertising of professional attainments or services of a member. It also restrains a member from using any designation or expression other than that of a Chartered Accountant in documents through which the professional attainments of the member would come to the notice of the public.

It is improper for a Chartered Accountant to state on his professional documents that he is an Income-tax Consultant or a Cost Consultant or a Management Consultant.

The date of setting up the practice by a member or the date of establishment of the firm on the letterheads and other professional documents, etc. should not be mentioned. However in the Website, the year of establishment can be given on the specific "pull" request.

A member must not use the designation such as 'Member of Parliament', Municipal Councilor any other functionary in addition to that of Chartered Accountant.

Members of the Institute in practice who are otherwise eligible may practice as advocates subject to the permission of the Bar Council but in such case, they should not use designation 'chartered accountant in respect of the matters involving the practice as an advocate. In respect of other matters they should use the designation 'chartered accountant' but they should not use the designation 'chartered accountant' and 'advocate' simultaneously.

It is not proper for Chartered Accountant to use the designation "Chartered Accountant" except on

professional documents, visiting cards, letterheads or sign boards and under the circumstances clarified under para (f) of Clause (6).

The name, description and address of member (or firm) may appear in any directory or list of members of a particular body in which the names are listed alphabetically. For a specialised directory or a publication such as a "Who's Who" (including those compiled on purely local basis), a member should use his discretion in supplying information, bearing in mind the nature and purpose of the publications. In addition to his name, description and address and those of his firm, a member may give where appropriate, directorship held and reasonable personal details and may state his outside interests. He should not, however, give the names of any of his clients or details of the service offered by his firm.

Publication of Name or Firm Name by Chartered Accountants in the Telephone or other Directories published by Telephone Authorities or Private Bodies. Detailed directions of the Council in this regard are published under Clause (6).

There should be no objection to the publication of photographs and brief particulars of members in magazines provided no payment is made for such publication and there is no advertisement of professional attainments.

Further via a clarification on whether the Chartered Accountants in practice can print their photograph on their visiting cards, the Ethical Standard Board (ESB) of the Institute has opined that mostly the business class prints the photograph on their visiting cards for promoting their business and soliciting clients. As such, it is not permissible for the chartered accountants in practice to print their photograph on their visiting cards.

However, a member in practice is allowed to print Quick Response Code (QR Code) on the visiting Card, provided that the Code does not contain information that is not otherwise permissible to be printed on a visiting Card.

A special exemption has been made as regards publication of the name and address of a member or that of his firm, with the description Chartered Accountant(s), in an advertisement appearing in the press in the following circumstances, provided that the advertisement is not displayed more prominently than is usual for such advertisements or the member or that of his firm with the designation Chartered Accountant(s) appears in type not bolder than the substance of the advertisement.

- (a) Advertisements for recruiting staff in the members' own office.
- (b) Advertisements inserted on behalf of clients requiring staff or wishing to acquire or dispose of business or property.
- (c) Advertisement for the sale of a business or property by a member acting in a professional capacity as trustee, liquidator or receiver.

When advertising for staff, it is desirable that members should avoid the expression such as “a well-known firm”, since this would be form of advertisement. Similar considerations apply to advertisements for articled clerks. The advertisements should not contain any promotional element nor should there be any suggestion that the services offered by the Chartered Accountant or his firm are superior to those offered by other accountants.

Notice in the press relating to the success in an examination of an individual candidate, should not contain any element of undesirable publicity either in relation to the articled/audit clerk or an employee or the member or the firm with whom he has served.

It is usual for local papers to publish details of the examination success of local candidates. Some biographical information is often included. The rule aforementioned is not intended to discourage the printing of news of local interest but is intended to indicate the need for restraint. The candidate's name and address, school and local background, examinations passed with details of any prize or place gained, the name of the principal, firm and town in which the principal practices may be published.

The reports and certificates issued by a Chartered Accountant brings him to the notice of the public in a greater or lesser degree. It is therefore incumbent upon him to ensure that the extent and manner of publications of certificates are limited to what is necessary to enable the report or certificate to serve its proper purpose.

Member may appear on television and films and agree to broadcast in the Radio or give lectures at forums and may give their names and describe themselves as Chartered Accountants. Special qualifications or specialized knowledge directly relevant to the subject matter of the programme may also be given but no reference should be made, in the case of practicing member to the name and address or services of his firm. What he may say or write must not be promotional of his or his firm but must be an objective professional view of the topic under consideration.

Publicity is permitted for appointments to positions of local or national importance or for the views of members on matters of similar importance. Mention of the membership of the Institute is desirable in such cases. What should be aimed at is to achieve suitable publicity for the Institute and its member generally. Members giving talks or lectures or attending a conference may describe themselves as Chartered Accountants only when they are acting in their capacity as Chartered Accountant. Here again reference to the professional firm of the member should not be given.

A professional accountant in public practice holding training courses, seminars etc. for his staff may also invite the staff of other professional accountants and clients to attend the same. However, undue prominence should not be given to the name of the profession accountant in any booklet or document issued in connection therewith.

Members writing articles or letters to the press on subjects connected with the profession may give their names and use the description Chartered Accountants.

Council Guidelines for Advertisement for the Members in Practice

(Issued Pursuant to Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949)

The Members may advertise through a write up setting out their particulars or of their firms and services provided by them subject to the following Guidelines and must be presented in such a manner as to maintain the profession's good reputation, dignity and its ability to serve the public interest.

The Member(s)/Firm(s) should ensure that the contents of the Write up are true to the best of their knowledge and belief and are in conformity with these Guidelines and be aware that the Institute of Chartered Accountants of India does not own any responsibility whatsoever for such contents or claims by the Writer Member(s)/ Firm(s).

With regard to the size of signboard for his office that member can put up, it is matter in which the members should exercise their own discretion and good taste. Use of glow signs or lights on large-sized boards as is used by traders or shop-keepers 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.

The Council has issued following Guidance Note for Members Holding Certificate of Practice on acceptance of directorships in companies.

The Council's attention has been drawn to the fact that more and more companies are appointing Chartered Accountants as directors on their Boards. The prospectus or public announcements issued by these companies often publish descriptions about the Chartered Accountant's expertise, specialization and knowledge in any particular field or add appellation or adjectives to their names. Attention of the members in this context is invited to the provisions of Clauses (6) and (7) of Part I of the First Schedule to the Chartered Accountants Act.

In order that the inclusion of the name of a member of the Institute in the prospectus or public announcements or other public communications issued by the companies in which the member is a director does not contravene the above noted provisions, it is necessary that the members should take necessary steps to ensure that such prospectus or public announcements or public communications do not advertise his professional attainments and also that such prospectus or public announcements or public communications do not directly or indirectly amount to solicitation of clients for professional work by the member. While it may be difficult to lay down a rigid rule in this respect, the members must use their good judgement, depending upon the facts and circumstances of each case to ensure that the above noted provisions are complied with both in letter and spirit.

It is advisable for a member that as soon as he is appointed as a director on the Board of a Company, he should specifically invite the attention of the management of the company to the aforesaid provisions and should request that before any such prospectus or public announcements or public

communication mentioning the name of the member concerned, is issued, the material pertaining to the member concerned should, as far as practicable be got approved by him. The use of the expression 'Chartered Accountant' is permissible. However, the member must ensure that descriptions about his expertise, specialization and knowledge in any particular field of other appellation or adjectives are not published with his name. Particulars about directorships held by the member in other companies can, however, be given, but the name of the Firm of Chartered Accountants in which the member is a partner, should not be given.

For use of logos by Members on letter heads, visiting cards etc. the Council has decided that the logos unconnected with the first letter of the name of the firm or its partners or proprietors will not be permitted for use by members in practice / firms of chartered accountants on their letter heads, visiting cards etc. as the same amounts to advertisement or smacking of publicity. Accordingly, an announcement was published in October, 1995 issue of "The Chartered Accountant".

Subsequent to above, the Institute came across cases of registration of firm name in circumvention of the provisions contained in the Regulation 190 of the Chartered Accountants Regulations, 1988. The members/firms by themselves or through engineered name had been seeking to obtain firm name approval based on the name of the partner/s selected in the manner that logo of the firm would be identical to the firm name which would have not otherwise been permissible as firm name under Regulation 190. In order to ensure compliance with the Regulations, the Council at its meeting held in December, 1997, therefore, decided that the use of logo/monogram of any kind/form/style/design/colour, etc. whatsoever on any display material or media e.g. paper stationery, documents, visiting cards, magnetic devices, internet, sign board, by the members in practice and/or the firm of Chartered Accountants, be prohibited. Use/printing of member/firm name in any other manner tantamounting to logo/monogram was also prohibited.

An announcement was published in February, 1998 issue of the Journal at pages 54 & 55 informing that the use of logo/monogram as above was prohibited with immediate effect in the case of newly enrolled members in practice/new firms of Chartered Accountants. The members already in practice/existing firms of Chartered Accountants using logo/monogram were advised to take immediate steps for discontinuing use of the logo/monogram so as to stop using the logo/monogram in any case before 1st July, 1998. The Council at its meeting held in December 1999 has reiterated its decision to ban logo.

Some of the decisions of the Council/High Courts on this clause are given below:

A chartered accountant wrote several letters to Government Department, inter alia, pointing out seniority of his firm, sending his life sketch and stating that he had a glorious record of service to the country as well as to the organisation of accountancy profession with a view to get the audit work. These letters were clearly in the nature of advertising professional attainments. Held, he was guilty of professional misconduct under the clause. [*Sirdar P.S. Sodhbans (1969)*]

Where a Chartered Accountant had issued two insertions in a Journal published by a Chamber of

Commerce expressing his willingness to offer the concession in respect of all services offered by him. Held that he was guilty under Clauses (6) & (7). [N.O. Abraham Isaac Raj (1992)]

Where a Chartered Accountant had addressed a letter to the Managing Director of a company offering his services as a practicing chartered accountant and giving impression that the letter had been addressed to more than one organization for the above purpose, it was held that the member had contravened the provisions of Clauses (6) & (7). [Yogash Gupta (1996)]



A practising Chartered Accountant uses a visiting card in which he designates himself, besides as Chartered Accountant, as a Tax Consultant

Tax Consultant: Section 7 of the Chartered Accountants Act, 1949 read with Clause (7) of Part I of the First Schedule to the said Act prohibits advertising of professional attainments or services of a member. It also restrains a member from using any designation or expression other than that of a chartered accountant in documents through which the professional attainments of the member would come to the notice of the public.

Under the clause, use of any designation or expression other than chartered accountant for a chartered accountant in practice, on professional documents, visiting cards, etc. amounts to a misconduct unless it be a degree of a university or a title indicating membership of any other professional body recognised by the Central Government or the Council.

Conclusion: Thus, it is improper to use designation "Tax Consultant" since neither it is a degree of a University established by law in India or recognised by the Central Government nor it is a recognised professional membership by the Central Government or the Council.



B, a Chartered Accountant in practice is a partner in 3 firms. While printing his personal letter heads, B gave the names of all the firms in which he is a partner.

Advertisement of Professional Attainments: Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949 prohibits advertising of professional attainments or services of a member. It also restrains a member from using any designation or expression other than that of a Chartered Accountant in documents through which the professional attainments of the member would come to the notice of the public. Even a member is not permitted to specify the date of setting up of practice or establishment of firm on letterheads. However, there is no prohibition for printing names of all the three firms on the personal letterheads in which a member holding Certificate of Practice is a partner.

Conclusion: Thus, B is not guilty of any misconduct under the Chartered Accountants Act, 1949.

Clause (8) accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing.

It must be pointed out that professional courtesy alone is not the major reason for requiring a member to communicate with the existing accountant who is a member of the Institute or a certified auditor.

The underlying objective is that the member may have an opportunity to know the reasons for the change in order to be able to safeguard his own interest the legitimate interest of the public and the independence of the existing accountant. It is not intended, in any way, to prevent or obstruct the change. When making the inquiry from the retiring auditor, the one proposed to be appointed or already appointed should primarily find out whether there are any professional or other reasons why he should not accept the appointment.

It is important to remember that every client has an inherent right to choose his accountant also that he may, subject to compliance, with the statutory requirements in the case of limited companies, make a change whenever he chooses, whether or not the reasons which had impelled him to do so are good and valid. The change normally occurs where there has been a change of venue of business and a local accountant is preferred or where the partner who has been dealing with the client's affairs retires or dies; or where temperaments clash or the client has some good reasons to feel dissatisfied. In such cases, the retiring auditor should always accept the situation with good grace.

The existence of a dispute as regards the fees not having been paid often may be the root cause of an auditor being changed, but this would not constitute valid professional reasons on account of which an audit should not be accepted by the member to whom it is offered. It is no doubt true that the incoming auditor should in appropriate circumstances use his influence in favour of his predecessor to have the disputes as regards the fees settled. Also a number of members would not accept appointment in such circumstances unless and until they are satisfied that the predecessor has been fairly treated, but there is no rule to that effect and the decision in this regard must rest with the good sense of the member himself.

The professional reasons for not accepting an audit could be:

- (i) Non-compliance of the provisions of Sections 224 and 225 of the Companies Act as mentioned in Clause (9) [now Section 139, 140 and 142 read with Section 141 of the Companies Act, 2013];
- (ii) Non-payment of undisputed audit fees by auditees other than in case of sick units for carrying out the statutory audit under the Companies Act or various other statutes; and
- (iii) Issuance of a qualified report.

In the first two cases, an auditor who accepts the audit would be guilty of professional misconduct. The Council has taken the view that the provision for audit fee made in accounts signed by both - the auditee and auditor shall be considered as 'undisputed' audit fees. In this connection, attention of members is invited to Council Guidelines No. 1-CA/(7)/02/2008 dated 08.08.08. In the said guidelines, Council has explained that the provision for audit fee in accounts signed by both the auditee and the auditor shall be considered as "undisputed" audit fee and "sick unit" shall mean where the net worth is negative.

In the last case, however, he may accept the audit if he is satisfied that the attitude of the retiring auditor was not proper and justified. If, on the other hand, he feels that the retiring auditor has qualified the report for good and valid reasons, it would be a healthy practice not to accept the audit. There is however no rule, written or unwritten, which would prevent an auditor from accepting the appointment offered to him in these circumstances. However, before accepting the appointment he should ascertain full facts of the case. For nothing will bring the profession to disrepute so much as the knowledge amongst the public that if an auditor is found to be “inconvenient” by the client, he could readily be replaced by another who would not displease the client and this point cannot be too over-emphasized.

What should be the correct procedure to adopt when a prospective client tells you that he wants to change his auditor and wants you to take up his work? There being two persons involved, the company and the old auditor, the former should be asked whether the retiring auditor has been informed of the intention to change. If the answer is in the affirmative, then a communication should be addressed to the retiring auditor. If, however, it is learn that the old auditor has not been informed, and the client is not willing to make the first move, it would be necessary to ask him the reason for the proposed change. If there is no valid reason for a change, it would be healthy practice not to accept the audit. If he decides to accept the audit he should address a communication to the retiring auditor.

As stated earlier the object of the incoming auditor, in communicating with the retiring auditor is to ascertain from him whether, there is any circumstances which warrants him not to accept the appointment. For example, whether the previous auditor has been changed on account of having qualified his report or he had expressed a wish not to continue on account of something inherently wrong with the administration of the business. The retiring auditor may even give out information regarding the condition of the accounts of the client or the reason that impelled him to qualify his report. In all these cases it would be essential for the incoming auditor to carefully consider the facts before deciding whether or not he should accept the audit, and should he do so, he must also take into account the information while discharging his duties and responsibilities.

Sometimes, the retiring auditor fails without justifiable cause except a feeling of hurt because of the change, to respond to the communication of the incoming auditor. So that it may not create a deadlock, the auditor appointed can act, after waiting for a reasonable time for a reply.

The Council has taken the view that a mere posting of a letter “under certificate of posting” is not sufficient to establish communication with the retiring auditor unless there is some evidence to show that the letter has in fact reached the person communicated with. A Chartered Accountant who relies solely upon a letter posted “under certificate of posting” therefore does so at his own risk.

The view taken by the Council has been confirmed in a decision by the Rajasthan High Court in J.S. Bhati v.s. The Council of the Institute of Chartered Accountants of India and another. The following observations of the Court are relevant in this context:

“Mere obtaining a certificate of posting in my opinion does not fulfil the requirements of Clause (8) of Schedule I as the presumption under Section 114 of the Evidence Act that the letter in due course reached the addressee cannot replace that positive degree of proof of the delivery of the letter to the addressee which the letters of the law in that case required. The expression ‘in ‘ communication with’ when read in the light of the instructions contained in the booklet ‘Code of Conduct’ (now Code of Ethics) cannot be interpreted in any other manner but to mean that there should be positive evidence of the fact that the communication addressed to the outgoing auditor by the incoming auditor reached his hands. Certificate of posting of a letter cannot, in the circumstances, be taken as a positive proof of its delivery to the addressee”.

Members should therefore communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the delivery of the communication to the addressee. In the opinion of the Council, communication by a letter sent “Registered Acknowledgment due” or by hand against a written acknowledgment would in the normal course provide such evidence.

The Council is of the opinion that it would be a healthy practice if the practice of communication with the member who had done the work previously is followed in every case where a Chartered Accountant is required to give a certificate or in respect of a verification of the books of account for special purpose as well as in cases where he is appointed as a Liquidator, Trustee or Receiver and his predecessor was a Chartered Accountant.

As a matter of professional courtesy and professional obligation it is necessary for the new auditor appointed to act jointly with the earlier auditor and to communicate with such earlier auditor.

It is desirable that a member, on receiving communication from the auditor who has been appointed in his place, should send a reply to him as soon as possible setting out in detail the reasons which according to him had given rise to the change and other attended circumstances but without disclosing any information as regards the affairs of the client which he is not competent to do.

The Council has also laid down the detailed guidelines on the subject as under:

- (1) The requirement for communicating with the previous auditor being a chartered accountant in practice would apply to all types of audit viz., statutory audit, tax audit, internal audit, concurrent audit or any other kind of audit.
- (2) Various doubts have been raised by the members about the terms “audit”, “previous auditor”, “Certificate” and “report”, normally while interpreting the aforesaid Clause (8). These terms need to be clarified.
- (3) As per para 2 of SA 200 on “Basic Principles Governing an Audit”, an “audit” is the independent examination of financial information of any entity, whether profit oriented or not, and irrespective of its size or legal form, when such an examination is conducted with a view to expressing an opinion thereon.
- (4) The term “previous auditor” means the immediately preceding auditor who held same or similar assignment comprising same/similar scope of work. The mandatory communication

with the previous auditor being a Chartered Accountant is required ever in a case where the previous auditor happens to be an auditor for a year other than the immediately preceding year.

- (5) As explained in para 2.2 of the Institute's publication viz., 'Guidance Note on Audit Report and Certificates for Special Purposes', a "certificate" is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion. A "report", on the other hand, a formal statement usually made after an enquiry, examination or review of specified matters under report and includes the reporting auditor's opinion thereon. Thus, when a reporting auditor issue a certificate, he is responsible for the factual accuracy of what is stated therein. On the other hand, when a reporting auditor gives a report, he is responsible for ensuring that the report is based on factual data, that his opinion is in due accordance with facts, and that it is arrived at by the application of due care and skill.
- (6) A communication is mandatorily required for all types of audit/report if the previous auditor is a chartered accountant. For certification, it would be healthy practice to communicate. In case of assignments done by other professionals not being chartered accountants, it would also be a healthy practice to communicate.
- (7) Although the mandatory requirement of communication with previous auditor being chartered accountant applies, in uniform manner, to audits of both government and non-government entities, yet in the case of audit of government is made well in time to enable the obligation must be complied with before accepting the audit. However, in case the time schedule given for the assignment is such that there is no time to wait for the reply from the outgoing auditor, the incoming auditor may give a conditional acceptance of the appointment and commence the work which needs to be attended to immediately after he has sent the communication to the previous auditor in accordance with this clause. In his acceptance letter, he should make clear to the client that his acceptance of appointment is subject to professional objections, if any, from the previous auditors and that he will decide about his final acceptance after taking into account the information received from the previous auditor.

Some of the decisions of the BOD/Council/High Courts on this matter are briefly given in the following paragraphs:

A Chartered Accountant commenced the work of audit on the very day he sent letter to the 'previous auditor - Held, he was guilty of professional misconduct under the clause. The appointment could be accepted only when the outgoing auditor does not respond within a reasonable time. [S.N. Johri vs. N.K. Jain (1973)]

A Chartered Accountant sent a registered letter to the previous auditor after the commencement of the audit by him. Held he was guilty of professional misconduct under the clause. [Radhey Shyam vs. K.S. Dubey (1974)]

A chartered accountant had sent a communication to the previous auditor under certificate of posting without obtaining any acknowledgment thereof. The Council held the member guilty in terms of this Clause. On an appeal made by the member, the High Court observed that the expression “in communication with” when read in the light of the instructions contained in the booklet “Code of Conduct” could not be interpreted in any other manner but to mean that there should be positive evidence of the fact that the communication addressed to the outgoing auditor had reached his hands. Certificate of Posting of a letter could not in the circumstances be taken as positive evidence of its delivery to the addressee. *[M.L. Agarwal vs. J.S. Bhati (1975)]*

The provision of Clause (8) requiring a communication with the previous auditor is absolute and applicable even in respect of an appointment by the Government agencies and even in case where the member is aware that the previous auditor had been made aware of the appointment. *[Rajeev Kumar vs. R.K. Agrawal (1988)]*

The requirements of Clause (8) of Part I of the First Schedule can be considered to have been complied with only:

- (i) if there is evidence that a communication to the previous auditor had been by R.P.A.D.
- (ii) if there was positive evidence about delivery of the communication to the previous auditor.

In the absence of both, the member should be found to have contravened this Clause. *[R.M. Singhai vs. R.V. Agarwal (1988)]*

Where a Chartered Accountant had conducted tax audit of a firm without first communicating in writing with the Complainant, who was the previous tax auditor of the said firm. Held that he was guilty under the clause. *[V.A. Parikh vs. R.I. Galledar (1991)]*

In this case the Respondent did not communicate with the Complainant being the previous auditor while accepting the appointment of the aforesaid companies. The fact that the matter was impliedly in the knowledge of the Complainant as contemplated by the Respondent in terms of the minutes of the meeting held between the Complainant and the Respondent on 3rd October, 2001 does not absolve the Respondent from ensuring the compliance with the requirements of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949. The onus lies on the incoming auditor to communicate with the outgoing auditor which the Respondent has failed to do so. *[CA. Manindra Chandra Poddar vs. CA. Manas Ghosh (2013)]*



Mr. X, a Chartered Accountant accepted his appointment as tax auditor of a firm under Section 44AB, of the Income-tax Act, and commenced the tax audit within two days of his appointment since the client was in a hurry to file Return of Income before the due date. After commencing the audit, Mr. X realised his mistake of accepting this tax audit without sending any communication to the previous tax auditor. In order to rectify his mistake, before signing the tax audit report, he sent a registered post to the previous auditor and obtained the postal acknowledgement. Will Mr. X be held guilty under the Chartered Accountants Act?

Communication with the Previous Auditor: As per Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949, Mr. X will be held guilty since he has accepted the tax audit, without first communicating with the previous auditor in writing. The object of the incoming auditor communicating in writing with the retiring auditor is to ascertain whether there are any circumstances which warrant him not to accept the appointment, for example, whether the previous auditor has been changed on account of having qualified the report or he had expressed a wish not to continue on account of something inherently wrong with the administration of the business. The retiring auditor may even give out information regarding the condition of the accounts of the client or the reason that impelled him to qualify his report. Under all circumstances, it would be essential for the incoming auditor to carefully consider the facts before deciding whether or not he should accept the audit. As a matter of professional courtesy and professional obligation it is necessary for the new auditor appointed to communicate with such earlier auditor.



W, a Chartered Accountant has sent letters under certificate of posting to the previous auditor **informing** him his appointment as an auditor before the commencement of audit by him.

Communication with the Previous Auditor: Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 requires communication by the incoming auditor with the previous auditor before accepting a position by him. The Council of the Institute has taken the view that a mere posting of a letter “under certificate of posting” is not sufficient to establish communication with the retiring auditor unless there is some evidence to show that the letter has in fact reached the person communicated with. A Chartered Accountant who relies solely upon a letter posted “under certificate of posting” therefore does so at his own risk. Since the letters were sent by “W” to the previous auditor informing him of his appointment as an auditor before the commencement of audit by him under Certificate of Posting is not sufficient to prove communication with the retiring auditor. In the opinion of the Council, communication by a letter sent “Registered Acknowledgement Due” or by hand against a written acknowledgement would in the normal course provide positive evidence.

Conclusion: Hence “W” was guilty of professional misconduct under Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949

Clause (9) Accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 of the Companies Act, 1956, in respect of such appointment have been duly complied with (now Section 139, 140 and 142 read with Section 141 of the Companies Act, 2013).

The Companies Act, 2013 provides for the requirements which an auditor appointed in respect of a company should satisfy himself about, before he accepts the appointment. The relevant provisions are contained in Sections 139, 140, 141 and 142 of the said Act. Section 139 contains several provisions in the matter of appointment of auditors in different circumstances and situations; and Section 140 lays down the procedure which must be followed when a company desires to change

its auditors, or when an auditor resigns from the company; whereas Section 141 provides the eligibility, qualifications and disqualifications of auditors; and Section 142 contains the provisions related to the remuneration of the auditor. In order that the validity of the appointment of an auditor is not challenged or objected to by shareholders or the retiring auditors at a later date, it has been made obligatory on the incoming auditor to ascertain from the company that the appropriate procedure in the matter of appointment has been faithfully followed.

The following guidelines have been issued by the Council for this purpose:

- (1) The steps to be taken by an auditor of a company who is appointed in the following circumstances are indicated below:
 - (i) When the auditor appointed is the first auditor of the company.
 - (ii) When the auditor is appointed in place of an existing auditor who has resigned or has been removed or has ceased to hold office for any other reason.
 - (iii) When the auditor or auditors appointed by the company were holding this office jointly with others and one or more of such joint auditors are not reappointed.
 - (iv) When one or more of the auditors appointed by the company was/were not holding this office earlier.
- (2) Under Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949, the incoming auditor has to ascertain whether the company has complied with the provisions of the above sections. The word “ascertain” means “to find out for certain”. This would mean that the incoming auditor should find out for certain as to whether the company has complied with the provisions of Sections 224, 224A and 225 of the Companies Act, 1956 (now Section 139, 140 and 142 read with Section 141 of the Companies Act, 2013). In this respect, it would not be sufficient for the incoming auditor to accept a certificate from the management of the company that the provisions of the above sections have been complied with. It is necessary for the incoming auditor to verify the relevant records of the company and ascertain as to whether the company has, in fact, complied with the provisions of the above Sections. If the company is not willing to allow the incoming auditor to verify the relevant records in order to enable him to ascertain as to whether the provisions of the above sections have been complied with, the incoming auditor should not accept the audit assignment.

- (3) (A) As regards the mode of sending the notice of the resolution to the members of the company as provided in Sections 224 and 225 (now Section 139, 140 and 142 read with Section 141 of the Companies Act, 2013), it should be noted that there is no provision that the notice should necessarily be sent by registered post. The notice can be sent by the company in accordance with the provisions contained in Section 53 (now Section 20 of the Companies Act, 2013).

For the purpose of better understanding to the students, the relevant provisions of Section 20 of the Companies Act, 2013 are briefly summarised hereunder:

- (i) A document may be served on a company or an officer thereof sending it through registered post; or speed post; or courier service; or by leaving it at its registered office; or by means of electronic transmission.
- (ii) If the member or the person concerned has given specific direction to the Company that the notice should be sent to him through a particular mode, and has deposited with the Company the sum sufficient to defray the expenses for this purpose, the notice should be sent in such specified manner.
- (iii) For above purposes, the courier means a document sent through a courier which provides proof of delivery.

(B) If it is not practicable to send the notice of the resolution to the members by post, such notice can be given either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the Articles of Association of the Company.

(C) In order to ascertain whether notice of the resolution has been sent to the members, the incoming auditor should ascertain whether there is sufficient evidence with the Company to indicate that the notice has been sent by any of the modes stated in (A) or (B) above. The despatch register, postage register, postal certificate (if notice is sent under postal certificate) or such other satisfactory evidence available with the company should be verified.

(D) As regards the mode of sending the notice of the resolution to the retiring auditor as provided in Sections 224 and 225 (now Section 139, 140 and 142 read with Section 141 of the Companies Act, 2013), attention is invited to the Department of Company Affairs circular dated 17.10.1981 issued to all Chambers of Commerce, which is reproduced below.

“I am directed to say that it has been reported by the Institute of Chartered Accountant of India that difficulties are being experienced by retiring Auditors in the operation of the provisions of Section 225 of the Companies Act, 1956 whenever any appointment of a new auditor takes place. Such difficulties arise because of the fact that the copy of the special notice required to be served under Section 225(2) of the Act on the retiring auditors are not effectively served and proof of such service is not available. To obviate such difficulties, therefore, it is advisable than the copy of the special notice under Section 225(2) of the Act should be sent to the retiring auditors by Registered Post with A/D.”

(E) Accordingly, it is necessary for the incoming auditor to satisfy himself that the notice provided for in Sections 224 & 225 (now Section 139, 140 and 142 read with Section 141 of the Companies Act, 2013) has been effectively served on the outgoing auditor (e.g.

by seeing that the notice has been duly served through hand delivery or by Regd. Post A.D.). Production of a certificate of posting by the company would not be adequate for the purpose of the incoming auditor satisfying himself about compliance with Sections 224/225. Acknowledgement received from the outgoing auditor would be one of the forms in which satisfaction can be obtained.

- (4) A copy of the relevant minutes of the general meeting where the above resolution is passed duly verified by the Chairman of the meeting should also be obtained by the incoming auditor for his records.
- (5) If any annual general meeting is adjourned without appointing an auditor, no special notice for removal or replacement of the retiring auditor received after the adjournment can be taken note of and acted upon by the company, since in terms of Section 190(1) of the Companies Act, 1956 (now Section 115 of the Companies Act, 2013), special notice should be given to the company at least fourteen clear days before the meeting in which the subject matter of the notice is to be considered. The meeting contemplated in Section 190(1) undoubtedly is the original meeting.
- (6) If the incoming auditor is satisfied that the company has complied with the provisions of Sections 224, 224A and 225 of the Companies Act, 1956 (now Section 139, 140 and 142 read with Section 141 of the Companies Act, 2013), he should first communicate with the outgoing auditor in writing as provided in Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 before accepting the audit assignment.

In order to examine various ethical issues and safeguard the independence of the Auditors, the Council has set up Ethical Standards Board. This Committee examines various issues concerning professional ethics governing the members of the Institute which are either raised by the members or are taken up based on their importance. The recommendations of the Committee are forwarded to the Council for its consideration. This Committee is also charged with the responsibility of looking into the cases of removal and resignation of auditors and making an appropriate report to the Council. The following guidelines have been issued for this Committee for looking into the cases of Removal of Auditors:

- (A) Where an auditor resigns his appointment as an auditor of a Company or does not offer himself for reappointment as auditor of such company, he shall send a communication, in writing, to the Board of Directors of the Company giving reasons therefore if he considers that there are professional reasons. Therefore, if he considers that there are professional reasons connected with his resignation or not offering him for reappointment which, in his opinion should be brought to the notice of the Board, and shall send a copy of such communication to the Institute. It shall be obligatory on the incoming auditor, before accepting appointment, to obtain a 'copy of such communication, from the Board and consider the same before accepting the appointment.

- (B) Where an auditor, though willing for reappointment has not been reappointed, he shall file with the Institute a copy of the statement which he may have sent to the management of the company for circulation among the shareholders. It shall be obligatory on the incoming auditor before accepting the appointment, to obtain a copy of such a communication from the company and consider it, before accepting the appointment.
- (C) The Committee, on a review of the communications referred to in above paras may call for such further information as it may require from the incoming auditor, the outgoing auditor and the company and make a report to the Council in cases where it considers necessary.
- (D) The above procedure is also followed in the case of removal of auditors by the government and other statutory authorities.

[Students may note that, with the introduction of Companies Act, 2013, Clause 9 of Part I of the First Schedule to the Chartered Accountants Act, 1949 also needs to be modified in view of the new Companies Act, 2013. Till the time the Chartered Accountants Act, 1949 along with the “Code of Ethics” gets amended in accordance with Companies Act, 2013, students may study and use section 139, 140 and 142 read with section 141 of the Companies Act, 2013 while applying the above clause.

Further, students may refer Chapter 5 of the Study Material for detailed knowledge on the abovementioned sections.]

CASE STUDY 1

CA Raja was appointed as the Auditor of Castle Ltd. for the year 2015-16. Since he declined to accept the appointment, the Board of Directors appointed CA Rani as the auditor in the place of CA Raja, which was also accepted by CA Rani.

Board can appoint the auditor in the case of casual vacancy under section 139(8) of the Companies Act, 2013. The non-acceptance of appointment by CA. Raja does not constitute a casual vacancy to be filled by the Board. In this case, it will be deemed that no auditor was appointed in the AGM.

Further, as per Section 139(10) of the Companies Act, 2013 when at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company. The appointment of the auditor by the Board is defective in law.

Clause (9) of Part I of First Schedule to the Chartered Accountants Act, 1949 states that a chartered accountant is deemed to be guilty of professional misconduct if he accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of section 225 of the Companies Act, 1956 (now Section 139, 140 and 142 read with Section 141 of the Companies Act, 2013), in respect of such appointment have been fully complied with.

Conclusion: Hence, CA. Rani is guilty of professional misconduct since she accepted the appointment without verification of statutory requirements.

CASE STUDY 2

Mrs. X is a Director of ABC Pvt. Ltd. During the year 2015-16, the company appointed CA Mr. Y,

Mrs. X's spouse, as its statutory auditor. Mr. Y used to deliver audit report without any comments or disclosures, thereupon.

As per Section 141(3)(f) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor of a company whose relative is a director or is in the employment of the company as a director or key managerial personnel. The definition of 'Relative' includes husband and wife.

Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949, provides that a member in practice shall be deemed to be guilty of professional misconduct if he accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 of the Companies Act, 1956 (now Section 139, 140 and 142 read with Section 141 of the Companies Act, 2013), in respect of such appointment have been duly complied with.

In this case Mrs. X is a Director of ABC Pvt. Ltd. and the company has appointed Mr. Y, Chartered Accountant, Mrs. X's spouse, as its statutory auditor. Mr. Y should not accept the appointment as statutory auditor of the company, where his wife Mrs. X is a director. This is contravention of section 141 of the Companies Act, 2013.

Conclusion: Therefore, Mr. Y is liable for misconduct under the said clause since he accepted the appointment without first verifying the compliance of statutory requirements.

Some decisions of the BOD/Council/High Courts on this subject are given below:

Failure to communicate with the previous auditor-

Where a chartered accountant failed to communicate in writing with the previous auditor of his appointment as auditor of a co-operative bank and such omission was not intentional. Held that the breach was only technical and that it was open to the High Court to award a lesser punishment than removal of a member. [*S.V. Kharwandikar vs. O.K. Borkar (1952)*]

Where a chartered accountant applied in response to an advertisement in a newspaper for appointment as auditor and was appointed by the Directors and failed to communicate with the previous auditor and ascertain from the company whether the requirements of the Companies Act as regards the appointment of the auditors were duly complied with. Held the respondent was guilty on both the counts under Clauses (8) and (9). [*B.N. Mohan vs. K.C.J. Satyawadi (1955)*]

The contention w.r.t. deeming provision is not tenable as Section 224(2)(b) of the Companies Act, 1956 specifically requires that the retiring auditor has to give a notice in 365 writing of his unwillingness to be reappointed and a mere silence in the matter cannot be taken as a ground to appoint any other auditor without notice of an intended resolution to appoint some other person in place of the retiring auditor. In view of this, the Board is of the view that the Respondent failed to assess and verify that the compliance of Sections 224 and 225 of the Companies Act, before accepting his appointment was complied with by the Company. Accordingly, in view of the Board, the Respondent is held guilty of professional misconduct falling within the meaning of Clause (9) of Part I of First Schedule of the Chartered Accountants Act, 1949. [*Anil Kumar Goel vs. CA. Anurag Nirbhaya (2014)*]

Clause (10) Charges or offers to charge, accepts or offers to accept in respect of any professional employment fees which are based on a percentage of profits or which are contingent upon the findings, or results of such employment, except as permitted under any regulations made under this Act.

What distinguishes a profession from a business is that professional services are not rendered with the sole purpose of a profit motive. Personal gain is one but not the main or the only objective. Professional opinion, therefore frowns upon methods where payment is made to depend on the basis of results. It is obvious that a person who is to receive payment in direct proportion to the benefit received by his client, may be tempted to exaggerate the advantage of his service or may adopt means that are not ethical. It will have the effect of undermining his integrity and impairing his independence. Therefore, members are prohibited from charging or accepting any remuneration based on a percentage of the profits or on the happening of a particular contingency such as, the successful outcome of an appeal in revenue proceedings.

Professional services should not be offered or rendered under an arrangement whereby no fee will be charged unless a specified finding or result is obtained or where the fee is otherwise contingent upon the findings or results of such services. However, fees should not be regarded as being, contingent if fixed by a court or other public authority.

The Council of the Institute has however framed Regulation 192 which exempts members from the operation of this clause in certain professional services. The said Regulation 192 is reproduced -

192. Restriction on fees - No Chartered Accountant in practice shall charge or offer to charge, accept or offer to accept, in respect of any professional work, fees which are based on a percentage of profits, or which are contingent upon the findings or results of such work, provided that:

- (a) "In the case of a receiver or a liquidator, the fees may be based on a percentage of the realization or disbursement of the assets;
- (b) In the case of an auditor of a co-operative society, the fees may be based on a percentage of the paid up capital or the working capital or the gross or net income or profits;
- (c) In the case of a valuer for the purposes of direct taxes and duties, the fees may be based on a percentage of the value of property valued;
- (d) in the case of certain management consultancy services as may be decided by the resolution of the Council from time to time, the fees may be based on percentage basis which may be contingent upon the findings, or results of such work;
- (e) in the case of certain fund raising services, the fees may be based on a percentage of the fund raised;
- (f) in the case of debt recovery services, the fees may be based on a percentage of the debt recovered;

- (g) in the case of services related to cost optimisation, the fees may be based on a percentage of the benefit derived; and
- (h) any other service or audit as may be decided by the Council.

Clause (11) Engages in any business or occupation other than the profession of chartered accountant unless permitted by the Council so to engage.

Provided that nothing contained herein shall disentitle a chartered accountant from being a director of a company (Not being managing director or a whole time director) unless he or any of his partners is interested in such company as an auditor.

This is a provision introduced to restrain a member in practice from engaging himself in any business or occupation other than that of chartered accountant except when permitted by the Council to be so engaged. The objective is to restrain members from carrying on any other business in conjunction with the profession of accountancy and combining such work with any business, which is not in keeping with the dignity of the profession. Another reason for the introduction of such prohibition is that a chartered accountant, if permitted to enter into all kinds of business, would be able to advertise for his other business and thereby secure an unfair advantage in his professional practice.

The Council, on a very careful consideration of the matter, has formulated Regulation, 190A and 191 which are reproduced below, specifying the activities with which a member in practice can associate himself with or without the permission of the Council.

190A. Chartered Accountant in practice not to engage in any other business or occupation.

“A chartered accountant in practice not to engage in any other business or occupation other than the profession of accountancy except with the permission granted in accordance with a resolution of the Council”.

191. Part-time employment a Chartered Accountant in practice may accept.

“Notwithstanding anything contained in Regulation 190A but subject to the control of the Council, a chartered accountant in practice may act as a liquidator, trustee, executor, administrator, arbitrator, receiver, adviser or representative for costing, financial or taxation matter, or may take up an appointment that may be made by the Central Government or a State Government or a court of law or any other legal authority or may act as a Secretary in his professional capacity, provided his employment is not on a salary-cum-full-time basis”.

Appendix 9 C.A. Regulations, 1988

The General and specific Resolutions passed by the Council under the power vested in it under Regulation 190A as included in Appendix 9 of C.A. Regulations, 1988 are also reproduced below for information.

General Resolution

Permission granted generally - Members of the Institute in practice be generally permitted to engage in the following categories of occupations, for which no specific permission from the Council would be necessary in individual cases:

- (1) Employment under Chartered Accountants in practice or firms of such chartered accountants.
- (2) Private tutorship.
- (3) Authorship of books and articles.
- (4) Holding of Life Insurance Agency License for the limited purpose of getting renewal commission.
- (5) Attending classes and appearing for any examination.
- (6) Holding of public elective offices such as M.P., M.L.A. and M.L.C.
- (7) Honorary office leadership of charitable-educational or other non-commercial organisations.
- (8) Acting as Notary Public, Justice of the Peace, Special Executive Magistrate and the like.
- (9) Part-time tutorship under the coaching organisation of the Institute.
- (10) Valuation of papers, acting as paper-setter, head-examiner or a moderator, for any examination.
- (11) Editorship of professional journals.
- (12) Acting as Surveyor and Loss Assessor under the Insurance Act, 1938 provided they are otherwise eligible.
- (13) Acting as recovery consultant in the banking sector
- (14) Owning agricultural land and carrying out agricultural activity (w.e.f. August 9th, 2008).

Specific Resolution - Members of the Institute in practice may engage in the following categories of business or occupations, after obtaining the specific and prior approval of the Council in each case:

- (1) Full-time or part-time employment in business concerns provided that the member and/or his relatives do not hold "substantial interest" in such concerns.
- (2) Full-time or part-time employment in non-business concern.
- (3) Office of managing director or a whole-time director of a body corporate within the meaning of the Companies Act, 1956 (now Companies Act, 2013).
- (4) Interest in family business concerns (including such interest devolving on the members as a result of inheritance / succession / partition of the family business) or concerns in which

interest has been acquired as a result of relationships and in the management of which no active part is taken.

- (5) Interest in an educational institution.
- (6) Part-time or full-time lectureship for courses other than those relating to the Institute's examinations conducted under the auspices of the Institute or the Regional councils or their branches.
- (7) Part-time or full-time tutorship under any educational institution other than the coaching organization of the Institute.
- (8) Editorship of journals other than professional journals.
- (9) Any other business or occupation for which the Executive Committee considers that permission may be granted.

However, it is open to the Council to refuse permission in individual cases though covered under any of the above categories. For the purpose of the above resolution:

- (i) the expression "relative", in relation to a member, means the husband, wife, brother or sister or any lineal ascendant or descendant of that member;
- (ii) a member shall be deemed to have a "substantial interest" in a concern:
 - (a) In a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profit) carrying not less than 20% of voting power at any time, during the relevant years are owned beneficially by such member or by any one or more of the following persons or partly by such member and partly by one or more of the following persons:
 - (i) one or more relatives of the member;
 - (ii) one or more partners and/or their relative;
 - (iii) any concern in which any of the persons referred to above has a substantial interest.
 - (b) In the case of any other concern, if such member is entitled or the other persons referred to above or such member and one or more of the other persons referred to above or persons of such number and / or are more sections of such persons are entitled in the aggregate, at any time during the relevant years not less than 20% of the profits of such concern.

Attention of the members is also invited to para 3 of the above Resolution relating to the holding of office of a managing director or a whole-time director in a company. In such cases, a member can accept the office of a managing director or a whole-time director only after obtaining, the specific and prior approval of the Council. Attention of the members is also invited to the provisions of Section 2(26) of the Companies Act, 1956 (now Section 2(54) of the Companies Act, 2013) under which

even where a person is not designated as a managing director or a whole-time director, he can be deemed to be a managing director or a whole-time director if he is entrusted with the whole or substantially the whole of the management of the affairs of the company. It may be pointed out that a member cannot accept and hold the office of a managing director or a whole-time director in a company if the member and/or his partners and relatives hold substantial interest in such a company.

The Council has considered the question of permitting members in practice to become a Director, Managing Director, full time/Executive Director etc. and related issues and the following decisions have been taken.

As regards the question of permitting member in practice to be a Director, Promoter/Promoter-Director, Subscriber to the Memorandum and Articles of Association of any company including a board managed company, it was decided that -

(a) Director of a Company

- (i) The expression "Director Simplicitor" means an ordinary / simple Director.
- (ii) A member in practice is permitted generally to be a Director Simplicitor in any company including a board-managed company and as such he is not required to obtain any specific permission of the council in this behalf irrespective of whether he and / or his relatives hold substantial interest in that company.

A question arises, whether the auditor of a Subsidiary Company can be a Director of its Holding Company-

The Ethical Standard Board (ESB) noted that, in terms of Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 a Chartered Accountant in practice can not engage (unless permitted by the Council so to engage) in any business or occupation other than the profession of Chartered Accountant but he can be a director of a Company (not being a managing director or whole time director) wherein he or any of his partners is not interested in such company as an auditor. The Board further noted that Public conscience is expected to be ahead of the law. Members, therefore, are expected to interpret the requirement as regards independence much more strictly than what the law requires and should not place themselves in positions which would either compromise or jeopardise their independence. In view of the above, the Board, via a clarification, decided that the auditor of a Subsidiary Company can't be a Director of its Holding Company, as it will affect the independence of an auditor.

(b) Promoter/Promoter Director - 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 object of the company include areas which fall within the scope of the profession of chartered accounts. Therefore members are not required to obtain specific permission of the Council in such cases.

Item Nos. 4 & 5 of the Specific Resolution would be equally applicable to member carrying out the activities referred to therein in his capacity as Karta / representative of HUF provided he is not actively engaged in carrying on such activities.

Students may also note that as per decision taken by appropriate authority in Council, Regulation 190A of the Chartered Accountants Regulations, 1988 provides that a chartered accountant in practice shall not engage in any business or occupation other than the profession of accountancy, except with the permission granted in accordance with a resolution of the Council. The Council has passed a Resolution under Regulation 190A granting general permission (for private tutorship, and part-time tutorship under Coaching organization of the Institute) and specific permission (for part-time or full time tutorship under any educational institution other than Coaching organization of the Institute). Such general and specific permission granted is subject to the condition that the direct teaching hours devoted to such activities taken together should not exceed 25 hours a week in order to be able to undertake attest functions.

Some of the decisions of the BOD/Council/High Courts on this clause are given below:

A chartered accountant in practice entered into partnership with persons who were not the members of the Institute, for the purpose of carrying on business. The share of the chartered accountant in the profit and losses was 25%. He was to take part in the business and was entitled to represent the firm before Govt. authorities etc. He was operating the Bank account of the firm was receiving moneys from the customers and was also looking after the affairs of the partnership. Held he was guilty of professional misconduct under the clause, as he was engaged in the business, without the permission of the Council. [*K.S. Dugar (1980)*]

A member in practice was authorised by a resolution of the Board of Directors of a company held on 4.9.81 to look after the day to day affairs of the company and other more than 51% the said company. Later on 8.5.82, he applied to the Council for permission to hold the office of the Executive Chairman of the said company. It was held on the basis of facts and circumstances of the case that during the period 4.9.81 to 8.5.82 the member had engaged himself in 'other occupation' without the permission of the Council and was found guilty in terms of this Clause. [*M.K. Abrol and S.S. Bawa vs. V.P. Vijh (1988)*]

Where a Chartered Accountant who had held a salaried employment as an Assistant Manager (Finance & Accounts) in addition to the practice of chartered accountancy without obtaining permission of the Institute as required was held guilty under Clause (11) of Part I of First Schedule. [*Anil Kumar (1994)*]

Where a Chartered Accountant while practicing as a chartered accountant had engaged himself in other occupation as an LIC agent in another name. Held that he was guilty Clause (11) of First Schedule. [*C.I.T. (Admn.) vs. H.M. Giriya (1996)*]

Where a chartered Accountant had offered to help the Complainant in disposing of odd lot share holding, sold them at much lower rate than he had sent of the Complainant notes etc. and the said

chartered accountant was personally involved in the share transfer and broker's business besides his professional activities. Held that he was guilty under Clause (11) of Part I.

Where a chartered Accountant was in full time employment besides holding full time Certificate of Practice. Though, the Respondent submitted that he did not carry out any attestation function during this period, yet the same cannot absolve him for the non-compliance. Thus, the Board held the Respondent guilty of professional misconduct falling within the meaning of Clause (11) of Part I of First Schedule to the Chartered Accountants (Amendment) Act, 2006. [CA. Shivaputra Mohan Jotwar (2013)]

CASE STUDY

A chartered accountant holding certificate of practice and having four articled clerks registered under him accepts appointment as a full-time lecturer in a college. Also he becomes a partner with his brother in a business. Examine his conduct in the light of Chartered Accountants Act, 1949 and the regulations thereunder.

Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 debars a chartered accountant in practice from engaging in any business or occupation other than the profession of chartered accountancy unless permitted by the Council of the Institute so to engage. This clause, in effect, has empowered the Council of the Institute to permit chartered accountants in practice to engage in any other business or occupation considered fit and proper. Accordingly, the Council had formulated Regulations 190A and 191 to the Chartered Accountants Regulations, 1988 to provide a basis for considering applications of chartered accountants seeking permission to engage in other business or occupation. A member can accept full-time lecturer-ship in a college only after obtaining the specific and prior approval of the Council as also becoming a partner in a business with his brother would require specific permission.

Conclusion: Thus, the chartered accountant is liable for professional misconduct since he failed to obtain specific and prior approval of the Council in each case.

Mr. A, a practicing Chartered Accountant, took over as the executive chairman of Software Company on 1.4.2019. On 10.4.2019 he applied to the Council for permission.

Specific Permission to be Obtained: As per Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice will be deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council so to engage.

In the instant case, Mr. A took over as the executive chairman on 01.04.2019 and applied for permission on 10.04.2019. On the basis of these facts, he was engaged in other occupation between the period 01.04.2019 and 10.04.2019, without the permission of the Council.

Conclusion: Therefore, Mr. A is guilty of professional misconduct in terms of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

C.A. Prabhu is a leading income tax practitioner and consultant for derivative products. He resides

in Mumbai near to the ABC commodity stock exchange and does trading in commodity derivatives. Every day, he invests nearly 50% of his time to settle the commodity transactions. Is C.A. Prabhu liable for professional misconduct?

Engaging into a Business: As per Clause (11) of Part I of First Schedule of Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council so to engage.

However, the Council has granted general permission to the members to engage in certain specific occupation. In respect of all other occupations specific permission of the Institute is necessary.

In this case, CA. Prabhu is engaged in the occupation of trading in commodity derivatives which is not covered under the general permission.

Conclusion: Hence, specific permission of the Institute has to be obtained otherwise he will be deemed to be guilty of professional misconduct under Clause (11) of Part I of First Schedule of Chartered Accountants Act, 1949.

Clause (12) Allows a person not being a member of the institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any balance sheet, profit and loss account, report or financial statements.

The above clause prohibits a member from allowing another member who is not his partner to sign any balance sheet, profit and loss account or financial statements on his behalf or on behalf of his firm.

This clause is to be read in conjunction with Section 26 of the Chartered Accountants Act, 1949 which stipulates that 'No person other than a member of the Institute shall sign any document on behalf of a Chartered Accountant in practice or a firm of Chartered Accountants in his or its professional capacity'.

The term 'financial statement' for the purposes of this clause would cover an examination of the accounts or of financial statements given under a statutory enactment or otherwise. A report, however, may cover a wider range of documents but in the context in which it is used in this clause, it would mean only a report arising out of a professional assignment undertaken by him or his firm and submitted by him or his firm to the client(s) or where so required, to an outsider on behalf of himself or on behalf of the firm. The subject matter of report should be the expression of a professional opinion whether, financial or non-financial. The financial statements and the reports referred to in this clause obviously means the financial statements and reports as ultimately finalized and submitted to the outside authorities.

The Council has clarified that the power to sign routine documents on which a professional opinion or authentication is not required to be expressed may be delegated in the following instances and such delegation will not attract provisions of this clause:

- (i) Issue of audit queries during the course of audit.
- (ii) Asking for information or issue of questionnaire.
- (iii) Letter forwarding draft observations/financial statements.
- (iv) Initiating and stamping of vouchers and of schedules prepared for the purpose of audit.
- (v) Acknowledging and carrying on routine correspondence with clients.
- (vi) Issue of memorandum of cash verification and other physical verification or recording the results thereof in the books of the clients.
- (vii) Issuing acknowledgements for records produced. Raising of bills and issuing acknowledgements for money receipts.
- (ix) Attending to routine matters in tax practice, subject to provisions of Section 288 of Income Tax Act.
- (x) Any other matter incidental to the office administration and routine work involved in practice of accountancy.

It is also clarified that where the authority to sign documents given above is delegated by a chartered accountant or by a firm of chartered accountants the fact that the documents have not been signed by a chartered accountant is not a defence to him or to the firm in an enquiry relating to professional misconduct.

However, the Council has decided that where a Chartered Accountant while signing a report or, a financial statement or any other document is statutorily required to disclose his name, the member should disclose his name while appending his signature on the report or document. Where there is no such statutory requirement, the member may sign in the name of the firm.

Case Study 1

S, a practicing chartered accountant gives power of attorney to an employee chartered accountant to sign reports and financial statements, on his behalf.

Power of Signing Reports and Financial Statements: Under Clause (12) of Part I of First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any balance sheet, profit and loss account, report or financial statements.

This clause read in conjunction with Section 26 of the Chartered Accountants Act, 1949 stipulates that no person other than the member of the institute shall sign any document on behalf of a Chartered Accountant in practice or a firm of Chartered Accountants in his or its professional capacity.

The term 'Financial Statement' for this purpose would cover an examination of the accounts or

financial statements given under a statutory enactment or otherwise.

Further, Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 states that a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he contravenes any of the provisions of this Act or the regulations made there under or any guidelines issued by the Council.

Conclusion: Accordingly, S is guilty of professional misconduct under Clause (12) of Part I of First Schedule and also under Clause (1) of Part II of Second Schedule for contravening Section 26.

Case Study 2

CA. Smart, a practicing Chartered Accountant was on Europe tour between 15-9-16 and 25-9-16. On 18-9-16 a message was received from one of his clients requesting for a stock certificate to be produced to the bank on or before 20-9-16. Due to urgency, CA. Smart directed his assistant, who is also a Chartered Accountant, to sign and issue the stock certificate after due verification, on his behalf.

Allowing a Member Not Being a Partner to Sign Certificate: As per Clause (12) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct "if he allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any balance sheet, profit and loss account, report or financial statements".

In this case, CA. Smart allowed his assistant who is not a partner but a member of the Institute of Chartered Accountants of India to sign stock certificate on his behalf and thereby commits misconduct.

Conclusion: Thus, CA. Smart is guilty of professional misconduct under Clause (12) of Part I of First Schedule to the Chartered Accountants Act, 1949.

PART II - Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he being an employee of any company, firm or person-

Clause (1) pays or allows or agrees to pay directly or indirectly to any person any share in the emoluments of the employment undertaken by him.

A member of the Institute in service is deemed to be guilty of professional misconduct, if he is an employee of any company, firm or person and during that course whatever emoluments he receives, if he either pays or allows to pay or agree to pay any part or share thereof whether directly or indirectly. However, this clause does not restrict such sharing or commitments among relatives, dependents, friends etc., if there is no relationship in procuring or retaining the job and payment is not a consideration for job procurement or retainership.

The clear verdict of this clause is that job must be procured and retained with own professional capabilities and not by any financial deal impairing professional dignity.

Clause (2) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a chartered accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

This clause restricts to accept or agrees to accept any part of fee, profits or gains from a lawyer, a chartered accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification. The objective is that when a member is in employment, he must maintain high level of ethics and should not accept any other amount from anyone for which he is not entitled from employer under contractual agreement of service.

[Note: A member in the foregoing circumstances would be guilty of misconduct regardless of the fact that he was in whole-time or part-time employment or that he was holding Certificate of Practice along with his employment.]

Case Study

Mr. 'C', a Chartered Accountant holds a certificate of practice while in employment also, recommends a particular lawyer to his employer in respect of a case. The lawyer, out of the professional fee received from employer paid a particular sum as referral fee to Mr. 'C'.

Referral Fee from Lawyer: According to Clause (2) of Part II of First Schedule of the Chartered Accountant Act, 1949, a member of the Institute (other than a member in practice) shall be guilty of professional misconduct, if he being an employee of any company, firm or person accepts or agrees to accept any part of fee, profits or gains from a lawyer, a chartered accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

In the present case, Mr. C who beside holding a certificate of practice, is also an employee and by referring a lawyer to the company in respect of a case, he receives a particular sum as referral fee from the lawyer out of his professional fee.

Conclusion: Therefore, Mr. C is guilty of professional misconduct by virtue of Clause (2) of Part II of First schedule.

PART III - Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he -

Clause (1) not being a fellow of the Institute, acts as a fellow of the Institute.

Clause (2) does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the

Appellate Authority.

Clause (11) of Part I and Clauses (1) and (3) of Part III where a Chartered Accountant had not disclosed to the Institute at any time about his engagement as a proprietor of a non-chartered accountant's firm while holding certificate of practice and had not furnished particulars of his engagement as Director of a company despite various letters of the institute which remained unreplied. Held that he was guilty under Clause (11) of Part I and Clauses (1) and (3) of Part III of the First Schedule. [P.S. Rao (1992)]

Where a Chartered Accountant had continued to train an articled clerk though his name was removed from the membership of the Institute and he had failed to send any reply to the Institute asking him to send his explanation as to how he was training as his articled clerk when he was not a member of the Institute. Held that he was guilty under Clause (2) of Part III of the First Schedule. [S.M. Vohra (1992)]

Case Study

1. Mr. 'G', while applying for a certificate of practice, did not fill in the columns which solicit information about his engagement in other occupation or business, while he was indeed engaged in a business.

Disclosure of Information: As per Clause (2) of Part III of First Schedule to the Chartered Accountants Act, 1949 a member shall be held guilty if a Chartered Accountant, in practice or not, does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority;

In the given case, Mr. "G", a Chartered Accountant while applying for a certificate of practice, did not fill in the columns which solicit information about his engagement in other occupation or business, while he was indeed engaged in a business. Details of engagement in business need to be disclosed while applying for the certificate of practice as it was the information called for in the application, by the Institute.

Conclusion: Thus, Mr. G will be held guilty for professional misconduct under the Clause (2) of Part III of First Schedule of the Chartered Accountants Act, 1949.

2. Mr. X, a Chartered Accountant, employed as a paid Assistant with a Chartered Accountant firm. On 31st December, 2016 he leaves the services of the firm. Despite many reminders from ICAI he fails to reply regarding the date of leaving the services of the firm.

Failed to Supply Information Called For: As per Clause (2) of Part III of the First Schedule to the Chartered Accountants Act, 1949, a member, whether in practice or not, will be deemed to be guilty of professional misconduct if he does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate authority.

Conclusion: Thus, in the given case, Mr. X has failed to reply to the letters of the Institute asking him to confirm the date of leaving the service as a paid assistant. Therefore, he is held guilty of professional misconduct as per Clause (2) of Part III of the First Schedule to the Chartered Accountants Act, 1949.

Clause (3) while inviting professional work from another chartered accountant or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in items (6) and (7) of Part I of this Schedule, gives information knowing it to be false.

Any member of the Institute, in the course of procurement of professional work from another Chartered Accountant or from any other source provides or renders any information which he knows to be false through any documents, or acts (like tenders, enquiries, response to advertisement, CV type write ups etc.), he would be deemed to be guilty of professional misconduct under Clause (3), Part III of First Schedule.

PART IV- Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he -

Clause (1) is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months.

Clause (2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

Case Study

YKS & Co., a proprietary firm of Chartered Accountants was appointed as concurrent auditor of a bank. YKS used his influence for getting some cheques purchased and thereafter failed to repay the loan/overdraft.

This is a case which is covered under the expression in other misconduct of the Chartered Accountants Act, 1949. As per Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949, a member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he, in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work. Here the Chartered Accountant is expected to maintain the highest standards of integrity even in his personal affairs and any deviation from these standards calls for disciplinary action.

In the present case, YKS & Co, being a concurrent auditor used his position to obtain the funds and failed to repay the same to the bank. This brings disrepute to the profession of a Chartered Accountant. This act of YKS & Co is not pardonable.

Conclusion: Therefore, YKS & Co will be held guilty of other misconduct under Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949.

These Clauses (1) & (2) are self explanatory and any of the member of the Institute is found guilty by any civil or criminal court and prosecuted for an imprisonment in an offence involving moral turpitude or his acts bring disrepute to the profession or the Institute, irrespective of the fact whether such acts are related to profession or not, such member will be deemed to be guilty of other misconduct in Part IV of First Schedule.

The important point to note is that if imprisonment tenure exceeds six months, this case will be covered in the Clause of Part III of Second Schedule.

8.2 THE SECOND SCHEDULE

Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the second schedule or in both the Schedule, he shall place the matter before the Disciplinary Committee.

Part I - Professional Misconduct in relation to Chartered Accountant in practice

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he-

Clause (1) Discloses Information acquired in the course of his professional engagement to any person other than his client so engaging him without the consent of his client or otherwise than as required by any law for the time being in force.

An accountant in public practice has access to a great deal of information of his client, which is of a highly confidential character. It is important for the work of an accountant and for maintaining the dignity and status of the profession that he should treat such information as having been provided to him, only to facilitate the performance of his professional duties for which his services have been engaged. To divulge such information would be a breach of professional confidence, which may give rise to the most serious consequences, even to an action by the client for the loss suffered by him through such a breach. But for this confidence that the public has developed in the integrity of accountants, it would not be possible for a person in a similar trade or industry to appoint the same accountant. The accountant's duty not to disclose continues even after the completion of his assignment.

If disclosure is required as a part of performance of professional duty by a practicing member in relation to a client, the fact that such performance is required by the client would itself amount to the client consenting to such disclosure. Thus, a member in practice submitting information to, say, exchange control authorities, while performing his professional duties cannot be considered to have made disclosure without the aforesaid consent. But, in all cases, the request or the initiative that the members do prefer the service, which would entail such disclosure, must come from the client in relation to whose affairs the disclosure would be entailed.

If disclosure is required in other cases, it would be necessary to ensure that the consent of the client is given by a person who is competent to accord such consent. Thus, in the case of a sole proprietary concern, the consent may be given by the proprietor or his constituted attorney who is legally empowered to give such consent. In the case of partnership firm, since in turn, every partner has the authority to bind the firm by his acts, the consent may be given by any partner. In the case of a company, by virtue of section 179 of the Companies Act, 2013, the Board of Directors is empowered to do all that the company in a general meeting may do unless a resolution by the company in general meeting is required by the Act or by the Memorandum or Articles of the company. Hence, the consent may be given by the Managing Director if the powers of the Board of Directors are delegated to him

comprehensively enough to include the power to give such consent, but if the powers of the Board of Directors are not so delegated, the consent should be obtained by means of resolution of the Board of Directors of the Company.

An auditor is not required to provide the client or other auditors of the same enterprise or its related enterprise such as a parent or a subsidiary, access to his audit working papers. The main auditors of an enterprise do not have right of access to the audit working papers of the branch auditors. In the case of a company, the statutory auditor has to consider the report of the branch auditor and has a right to seek clarifications and/or to visit the branch if he deems it necessary to do so for the performance of the duties as auditor. An auditor can rely on the work of another auditor, without having any right of access to the audit working papers of the other auditor. For this purpose, the term 'auditor' includes 'internal auditor'.

However, the auditor may, at his discretion, in cases considered appropriate by him, make portions of or extracts from his working papers available to the client. The above clarification has been published in April, 2000 issue of the Journal, 'The Chartered Accountant'.

It is not possible to set out all the circumstances under which disclosure of information may be required by law. If under any legal compulsion and if it is not legally permissible to claim privilege under the Evidence Act, 1872 (Section 126), the disclosure made by a member of such information may not be considered as misconduct. However, such matters involve niceties of law and expert legal advice may be sought prior to, such disclosure.

The only circumstance in which this duty of confidence may give rise to a difficulty is where the accountant has reason to believe that the client has been guilty of some unlawful act or default. This matter is of special significance in the case where the client is guilty of tax evasion.

Further, students may note that as per section 143(12) of the Companies Act, 2013, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within 60 days of his knowledge and after following the prescribed procedure.

Role of chartered accountants in relation to unlawful acts by their clients -

- (1) The question of the member's liability when he is not directly involved in tax frauds committed by his client but he discovers such fraud in the course of his professional work, the action recommended to be taken by him is indicated below. These recommendations are generally in line with similar recommendations made by the Institute of chartered accountants in England and Wales for the guidance of its members.
- (2) The recommendations below are based on the following premises:
 - (a) No duty is cast on a member, whether by Section 44 of Criminal Procedure Code, or by any other enactment, to inform the Income tax Authorities about taxation frauds by his client of which he comes to know during the course of his professional work.

- (b) Under Section 126 of the Evidence Act, a barrister, attorney, pleader or *Vakil* is barred from disclosing except with the express consent of his client, any communication made to him in the course of and for the purpose of his employment or to state the contents or conditions of any document with which he has become acquainted in such course. The proceedings before the Income tax authorities are judicial proceedings and the assessee is authorized to be represented by a chartered accountant. The privilege given and the restrictions imposed by Section 126 apply as between the client and the member as the member is the client's attorney. Nothing in Section 126 shall protect from disclosure of any fact observed by a barrister, pleader, attorney or *Vakil* in the course of his employment of such showing that any crime or fraud has been committed since the commencement of his employment.
- (c) Subject to the above, it is not the duty of a member to shield a client from the consequences of his tax frauds; on the contrary it is guiding principle of professional conduct to discourage tax evasion.
- (3) The paragraphs that follow apply to intentional suppressions or misstatement by the client in his tax returns. If there is a genuine mistake or inadvertent omission, it is presumed that the client would not have any objection to make a complete disclosure to the tax authorities.
- (4) If the fraud discovered by the member relates to the accounts or tax matters of the client for past year(s) for which the client was not represented by the member, the client should be advised to make a disclosure. The member may, however, continue to act for the client in respect of current matters, but is under no obligation so to continue. It is assumed that the past fraud does not affect in any way the current tax matters, and the member should be extra careful to ensure that past behaviour is not reflected in current matters.
- (5) If the fraud relates to accounts etc., examined by the member and reported upon, on the basis of which the tax assessment in the past has been made, or is currently to be made, the client should be advised to make a complete disclosure. If the client should refuse, he should be informed that the member would be entitled to dissociate himself from the case, and that, further, he would inform the authorities that the accounts prepared by him and/or reported upon by him are unreliable, on account of certain information since obtained. He should then make such a report to the authorities. But the information subsequently obtained should not as such be communicated to the authorities, unless the client consents in writing.
- (6) Normally, if disclosure is consented to by the client it should be made immediately. But if the suppression is trivial, the disclosure may be made when the current return is submitted. But if there is any possibility that the collection of tax would be prejudiced, on account of the client disposing of his property or removing his person from the jurisdiction of the Income-tax authorities the postponement of disclosure would be improper.
- (7) If the suppression etc. relates to accounts or returns currently being prepared, the member should advise the client to make full disclosure in the accounts and/or return, and should the

- client refuse, he should make full reservation in his report, and should not associate himself with the return.
- (8) If the employment of the member is dispensed with before the accounts are completed or are reported on, or the return is submitted, no further duty regarding disclosure etc. rests on the member.
 - (9) The suppression may relate to accounts, which are not prepared and/or reported upon by the member, e.g. personal income, from investments other than business investments etc. The client may refuse full disclosure in the tax return but still wish that the member should continue to prepare and/ or report on his business accounts, though this is quite unlikely in practice. If so requested, the member may continue to do so, but is under no obligation so to do.
 - (10) It should be impressed on the client that:
 - (a) While disclosure may entail only monetary penalties, nondisclosure and subsequent discovery thereof may entail imprisonment and fine, in addition to penalties.
 - (b) Any intimation by the member to the Income tax authorities that the member dissociates himself from the case is certain to start investigation by them in the whole matter.
 - (11) The Income-tax authorities may summon the member for the purpose of examining him on oath, under Section 131(1) of the Income tax Act. The immunity from disclosure afforded by Section 126 of the Evidence Act, and the extent of such immunity are questions, which involve niceties of law, and expert legal advice should be sought in the matter. The refusal of the member to disclose may be taken down, and he may be required to certify it on oath.
 - (12) Production of books of account and other documents may be called for under Section 131(1). Here also the protection offered by Section 126 of the Evidence Act, is a matter for expert legal advice.

Case Study

Mr. Parekh, a Chartered Accountant was invited by the Chamber of Commerce to present a paper in a symposium on the issues facing Indian Leather Industry. During the course of his presentation he shared some of the vital information of his client's business under the impression that it will help the Nation to compete with other countries at international level.

Disclosure of Client's Information: Clause (1) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 deals with the professional misconduct relating to the disclosure of information by a chartered accountant in practice relating to the business of his clients to any person other than his client without the consent of his client or otherwise than as required by any law for the time being in force would amount to breach of conduct. The Code of Ethics further clarifies that such a duty continues even after completion of the assignment. The Chartered Accountant may however, disclose the information in case it is required as a part of

performance of his professional duties. In the given case, Mr. Parekh has disclosed vital information of his client's business without the consent of the client under the impression that it will help the nation to compete with other countries at International level.

Conclusion: Thus it is a professional misconduct covered by Clause (1) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Clause (2) If he certifies or submits in his name or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice.

The above clause restrains a member from subscribing to the report on a financial statement so long as it has not been examined by him or by a partner or an employee of his firm or by another chartered accountant in practice. It has been introduced to ensure that the work entrusted to him has been carried out by the member either directly or under his supervision before he renders his report.

An exception however has been made in respect of an examination carried out by another chartered accountant in practice. This enables two or more members to accept a joint assignment or enables a member also to carry out the examination of financial statements by or with the assistance of all or either any chartered accountant in practice.

Where the joint auditors are appointed, the work is normally divided among themselves in terms of identifiable units or areas, or with reference to the items of liabilities, or income or expenditure or to the period of time etc. Such division should be adequately documented and communicated to the auditee.

In the course of his work, where a joint auditor comes across matters requiring discussion with or application of judgement by the joint auditors, he must communicate to the other joint auditors before submission of the report.

In respect of audit work divided among the joint auditors, each joint auditor is responsible only for the work allocated to him, whether or not he has prepared a separate report on the work performed by him. On the other hand, all the joint auditors are jointly and severally responsible in accordance with SA 299 "Joint Audit of Financial Statements":

Each joint auditor should decide for himself the appropriateness of using test checks or sampling, the nature, timing and extent of audit procedures to be applied in relation to the work allotted to him.

Obtaining and evaluating the information and explanations from the management is the joint responsibility of the joint auditors unless they agree upon a specific pattern of distribution of this responsibility. In case of distribution of the responsibility, the liability of the joint auditors is limited to the area allotted to that auditor.

Case Study

Mr. A, a Chartered Accountant was the auditor of 'A Limited'. During the financial year 2015-16, the investment appeared in the Balance Sheet of the company of ₹ 10 lakhs and was

the same amount as in the last year. Later on, it was found that the company's investments were only ₹ 25,000, but the value of investments was inflated for the purpose of obtaining higher amount of Bank loan.

Grossly Negligent in Conduct of Duties: As per Part I of Second Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he, certifies or submits in his name or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice, under Clause (2); does not exercise due diligence, or is grossly negligent in the conduct of his professional duties, under Clause (7); or fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion, under Clause (8).

The primary duty of physical verification and valuation of investments is of the management. However, the auditor's duty is also to verify the physical existence and valuation of investments placed, at least on the last day of the accounting year. The auditor should verify the documentary evidence for the cost/value and physical existence of the investments at the end of the year. He should not blindly rely upon the Management's representation.

In the instant case, such non-verification happened for two years. It also appears that auditors failed to confirm the value of investments from any proper source. In case auditor has simply relied on the management's representation, the auditor has failed to perform his duty.

Conclusion: Accordingly, Mr. A, will be held liable for professional misconduct under Clauses (2), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Clause (3) Permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in manner which may lead to the belief that he vouches for the accuracy of the forecast.

The Council has issued Standard on Assurance Engagements (SAE) 3400, "The Examination of Prospective Financial Information", which is effective in relation to reports on projections/forecasts, issued on or after April 1, 2007. Pursuant to the issuance of this Standard, the Guidance Note on Accountant's Report on Profit Forecasts and/or Financial Forecasts, issued in September, 1982 stands withdrawn. The guidance provided in this Standard is in line with the provisions of Clause (3) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. As per the opinion of the Council while finalising the Guidance Note on Accountant's Report on Profit Forecasts and/or Financial Forecasts at its 100th meeting held on 22nd through 24th July 1982, a chartered accountant can participate in the preparation of profit or financial forecasts and can review them, provided he indicates clearly in his report the sources of information, the basis of forecasts and also the major assumptions made in arriving at the forecasts and so long as he does not vouch for the accuracy of the forecasts. The Council has further opined that the same opinion would also apply to projections made on the basis of hypothetical assumptions about future events and management actions which are not necessarily expected to take place so long as the auditor does not vouch for the accuracy

of the projection. Further, the attention of the members is drawn to “Guidance Note on Reports in Company Prospectuses (Revised)” issued by the Council. This Guidance Note provides guidance on compliance with the provisions of the Companies Act and the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, relating to the reports required to be issued by chartered accountants in prospectus/statement in lieu of prospectus issued by the companies for the offerings made in India.

Clause (4) Expresses his opinion on financial statements of any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest.

In this connection attention of members is also invited to Chapter IV of Council Guidelines No. 1-CA(7)/02/2008 dated 8th August, 2008. The said guidelines state that a member of the Institute shall not express his opinion on financial statements of any business or enterprise in which one or more persons, who are his “relatives” within the meaning of Accounting Standard (AS-18) has/have either by themselves or in conjunction with such members, a substantial interest in the said business or enterprise.

Many new areas of professional work have been added, e.g., Tax Audit, Concurrent Audit of Banks, Concurrent Audit of Borrowers of Financial institutions, Audit of non-corporate borrowers of banks and financial institutions, audit of stock exchange, brokers etc. The Council wishes to emphasize that the aforesaid requirement of Clause (4) are equally applicable while performing all types of attest functions by the members. Some of the situations which may arise in the applicability of Clause (4) are discussed below for the guidance of members:

- (1) Where the member, his firm or his partner or his relative has substantial interest in the business or enterprise.

The independence of mind is a fundamental concept of audit and/or expression of opinion on the financial statements in any form and, therefore, must always be maintained. Nothing can substitute for the essential and fundamental requirements of independence. Therefore, the Council's views are clarified in the following circumstances.

- (i) An enterprise/concern of which a member is either an owner or a partner. The holding of interest in the business or enterprise by a member himself whether as sole-proprietor or partner in a firm, in the opinion of the Council, would affect his independence of mind in the performance of professional duties in conducting the audit and/or expressing an opinion on financial statements of such enterprise. Therefore, a member should not audit financial statements of such business or enterprise.
- (ii) Where the partner or relative of a member has substantial interest: The holding of substantial interest by the partner or relative of the member in the business or enterprise of which the audit is to be carried out and opinion is to be expressed on the financial statement, may also affect the independence of mind of the member, in the opinion of Council, in the performance of professional duties. Therefore, the member

may, for the same reasons as not to compromise his independence, refrain from undertaking the audit of financial statements of such business or enterprise.

- (2) Where the member or his partner or relative is a director or in the employment of an officer or an employee of the company.

Section 141 of the Companies Act, 2013 specifically prohibits a member from auditing the accounts of a company in which he is an officer or employee. Although the provisions of the aforesaid section are not specifically applicable in the context of audits performed under other statutes, e.g. tax audit, yet the underlying principle of independence of mind is equally applicable in those situations also. Therefore, the Council's views are clarified in the following situations.

In cases where the member is a director of a company the financial statements of which are to be audited and/or opinion is to be expressed, he should not undertake such job and/or express opinion on the financial statements of that company.

The Council has clarified that the members are not permitted to write books of account of their auditee clients.

A statutory auditor of a company cannot also be its internal auditor, as it will not be possible for him to give independent and objective report.

A member should satisfy himself before accepting an appointment as an auditor of an entity that his appointment is in accordance with the statute governing the entity. In case the entity is constituted under a trust deed / instrument, the member should satisfy whether his appointment is valid according to the instrument constituting the entity and rules made hereunder. In case the appointment is to be authorized by the regulatory authorities such as in the case of cooperative societies, trusts etc. then the member must satisfy whether such regulatory authorities have authorized the managing committee of the society / trust for appointment of the auditors. In a case where any entity is being managed by a Managing Committee or Board of Trustees or Board of Governors by whatever name called he should ensure that his appointment is duly made by a resolution passed of such Managing Committee or Board of Trustees or Board of Governors. Even in case of partnership or sole proprietary, the member must ensure that a letter of appointment/ engagement is given by a financial statement before he accepts the assignment.

Clause (5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement not misleading where he is concerned with that financial statement in a professional capacity.

It may be observed that this clause refers to failure to disclose a material fact, which is known to him, in a financial statement reported on by the auditor. It is obvious, that before a member could be held guilty of misconduct, materiality has to be established. The determination of materiality has been provided in SA 320, "Materiality in Planning and Performing an Audit".

It should be borne in mind that there may be cases where an item may not be material from the point of view of the balance sheet, but may have material significance in relation to the profit and loss

account for that year and vice-versa. It is therefore essential that care should be taken to ensure that the aspect of materiality should be judged in relation to both the balance sheet and the profit and loss account.

The word “financial statements” used in this clause would cover both reports and certificate usually given after an examination of the accounts or of financial statements under any statutory enactment, or/for purposes of income tax assessments. This would not however, apply to cases where such statements are prepared by members in employment purely for the information of their respective employers in the normal course of their duties and not meant to be submitted to any outside authority.

Some of the decisions of the Courts on this clause are briefly given below-

Where a Chartered Accountant failed to report to the shareholders of a company about the non-creation of a sinking fund in accordance with the Debenture Trust Deed and did not make clear that the amounts shown as towards sinking fund were borrowed from the managing agents of the company-Held, that the chartered accountant was duty bound to see that the nature and subject matter of the charge over a security and the nature and mode of valuation of the sinking fund investment were disclosed in the Balance Sheet in accordance with Form F and he was found guilty of misconduct. [*Davar & Sons Ltd. vs M.S. Krishnaswamy (1952)*]

Where a Chartered Accountant failed to examine how debts became bad and were written off-Held he was guilty under Clause (5). [*A. Doraiswami/ Naidu-vs. P.M. Raghavendra Rao (1965)*]

Where a Chartered Accountant had not disclosed the fact that a large amount of loan have been given out of the funds of an Employees Provident Fund to the Employer Company in contravention of the Rules of the Provident Fund and had failed to report on the default in clearing the cheques received in re-payment of the loan. Held by the High Court that he was not guilty of any non-disclosure to the individual subscribers of the Provident Fund because he owed no duty to disclose to them and he was well within his rights to have disclosed the irregularities to the trustees themselves and to the company which had appointed him. Held by the Supreme Court on appeal that it was no defence for the chartered accountant to say that he had disclosed the irregularities to the company as it was his duty to have made a disclosure thereof to the beneficiaries of the Provident Fund in the statement of accounts signed by him as the legal position of the auditor in the present case was similar to that of the auditor appointed under the Companies Act. He was therefore guilty of professional misconduct under Clause (5). [*Kishori Lal Dutta vs-P.K. Mukherjee (1968)*]

Case Study

Mr. Joe, a Chartered Accountant during the course of audit of M/s XYZ Ltd. came to know that the company has taken a loan of ₹ 10 lakhs from Employees Provident Fund. The said loan was not reflected in the books of account. However, the auditor ignored this information in his report.

Failure to Disclose Material Facts: As per Clause (5) of Part I of Second Schedule to the Chartered Accountants Act, 1949, a chartered Accountant in practice will be held liable for

misconduct if he fails to disclose a material fact known to him, which is not disclosed in the financial statements but disclosure of which is necessary to make the financial statements not misleading. In this case, Mr. Joe has come across information that a loan of ₹ 10 lakhs has been taken by the company from Employees Provident Fund. This is contravention of Rules and the said loan has not been reflected in the books of accounts. Further, this material fact has also to be disclosed in the financial statements. The very fact that Mr. Joe has failed to disclose this fact in his report, he is attracted by the provisions of professional misconduct under Clause (5) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Clause (6) Fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity.

This clause refers to failure on the part of a member to point out in his report a material misstatement appearing in a financial statement and he has knowledge of the same. Here also, it is obvious, that before a member could be held guilty of misconduct, materiality has to be established and the observations made under the preceding Clause (5), in this connection, will equally apply to this clause.

Some of the decisions of the Courts on this clause are briefly given below-

A Company did not provide for depreciation as required by Section 205 and Section 350 of the Companies Act, 1956 (now Section 123 read with Schedule III of the Companies Act, 2013) and although the Chartered Accountant was aware that the Company had underprovided depreciation, he did not bring out this fact in his report- Held the Chartered Accountant was guilty of professional misconduct under the clause. He had failed to disclose a material fact known to him but disclosure of which was necessary to make the financial statement not misleading.

Where a Chartered Accountant prepared a balance sheet of a firm and subsequently prepared statement regarding the state of affairs of the firm without taking into account the balance sheet already prepared by him showing a lesser amount by way of opening stock and a lesser amount to the credit of the proprietor and subsequently when he was called upon by his client to prepare a fresh balance sheet and profit and loss account for the same year so that it should tally with the statement of affairs prepared by him he did so without reference to the actual account books but on instruction of the client, and as such it was a false and incorrect balance sheet. Held, he was guilty under Clauses (5) & (6). [*Attorney General of Kenya-vs-V.B. Joshi (1968)*]

Case Study

A practicing Chartered Accountant was appointed to represent a company before the tax authorities. He submitted on behalf of his clients certain information and explanations to the authorities, which were found to be false and misleading.

Submitting Information as Authorised Representative: As per Clause (5) of Part I of Second Schedule to the Chartered Accountant Act, 1949, if a member in practice fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which

is necessary to make the financial statement not misleading, where he is concerned with that financial statement in a professional capacity, he will be held guilty under Clause (5). As per Clause (6) of Part I of Second Schedule if he fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity, he will be held guilty under Clause (6).

In given case, the Chartered Accountant had submitted the statements before the taxation authorities. These statements are based on the data provided by the management of the company. Although the statements prepared were based on incorrect facts and misleading, the Chartered Accountant had only submitted them acting on the instructions of his client as his authorized representative.

Conclusion: Hence the Chartered Accountant would not be held liable for professional misconduct.

Clause (7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.

Though very simply worded, it is a vital clause which unusually gets attracted whenever it is necessary to judge whether the accountant has honestly and reasonably discharged his duties. The expression negligence covers a wide field and extends from the frontiers of fraud to collateral minor negligence. The meaning and significance of this clause is well contained in the following passage quoted from the Judgement of the Karnataka High Court in a disciplinary case which came before it in 1977.

It is the duty of an auditor to bring to bear on the work he has to perform that skill, care and caution which a reasonably competent, careful, and cautious auditor would use. What is reasonable skill, care and caution must depend on the particular circumstances of each case. An auditor is not bound to be a detective, or, as was said, to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watchdog but not a bloodhound. If there is anything calculated to excite suspicion he should probe it to the bottom; but in the absence of anything of that kind he is only bound to be reasonably cautious and careful.

Professional misconduct is a term of fairly wide import but generally speaking, it implies fairly serious cases of misconduct of gross negligence. Negligence per se would not amount to gross negligence in the case of minor errors and lapses, which do not constitute professional misconduct and which, therefore, don't require a reference to the Disciplinary Committee, the Council would nevertheless bring the matter to the attention of its members so that greater care may be taken in the future in avoiding errors and lapses of a similar type".

Case Study

CA Chiranjiv who conducted ABC audit of a Haryana daily 'New Era' certified the circulation figures based on Management Information System Report (M.I.S Report) without examining the books of Account.

According to Clause (7) of Part I of Second Schedule of Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he “does not exercise due diligence or is grossly negligent in the conduct of his professional duties”.

In the instant case, CA Chiranjiv did not exercise due diligence and is grossly negligent in the conduct of his professional duties since he certified the circulation figures without examining the books of accounts.

To ascertain the number of paid copies verification of remittances from the agents, credit allowed to the agents for unsold copies returned, examination of books of account is essential. Further certification of circulation figures based on statistical information without cross verification with financial records amounts to gross negligence and failure to exercise due diligence.

Conclusion: Hence, CA Chiranjiv is guilty of professional misconduct as per Clause (7) of Part I of Second Schedule of Chartered Accountants Act, 1949.

Some of the decisions of the DC/Courts on this clause are briefly mentioned below:

Where a Chartered Accountant failed to indicate the mode of valuation of investments in shares as required by the Companies Act and also to draw attention to the inclusion of uniforms in the depreciation account- Held that he was guilty under Clause (7). [*M.C. Poddar vs-P.S. Sodhbans* - page 259 of Vol. I of the Disciplinary Cases and page 554 of March 1954 issue of the Institute's Journal-Judgement delivered on 1st April, 1954].

Where a Chartered Accountant certified the circulation of a newspaper based on the statistic record but stated in his certificate that he had given it after examination of the books of account without verifying that the books of account and the statistical records agreed and also without taking into account the return of copies unsold. Held that he was guilty of gross negligence. [*V.K. Madhava Rao (1956)*]

Where a certificate issued by a Chartered Accountant under Regulations 7(c) & 7(d) (i) of Part I (d) the First Schedule to the Insurance Act, 1938 was not correct, as the company had granted loans on policies which had already lapsed for non-payment of premium and also the claims in respect of two policies which had matured were not included in estimated liability in respect of outstanding claims shown in the Balance Sheet- Held he was guilty under Clauses (7) & (8). [*Controller of Insurance vs H. C. Das (1957)*]

Where a Chartered Accountant, appointed as auditor of the Madras branch of a limited company in Bombay was charged with failure to report to the Bombay office that some entries in the bank pass book had not been passed through the cash book of the branch. Held he was guilty of gross negligence. The High Court observed that a small fee paid to the respondent should not come in the way of his doing duty without fear or favour, although it involved unpleasant consequence namely, he might not be appointed again. [*The Fairdeal Corporation Ltd. Bombay vs K. Gopalakrishna (1957)*]

A certificate issued by a Chartered Accountant to a proprietor of a firm in respect of the turnover of betel nuts to enable the firm, which was not dealing in betel nuts, to obtain import license without

checking the books and documents himself, but relying on his articled clerk for its correctness. Held he was guilty of gross negligence. [*Sunder Lal Fatehpuria in Re: page 591 of Vol. III of the Disciplinary Cases and page 224 of January, 1959 issue of the Institute's Journal-Judgement delivered on 14th November, 1958*]

Where a Chartered Accountant failed in his duty to check the bank balances with the pass books of the banks and failed to obtain certificates of balances from the bankers in respect of those balances. The Council found him guilty of misconduct under Clauses (7) & (8) of Part I of the Second Schedule. Held there being no proof of dishonesty or volume *malafide* on the part of the Chartered Accountant and in view of the circumstances of the case, the High Court took no more serious view of the matter than to express disapprobation of the conduct of the Chartered Accountant in the form of admonition. [*Company Law Administration-vs-D.B. Kulkarni (1960)*]

In the course of some investigation of the affairs of a bank on liquidation, it was found that the authorities of the bank failed to disclose the total indebtedness of the directors in the balance sheet and to report on the numerous alterations and fictitious entries in the books of accounts of the bank. Held that no auditor could escape from personal liability by taking shelter under the misconduct of his own employees. There was nothing to indicate the status, qualifications or capacity of the assistants. Under the circumstances, the conduct of the Chartered Accountant in abdicating his functions to his subordinates amounted to gross negligence. [*Superintendent of Police Madras vs M. Rajamany (1961)*]

Where a Chartered Accountant had placed implicit reliance on his paid assistant who took absolutely no step whatsoever to check the cash balances facilitating and resulting, in serious defalcations. Held he was guilty under Clauses (5), (7) (8) and (9). [*D. C. Sopariwala (1968)*]

Where a certificate issued by a Chartered Accountant to the Joint Chief Controller of Imports & Exports, Calcutta stating that a firm had exported a certain quantity of onions during a certain period contained false and inaccurate particulars in respect of three items of invoice value the particulars themselves related to exports not by this firm but by two other firms. Held he was guilty of the charge of gross negligence. [*The Chief Controller of Exports vs-G.P. Acharya (1962)*]

Where a Chartered Accountant signed the accounts of an institution subject to separate notes. Held he was guilty of gross negligence. In the view of the High Court, the essential part was the separate notes. Any one going through his report would at least assume that those notes when prepared and were ready at the time when the report was signed by him. It could not be supposed that those notes were not in existence at that time and were written at some later date on some facts, which were still to be verified or ascertained. His act, though not suffering from bad or vicious intention, was still an act of gross negligence. [*Hitkarini Mahavidyalaya, Jabalpur vs P.C. Madan (1963)*]

Where a chartered accountant gave clean reports on the balance sheets whereas the reports on the special audit conducted subsequently revealed certain irregularities which amounted to failure to examine the pass book and to verify the cash balance. Held he was guilty under Clause (7). [*Director of Accounts, Gujarat State, Ahmedabad vs K.D. Patel (1968)*]

Where a Chartered Accountant had not completed his work relating to the audit of the accounts of a company and had not submitted his audit report in due time to enable the company to comply with the statutory requirement in this regard. Held, he was guilty of professional misconduct under Clause (7). [*Qaroon Trading & Finance Pvt. Ltd.- vs Luxmi Narain Saxena and Jitendera Mohan Chadha (1969)*]

Where a Chartered Accountant failed to exercise sufficient care and diligence in his professional responsibilities in not checking the cash memos and not verifying the alterations in the trial balance with the original books in respect of one company and in not checking the journal entries and the final figures of the balance sheet with the general ledger in respect of another company. Held, he was guilty under Clause (7). [*Messrs. O. M. Agency Private Ltd. & Messers. Oriental Mercantile Distributors Private Ltd. Surendra Sastry (1971)*]

In his audit report of a school, the auditor failed to point out wrong and misleading entries and a sum of ₹ 7,000/- on account of reserve fund did not find a place at all in the original statement sent to the school. The correction slip alleged to be sent by the Chartered Accountant was never received by the school. The Chartered Accountant had not proved that the correction slip was sent to the school. Held the Chartered Accountant was guilty of gross negligence in the conduct of professional duties and his conduct was quite unbecoming of a professional person entrusted with responsibility of dealing with the accounts. [*B.L. Shoulder vs-M.K. Deb (1976)*]

A Chartered Accountant adopted arbitrary valuation of closing stock and no verification at all was done by him. Further he accepted the capitalization of a large sum of expenditure which was in the nature of revenue. He had merely adopted an *ad-hoc* basis in deciding upon capitalization of expenditure and failed to apply his mind and bring to bear on the subject the due diligence and care expected of a member of the profession. Held, the Chartered Accountant was guilty of gross negligence in the performance of his duties. [*B. Shantharam Rao (1977)*]

A Chartered Accountant was charged under Clauses (5), (6), (7) and (8) of Part I of Second Schedule in regard to a loss of ₹ 1.84 lakhs in a bank of sale of some investments out of which only a sum of ₹ 21,500 was written off by the bank. The value of investment in the balance sheet was inflated and it did not exhibit the correct position and the profit and loss account did not show a true balance of profit and loss. Held, the respondent was guilty of misconduct so as to render him unfit to be a member of the institute. [*B.S. Waierker (1957)*]

Where a Chartered Accountant issued two different certificates of circulation of a daily for one and the same period showing different figures in respect of the number of copies printed and circulated. Held, he was guilty under Clauses (7) and (8). [*Registrar of Newspapers for India vs P.K. Mukherji (1971)*]

A Chartered Accountant had failed to detect a fraud committed by the accountant of a canteen which could have been detected if he had checked the castings of the cash books and also checked the 'contra' entries of the bank and cash columns of the cash books. Held, he was guilty of professional misconduct under Clauses (7), (8) and (9). [*Air Commodore Dilbagh Singh vs C.G. Apte (1976)*]

Where a Chartered Accountant failed to make a reference in the “Income Certificates” prescribed by the ABC to the report which he had separately submitted to the newspaper concerned which did represent the correct state of affairs in all respects but which was not sent by the newspaper to the Bureau. Held, he was guilty under Clauses (7) and (9). [*Audit Bureau of Circulations Ltd., vs A.D. Shinde (1968)*]

The Committee noted that the audited accounts of the Company for the year ended 2004-05 and 2005-06 show an amount of Rs.53.44 lakhs as prior period adjustment from Shri Sushil Gupta. The said amount is mentioned as an item of prior period adjustment amounts to Rs.53.44 lacs which constitutes 58.02% of the total unsecured funds and 55.03% of the total liabilities of the Company for the said year which itself speaks of its materiality with respect to the Financial Statement in question. The Respondent being the statutory auditor of the Company for the said year was statutorily required to determine 503 and consider the materiality of the said item for the purpose of audit and reporting. Where a Chartered Accountant being the auditor has not only failed to exercise due diligence and also failed to gather sufficient information to warrant an expression of opinion and also failed to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances. Thus in conclusion, in the opinion of the Committee, the Respondent is held guilty of professional misconduct falling within the meaning of Clauses (7), (8) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. [*Shri J.K.Teotia vs. CA. Gaurav Arora (2014)*]

Case Study

Mr. D, a practicing Chartered Accountant, did not complete his work relating to the audit of the accounts of a company and had not submitted his audit report in due time to enable the company to comply with the statutory requirements.

Not Exercising Due Diligence: According to Clause (7) of Part I of Second Schedule of Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he does not exercise due diligence or is grossly negligent in the conduct of his professional duties.

It is a vital clause which unusually gets attracted whenever it is necessary to judge whether the accountant has honestly and reasonably discharged his duties. The expression negligence covers a wide field and extends from the frontiers of fraud to collateral minor negligence.

Where a Chartered Accountant had not completed his work relating to the audit of the accounts a company and had not submitted his audit report in due time to enable the company to comply with the statutory requirement in this regard. He was guilty of professional misconduct under Clause (7).

Since Mr. D has not completed his audit work in time and consequently could not submit audit report in due time and consequently, company could not comply with the statutory requirements, therefore, the auditor is guilty of professional misconduct under Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Clause (8): Fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.

It is expected of a Chartered Accountant to express his opinion on the truth and fairness of statements of accounts after examining their authenticity with reference to information and explanations given to him. A Chartered Accountant must determine the extent of information, which, should be obtained by him before he expresses an opinion on the financial statements submitted to him for report.

The accountant should not express an opinion before obtaining the required data and information. The latter part of the clause enjoins that where due to inadequacy of information or data the report has to be circumscribed to an extent that it would cease to be of any expression of a categorical opinion, the auditor should clearly express his disclaimer in no uncertain terms. For example, if the auditor has not seen any evidence of the existence and/or valuation of the investment which constitute the only asset of a company, he should not say that:

“Subject to the verification of the existence and value of the investments the balance sheet shows a true and fair view etc.”

On the other hand he should say that-

“As we have been unable to verify the existence and value of the investments of the company, we are unable to state whether the balance sheet shows a true and fair view etc.”

Some of the decisions of the DC/Courts on this subject are briefly presented below:

A Chartered Accountant without examination of stock register and other relevant matters issued a wrong consumption certificate on the basis of which licence of higher value, for which the unit was not entitled, was issued by Controller of Imports & Exports. The examination done by the Chartered Accountant was so restricted that he could not have obtained the information necessary to warrant the expression of an opinion regarding consumption of raw material and components. Held the chartered accountant was guilty of professional misconduct under Clause (8). [*T.S. Vaidyanatha Iyer (1977)*]

Where a Chartered Accountant relying on the work of the internal auditor of a company qualified his report that the books of account and the supporting vouchers had been examined by the internal auditor of the company, the Council taking the view that the qualification amounted to an exception sufficiently material to negate the expression of an opinion, found him guilty, of misconduct under the latter part of Clause (8). As a general rule, a statutory auditor would be guilty under this clause, if he performed his work so recklessly as to give his report without looking into the books of account of a company, on the basis of the work of the internal auditor whose opinion turned out to be false. [*J.C. Chandhok (1964)*]

Where a Chartered Accountant issued a certificate of circulation of a periodical without going into the most elementary details of how the circulation of a periodical was being maintained i.e. by not looking into the financial records, bank statements or bank pass books, by not examining evidence

of actual payment of printers bills and by not caring to ascertain how many copies were sold and paid for. Held he was guilty under Clause (8). [*Registrar of Newspapers for India vs K. Rajinder Singh (1971)*]

“a certificate is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion.” A Chartered Accountant is required to clearly state his limitations/assumptions in his certificates, while in the said matter, the Respondent in none of the 12 certificates either mentioned his limitation or assumptions. Though, in his written statements he submitted that his job was not to verify the assets physically or verification of original bills or whether promoters contribution have come in actually in the Bank account etc. If his assignment did not include the same, he ought to have disclosed or mentioned in the certificates that while issuing the certificate he had relied upon the following documents, so as not to mislead the users of the said certificate(s). In the instant matter, the Respondent did not disclose any assumptions/limitations whatsoever while issuing the certificates. Moreover, the Respondent in none of the certificates issued by him had mentioned the basis/papers relied upon by him. Consequently, the same misled the IDBI Bank in approving the loan based on such certificates which did not mention the basis of issuance.

The Respondent while issuing the Certificates ought to have exercised diligence but he failed to do so. Accordingly, the Committee is of the view that the Respondent was grossly negligent in conduct of his professional duties and also failed to obtain sufficient information while issuing the aforesaid certificates. Thus, he was guilty under clause (7) and (8). [*Shri R. Hitendra vs. Prakash Ram Chandran(2012)*]

The Committee noted that since the transaction of land took place between the Shivdarshan Firm i.e., a partnership firm and Siddheshwari Developers, the same should have been reflected in the books of Shivdarshan Firm and not in the books of Shivdarshan Construction which was a proprietary concern. The Respondent being the auditor of Shivdarshan Construction failed to report the said discrepancy in his audit report. Since, the amount of loan was material and the Respondent failed to submit any evidence based on which he had chosen not to qualify the appearance of housing loan from Navsarjan Industrial Co. Op. Bank Ltd in the financial statements, hence, the Committee is of the view that the Respondent is guilty of professional misconduct falling within the meaning of Clauses (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 [*Shri Mukesh M. Kelawala vs. CA. Sukhdev Manilal Soni (2013)*]

Case Study

Z, a practicing Chartered Accountant issued a certificate of circulation of a periodical without going into the most elementary details of how the circulation of a periodical was being maintained i.e. by not looking into the financial records, bank statements or bank pass books, by not examining evidence of actual payment of printers bills and by not caring to ascertain how many copies were sold and paid for.

Failure to Obtain Information: Clause (8) of Part I of Second Schedule to the Chartered

Accountants Act, 1949 states that if a Chartered Accountant in practice fails to obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficient material to negate the expression of an opinion, the chartered accountant shall be deemed to be guilty of a professional misconduct.

In the instant case Mr. Z, a practicing Chartered Accountant issued a certificate of circulation of a periodical without going into the most elementary details of how the circulation of a periodical was being maintained i.e, by not looking into the financial records, bank statements or bank pass books, by not examining evidence of actual payment of printers bills and by not caring to ascertain how many copies were sold and paid for.

The chartered accountant should not express his opinion before obtaining the required data and information. As an auditor, Mr. Z ought to have verified the basic records to ensure the correctness of circulation figures.

Conclusion: Thus, in the present case Mr. Z will be held guilty of professional misconduct as per Clause (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Clause (9) Fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances.

This clause implies that the audit should be performed in accordance with “generally accepted procedure of audit applicable to the circumstances” and if for any reason the auditor has not been able to perform the audit in accordance with such procedure, his report should draw attention to the material departures from such procedures. What constitutes “generally accepted audit procedure” would depend upon the facts and circumstances of each case, but guidance is available in general terms from the various pronouncements of the Institute is issued by way of statements and Guidance Notes and SAs to members.

Members are also advised to refer to the ISA’s issued by the International Auditing Practices Committee of IFAC.

An auditor of a company is appointed by the shareholders to perform certain statutory functions and duties and it is expected of him that he will in fact, perform these functions and duties. The failure to perform a statutory duty in the manner required is not excused merely by giving a qualification or reservation in auditor’s report. For example, if an auditor fails to verify the cash balance in circumstances where such verification was necessary, feasible and material, it is not sufficient for him merely to state in his report that he did not verify the cash balance in circumstances when giving any reservations or qualifications in the auditor’s report as required under this clause, a member would be well advised to indicate clearly the reasons why he was unable to perform the audit in accordance with generally accepted procedures and standards.

It is not possible to exhaustively deal with instances or accepted procedure of audit applicable to special cases. Two instances of an audit requiring a special procedure are given below:

Very often members are required to certify the figures of circulation of newspapers, magazines etc. by their clients on behalf of the Audit Bureau of Circulations Ltd. Members are normally supplied by

the ABC with the Rules and Regulations under which the certification of circulation is to be carried out. Members are also asked to give their acceptance in writing that they will observe the rules of procedure envisaged to report upon any lapse of such special requirements, even of an insignificant nature.

Similarly, in the case of verification on behalf of banks, the rules or procedure for conducting such audit are different from the normal rules applicable to audits under the Companies Act. Members are required to be very familiar with the special procedure required in these matters and act accordingly.

Some of the decisions of the DC/Courts on this subject are briefly summarised below:

Where a Chartered Accountant did not conduct sample checking of the bank accounts in relation to the accounts of the company and did not carry out vouching with respect to the transactions reflected in the accounts of the company and depended upon his assistant who was a Chartered Accountant and experienced clerk who were entrusted with the auditing work. Held he was guilty under Clauses (7), (8) and (9). [*M.R. Ramanathan vs A. Utnalath Rao (1968)*]

Where a Chartered Accountant failed to verify the actual disbursement of the amount by examining the various items of purchases and insisting for the bills to be produced in respect of the various items before issuing his certificate as mere payment would not constitute utilization of the amount for the purpose for which it was meant. Held he was guilty under Clauses (7), (8) and (9). [*Punjab State Govt. vs K.N. Chandla (1972)*]

A Chartered Accountant had checked the cash book totals but not the bank column totals, had verified all the transactions in the bank columns but not the contra-entries, had taken the casting only of personal ledger and that too not of all accounts, had resorted to test check when there was no system of internal check, had not seen the pay-in-slips, had not checked the bank reconciliation statements for all the months. Held he was guilty of professional misconduct under Clauses (7), (8) and (9). [*Air Commodore Dilbagh Singh vs E.S. Venkataraman (1976)*]

Where the form of the certificate prescribed by the Audit Bureau of circulation Ltd., did not permit any alteration or explanation being given in the certificate itself, the Chartered Accountant had recorded, in a separate report the true state of affairs which he had found. Except making a report which explained the correct position he had no authority to indicate in the certificate itself the true position. But the separate report which he had sent along with the "Income Certificate" to the Newspaper concerned had not been forwarded by the newspaper to the Bureau. It was only later on that the ABC introduced a change in the procedure of audit by permitting a report being sent along with the "Income Certificate" in the various columns were subject to his separate report. Held he was guilty under Clauses (7) and (9). [*Audit Bureau of Circulations Ltd. v.s. M.L. Nanda (1968)*]

Where a Chartered Accountant as a concurrent auditor of the Bank carried out his duties recklessly, did not exercise due diligence, failed to obtain sufficient information and failed to invite attention to the material departure from the accounting policies. Accordingly, the Committee is of the considered view that the Respondent is guilty of professional misconduct falling within the 10 meaning of

Clauses (7), (8) and (9) of [Part I of Second Schedule to the Chartered Accountants Act [Tamilnadu Mercantile Bank Ltd.vs.CA. V.U. Gangolli (2012)].

Clause (10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

In the course of his engagement as a professional accountant, a member may be entrusted with moneys belonging to his client. If he should receive such funds, it would be his duty to deposit them in a separate banking account, and to utilize such funds only in accordance with the instructions of the client or for the purposes intended by the client. In this connection the Council has considered some practical difficulties of the members and the following suggestions have been made to remove these difficulties:

- (i) An advance received by a Chartered Accountant against services to be rendered does not fall under Clause (10) of Part I of the Second Schedule.
- (ii) Moneys received for expenses to be incurred, for example, payment of prescribed statutory fees, purchase of stamp paper etc., which are intended to be spent within a reasonably short time need not be put in a separate bank account. For this purpose, the expression; "reasonably time", would depend upon the circumstances of each case.
- (iii) Moneys received for expenses to be incurred which are not intended to be spent within a reasonably short time as aforesaid, should be put in a separate bank account immediately.
- (iv) Moneys received by a Chartered Accountant, in his capacity as trustee, executor liquidator, etc. must be put in a separate bank account immediately.

The decision of the Court in this matter is briefly mentioned below:

A Chartered Accountant was found guilty of professional misconduct under Clauses (7) & (10) of Part I of the Second Schedule to the Act for having failed to account satisfactorily for the various amounts entrusted to him by the client and for failure to keep them in a separate bank account. A refund voucher issued in the name of the client by the Income Tax Department was credited by him to his account in the bank. (N.S. Chenoy v.s. K.V. Subba Rao - page 958 of Vol. IV of the Disciplinary Cases and pages 207-214 of October, 1973, issue of the Institute's Journal - Judgement delivered on 6th April, 1973)

Case Study

A charitable institution entrusted ₹ 10 lakhs with its auditors M/s Ram and Co., a Chartered Accountant firm, to invest in a specified securities. The auditors pending investment of the money, deposited it in their Savings bank account and no investment was made in the next three months.

Failure to Keep Money in Separate Bank Account: If a Chartered Accountant in practice fails to keep moneys of his clients in a separate bank account or fails to use such moneys for purposes for which they are intended then his action would amount to professional misconduct under Clause (10) of Part I of Second Schedule to the Chartered Accountants Act, 1949. In the course of his

engagement as a professional accountant, a member may be entrusted with moneys belonging to his client. If he should receive such funds, it would be his duty to deposit them in a separate banking account, and to utilise such funds only in accordance with the instructions of the client or for the purposes intended by the client.

Conclusion: In the given case by depositing the client's money by M/s Ram and Co., a firm of Chartered Accountants, in their own savings bank account, the auditors have committed a professional misconduct. Hence in the given case, M/s Ram & Co. will be held guilty of professional misconduct.

PART II - Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he -

Clause (1) contravenes any of the provisions of this Act or the regulations made there under or any guidelines issued by the Council.

This clause is very important. It requires every member of the Institute to act within the framework of the Chartered Accountants Act and the Regulations made thereunder. Any violation either of the Act or the Regulations by a member would amount to misconduct.

The Regulations under which cases of contravention have generally come to the notice of the Council are the following:

Regulation 43	Engagement of Articled Assistant
Regulation 46	Registration of Articled Assistant
Regulation 47	Premium from Articled Assistant
Regulation 48	Stipend to Articled Assistant
Regulation 56	Termination or assignment of Articles
Regulation 65	Articled Assistant not to engage in any other occupation
Regulation 67	Complaint against the employer (from Articled Assistant)
Regulation 68 to 80	Audit Assistant
Regulation 190	Register of offices and firms
Regulation 190-A	Chartered Accountants not to engage in any other business or occupation
Regulation 191	Part time employment's a Chartered Accountant may accept
Regulation 192	Restriction on fees

Some of the decisions of the Courts under this clause are mentioned below:

A Chartered Accountant certified in Form K-2 that an audit clerk was in service with him while he was also, employed elsewhere with another employer between 11 A.M. and 5 P.M. and attended the office of the Chartered Accountant thereafter until 8 P.M. The Chartered Accountant suspended the audit clerk when the Institute brought this fact to the notice of the Chartered Accountant. Held he was guilty of misconduct for making a misstatement to the institute in regard to the discharge of his professional duties. [*J.K. Ghosh in (1953)*]

Where a Chartered Accountant agreed to take a person as an articled clerk in a vacancy shortly to arise and received the premium for the purpose and made him believe, when he executed the deed of articles that he was taking him in that vacancy, while, in fact, that vacancy had been filled up by the Chartered Accountant earlier by taking another audit clerk. The audit clerk came to know from the Institute that the deed of articles was not registered as that was forwarded with a request for entertaining an extra articled clerk. Held that the Chartered Accountant was guilty of serious misconduct for having contravened Regulation 58. [*A.K. Basu v.s. P.K. Mukherjee (1956)*]

Where a Chartered Accountant after signing the Articles of Agreement, failed to forward the articles for registration as required by Regulation 64 and the statement of particulars in the prescribed form as required by Regulation 64 in spite of repeated enquiries from the articled clerk and even failed to take notice of communications addressed to him in that behalf and having two other articled clerks along with the present one who articles were not sent for registration took up a fourth articled clerk without being entitled to do so. Held he was guilty for breach of Regulation 46. [*Mohan Sehwanji vs. Sunderlal Fatehpuria (1968)*]

A Chartered Accountant was found guilty of professional misconduct in terms of Clause (1) of Part II of the Second Schedule to the Act for contravention of Section 6 of the Act for having issued a certificate in respect of a consumption statement of a concern as a Chartered Accountant in practice on a date when he had not even applied for a certificate of practice to the Institute. [*N.K. Ray Chowdhery in (1973)*]

A Chartered Accountant issued a confidential and private circular to clients where, in addition to, describing himself as "Chartered Accountant" he also described himself as "Investment Consultant Public Accountant". By this circular he introduced himself to the public and private limited companies, which were accepting, fixed deposits and loans through him. Held he was guilty of professional misconduct under Clause (1) of Part II of the Second Schedule. [*B. M. Lala (1976)*]

A Chartered Accountant took loan from a firm in which the articled clerk and his father were both Interested, against the provisions of the Chartered Accountants Regulations, 1988 which prohibit 'taking of loan or deposit etc. from the articled clerk. Held the Chartered Accountant was guilty of professional misconduct under the clause. [*M.K. Tripathi (1979)*]

A Chartered Accountant did not pay stipend to his articled clerk, in accordance with Regulation 48 of the Chartered Accountants Regulations 1988, while to another articled clerk, he was paying every month. The stipend was paid only after the articled clerk left him after working for a months and complaint was lodged with the Institute. The plea of the Chartered Accountant that he had an agreement with the articled clerk to pay stipend on annual basis was found to be misconceived as the same should be against the provisions of Regulation 48. [*Radhey Mohan (1979)*]

Three articled clerks of a Chartered Accountant informed Institute that the Chartered Accountant had failed to make the payments of stipend to them every month in accordance with Regulation 48. Held the Chartered Accountant was guilty of professional misconduct under the clause as he contravened Regulation 48 by not making the payment every month. The court rejected two contentions put forward by the Chartered Accountant, viz, (i) that the declaration filed by the articled clerks could not be regarded as 'information' in order to justify the commencement of disciplinary proceedings (2) that under Regulation 48 the payments had to be made at a monthly rate and not that the payments had to be made every month. The third contention that the payments could not be made every month or regularly because of financial stringency was also rejected particularly in view of the fact that the Chartered Accountant during the relevant period had purchased a plot of land and constructed a house at the cost of more than 1 lakh of rupees and he had in his employment throughout the relevant period a Chartered Accountant at a salary of ₹ 500 Per Month. [*R.C. Gupta (1980)*]

The Chartered Accountant received ₹ 2000/- by way of security from the complainant's father as a consideration for taking him as an articled clerk. Held that he was guilty under the provision. [*Virender Kumar v.s. K.B. Madan (1980)*]

A Chartered Accountant did not pay stipend to the articled clerk per month in accordance with Regulation 32B of the Chartered Accountant Regulations, 1964 in view of the letter written by the articled clerk to the effect that the stipend be not paid to him every month. This letter was purported to have written at the time of commencement of training- Held the letter taken from the articled clerk would not be relied upon as it was ante-dated and it was not written on the date it purported to be. The Chartered Accountant was guilty of professional misconduct under the clause. It was observed that it was very reprehensible that a practising Chartered Accountant should have tried to fabricate evidence in support of the defence. [*V.K. Mittal (1980)*]

A Chartered Accountant did not pay stipend to the articled clerk in accordance with Regulation 32B of the Chartered Accountants Regulations, 1964 for the period during which the Article Clerk worked with him. Also the Article Clerk was asked to work in excess of the prescribed working hours in violation of Regulation 45 of the Chartered Accountants Regulations, 1964. Held that he was guilty of professional misconduct under Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949. [*U.V. Benadikar vs. N.G. Kulkarni (2004)*]

Clause (2) being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment except as and when required by any law for the time being in force or except as permitted by the employer.

This is an adaptation of the well-accepted principle of the law of agency. A member in the forthcoming circumstance would be guilty of misconduct regardless of the fact that he was in whole time or part-time employment or that he was carrying on practice of accountancy along with his employment. Since as employee, a member may have access to a confidential information, hence for maintaining the status and dignity of the profession in general, he should treat such information as having been provided to him only to facilitate the performance of his duties as an employee. In order to keep the confidence of the people, Chartered Accountants, should take special care not to divulge such information.

Clause (3) Includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false.

If a Chartered Accountant includes in any information, statement, return or form to be submitted to the Institute Council etc. any particular knowing it to be false, he will be held guilty of misconduct.

Clause (4) Defalcates or embezzles money received in his professional capacity.

Defalcation and embezzlement of moneys received in professional capacity amounts to fraud (Covered in SA-240) and such member will be deemed to be guilty of professional misconduct under this clause.

Part III - Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.

Imprisonment awarded for a term exceeding six months in any civil/criminal matter treated as a major offence under 'other misconduct' is included in this Schedule.



9 COUNCIL GUIDELINES

The relevant extracts of the **Council General Guidelines, 2008** are given below:

Chapter I Preliminary

1.0 Short title, commencement, etc.

- (a) These Guidelines have been issued by the Council of the Institute of Chartered

Accountants of India under the provisions of The Chartered Accountants Act, 1949, as amended by The Chartered Accountants (Amendment) Act 2006, in supersession of the Notifications issued by the Council under erstwhile Clause (2) of Part II of the Second Schedule to the Chartered Accountants Act, 1949. These Guidelines be called the 'Council General Guidelines, 2008'.

- (b) These guidelines shall be applicable to all the Members of the Institute whether in practice or not wherever the context so requires.

Chapter II

Conduct of a Member being an employee

A member of the Institute who is an employee shall exercise due diligence and shall not be grossly negligent in the conduct of his duties.

Chapter III

Appointment of a Member as Cost auditor

A member of the Institute shall not accept-

- (i) The appointment as Cost auditor of a Company under Section 233B* of the Companies Act, 1956 while he-
 - (a) is an auditor of the Company appointed under Section 224 of the Companies Act; or
 - (b) is an officer or employee of the Company; or
 - (c) is a partner, of any employee or officer of the Company; or
 - (d) is a partner or is in the employment of the Company's auditor appointed under Section 224 of the Companies Act, 1956; or
 - (e) is indebted to the Company for an amount exceeding one thousand rupees, or has given any guarantee or provided any security in connection with the indebtedness of any third person to the Company for an amount exceeding one thousand rupees;

OR

- (ii) After his appointment as Cost Auditor, he becomes subject to any of the disabilities stated in items (i) (a) to (e) above and continues to function as a cost auditor thereafter.

A member of the Institute in practice shall not accept the appointment as auditor of a Company under Section 224 of the Companies Act, 1956, while he is an employee of the cost auditor of the Company appointed under Section 233B* of the Companies Act, 1956.

*** [Students may note that Section 233B of the Companies Act, 1956 on Cost Audit has been replaced with Section 148 of the Companies Act, 2013.]**

Chapter IV

Opinion on financial statements when there is substantial interest

A member of the Institute shall not express his opinion on financial statements of any business or enterprise in which one or more persons who are his “relatives” within the meaning of *Accounting Standard (AS-18) has/have, either by themselves or in conjunction with such member, a substantial interest in the said business or enterprise.

Explanation: For this purpose and for the purpose of compliance of Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, the expression “substantial interest” shall have the same meaning as is assigned thereto under Appendix (9) to the Chartered Accountants Regulations, 1988.

[*In terms of its decision taken at the 299th Meeting of the Council held on 27th – 28th October, 2010, it has been decided that the term “relative” for the purpose of Chapter-IV of Council General Guidelines, 2008 (Opinion on Financial Statements when there is substantial interest) will have the same meaning as assigned to it in AS-18.]

Chapter V

Maintenance of books of account

A member of the Institute in practice or the firm of Chartered Accountants of which he is a partner, shall maintain and keep in respect of his / its professional practice, proper books of account including the following-

- (i) a Cash Book;
- (ii) a Ledger.

Case Study

L, a chartered accountant did not maintain books of account for his professional earnings on the ground that his income is less than the limits prescribed u/s 44AA of the Income Tax Act, 1961.

Maintenance of Books of Account: As per the Council General Guidelines 2008, under Chapter 5 on maintenance of books of accounts, it is specified that if a chartered accountant in practice or the firm of Chartered Accountants of which he is a partner fails to maintain and keep in respect of his/its professional practice, proper books of account including the Cash Book and Ledger, he is deemed to be guilty of professional misconduct. Accordingly, it does not matter whether section 44AA of the Income Tax Act, 1961 applies or not.

Conclusion: Hence, Mr. L is guilty of professional misconduct.

Chapter VI

Tax Audit assignments under Section 44 AB of the Income-tax Act, 1961

A member of the Institute in practice shall not accept, in a financial year, more than the “specified number of tax audit assignments” under Section 44AB of the Income-tax Act, 1961.

Provided that in the case of a firm of Chartered Accountants in practice, the “specified number of tax audit assignments” shall be construed as the specified number of tax audit assignments for every partner of the firm.

Provided further that where any partner of the firm is also a partner of any other firm or firms of Chartered Accountants in practice, the number of tax audit assignments which may be taken for all the firms together in relation to such partner shall not exceed the “specified number of tax audit assignments” in the aggregate.

Provided further that where any partner of a firm of Chartered Accountants in practice accepts one or more tax audit assignments in his individual capacity, the total number of such assignments which may be accepted by him shall not exceed the “specified number of tax audit assignments” in the aggregate.

Provided also that the audits conducted under Section 44AD, 44AE and 44AF of the Income Tax Act, 1961 shall not be taken into account for the purpose of reckoning the “specified number of tax audit assignments”.

Explanation:

For the above purpose, “the specified number of tax audit assignments” means -

- (a) in the case of a Chartered Accountant in practice or a proprietary firm of Chartered Accountant, **60 tax audit assignments, in a financial year, whether in respect of corporate or non-corporate assesses.
- (b) in the case of firm of Chartered Accountants in practice, **60 tax audit assignments per partner in the firm, in a financial year, whether in respect of corporate or non-corporate assesses.

According to a clarification on Tax Audit Assignments by Committee on Ethical Standards Board) of the Institute, if there are 10 partners in a firm of Chartered Accountants in practice, then all the partners of the firm can collectively sign 600 tax audit reports. This maximum limit of 600 tax audit assignments may be distributed between the partners in any manner whatsoever. For instance, 1 partner can individually sign 600 tax audit reports in case remaining 9 partners are not signing any tax audit report.

In computing the “specified number of tax audit assignments” each year’s audit would be taken as a separate assignment.

In computing the “specified number of tax audit assignments”, the number of such assignments, which he or any partner of his firm has accepted whether singly or in combination with any other Chartered Accountant in practice or firm of such Chartered Accountants, shall be taken into account.

The audit of the head office and branch offices of a concern shall be regarded as one tax audit assignment.

The audit of one or more branches of the same concern by one Chartered Accountant in practice shall be construed as only one tax audit assignment.

A Chartered Accountant being a part time practicing partner of a firm shall not be taken into account for the purpose of reckoning the tax audit assignments of the firm.

A Chartered Accountant in practice shall maintain a record of the tax audit assignments accepted by him in each financial year in the format as may be prescribed by the Council.

Case Study

A member of the institute shall not accept in a year more than the specified number of tax audits under section 44AB of the Income Tax Act.

Mr. Gaurav is a partner in M/s. XYZ & Co., a firm of Chartered Accountants with 6 partners.

During the assessment year 2015-16, Mr. Gaurav alone had signed 290 tax audit reports consisting of both corporate and non-corporate assesses.

Ceiling limit for signing the Tax Audit Reports: As per Council General Guidelines 2008, a member of the Institute in practice shall not accept, in a financial year, more than the “specified number of tax audit assignments” under Section 44AB of the Income-tax Act, 1961. It is also provided further that where any partner of a firm of Chartered Accountants in practice accepts one or more tax audit assignments in his individual capacity, the total number of such assignments which may be accepted by him shall not exceed the “specified number of tax audit assignments” in the aggregate.

In the case of firm of Chartered Accountants in practice “the specified number of tax audit assignments” means, 60 tax audit assignments per partner in the firm, in a financial year, whether in respect of corporate or non-corporate assesses.

Further, as per clarification issued by the Institute on Tax Audit Assignments, tax audit reports may be signed by the partners in any manner whatsoever in accordance with specified audit limits. Thus, one partner can individually sign all the tax audit reports subject to specified tax audit assignment limits on behalf of all the partners in the firm of Chartered Accountants in practice or all the partners of the firm can collectively sign the tax audit reports.

In the instant case, there are 6 partners in M/s XYZ & Co., a Chartered Accountants firm, accordingly specified ceiling limit for the firm will be (60 tax audit assignments per partner X 6 partners) = 360. Therefore, all the 6 partners of the firm can collectively sign 360 tax audit reports. This maximum limit of 360 tax audit assignments may be distributed between the partners in any manner whatsoever. For instance, 1 partner can individually sign 360 tax audit reports in case remaining 5 partners are not signing any tax audit report.

Assuming Mr. Gaurav has signed 290 tax audit reports consisting of both corporate and non-corporate assessee on behalf of firm and remaining partners are signing audit reports within the specified number of tax audit assignments u/s 44AB i.e. upto 70.

Conclusion: Hence, Mr. Gaurav shall not be deemed to guilty of professional misconduct provided total number of tax audit reports on behalf of firm do not exceeds 360.

Chapter VII

Appointment of an Auditor in case of non-payment of undisputed fees

A member of the Institute in practice shall not accept the appointment as auditor of an entity in case the undisputed audit fee of another Chartered Accountant for carrying out the statutory audit under the Companies Act, 1956 (now Companies Act, 2013) or various other statutes has not been paid:

Provided that in the case of sick unit, the above prohibition of acceptance shall not apply.

Explanation 1: For this purpose, the provision for audit fee in accounts signed by both - the auditee and the auditor shall be considered as “undisputed” audit fee.

Explanation 2: For this purpose, “sick unit” shall mean where the net worth is negative.

Case Study

Mr. C accepted the statutory audit of M/s PSU Ltd., whose net worth is negative for the year 2014-15. The audit was to be conducted for the year 2015-16. The audited accounts for the year 2015-16 showed liability for payment of tax audit fees of ₹ 15,000 in favour of Mr. E, the previous auditor.

Accepting Appointment as an Auditor: As per Chapter 7 of Council General Guidelines 2008, a member of the Institute of Chartered Accountants of India in practice shall be deemed to be guilty of professional misconduct if he accepts appointment as auditor of an entity in case the undisputed audit fee of another chartered accountant for carrying out the statutory audit under Companies Act or various other statutes has not been paid.

As per the proviso, such prohibition shall not apply in case of a sick unit where a sick unit is defined to mean “where the net worth is negative”.

Conclusion: In the instant case, though the undisputed fees are unpaid, Mr. C would still not be guilty of professional misconduct since the M/s PSU Ltd. is a sick unit having negative net worth for the year 2014-15.

Chapter VIII

Specified number of audit assignments

A member of the Institute in practice shall not hold at any time appointment of more than the “specified number of audit assignments” of Companies under Section 224 and/or Section 228 of the Companies Act, 1956.

Provided that in the case of a firm of Chartered Accountants in practice, the “specified number of audit assignments” shall be construed as the specific number of audit assignments for every partner of the firm.

Provided further that where any partner of the firm of Chartered Accountants in practice is also a partner of any other firm or firms of Chartered Accountants in practice, the number of audit

assignments which may be taken for all the firms together in relation to such partner shall not exceed the “specified number of audit assignments” in the aggregate.

Provided further where any partner of a firm or firms of Chartered Accountants in practice accepts one or more audit of Companies in his individual capacity, or in the name of his proprietary firm, the total number of such assignments which may be accepted by all firms in relation to such Chartered Accountant and by him shall not exceed the “specified number of audit assignments” in the aggregate.

In computing the “specified number of audit assignments”-

- (a) the number of audit of such Companies, which he or any partner of his firm has accepted whether singly or in combination with any other Chartered Accountant in practice or firm of such Chartered Accountants, shall be taken into account.
- (b) the audit of the head office and branch offices of a Company by one Chartered Accountant or firm of such Chartered Accountants in practice shall be regarded as one audit assignment.
- (c) the audit of one or more branches of the same Company by one Chartered Accountant in practice or by firm of Chartered Accountants in practice in which he is a partner shall be construed as one audit assignment only.
- (d) the number of partners of a firm on the date of acceptance of audit assignment shall be taken into account.

A Chartered Accountant in practice, whether in full-time or part time employment elsewhere, shall not be counted for the purpose of determination of “specified number of audit of Companies” by firms of Chartered Accountants.

A Chartered Accountant being a part time practicing partner of a firm shall not be taken into account for the purpose of reckoning the audit assignments of the firm.

A Chartered Accountant in practice as well as firm of Chartered Accountants in practice shall maintain a record of the audit assignments accepted by him or by the firm of Chartered Accountants, or by any of the partners of the firm in his individual name or as a partner of any other firm, as far as possible in the prescribed format.

*** [Students may note that Section 224 and/or Section 228 of the Companies Act, 1956 has been replaced with Section 139 and/or Section 143(8) read with Section 141(3)(g) of the Companies Act, 2013.]**

Chapter IX Appointment as Statutory auditor

A member of the Institute in practice shall not accept the appointment as statutory auditor of Public Sector Undertaking(s)/ Government Company(ies)/Listed Company(ies) and other Public Company(ies) having turnover of ₹ 50 crores or more in a year where he accepts any other work(s) or assignment(s) or service(s) in regard to the same Undertaking(s)/ Company(ies) on a

remuneration which in total exceeds the fee payable for carrying out the statutory audit of the same Undertaking/company.

Provided that in case appointing authority(ies)/regulatory body(ies) specify(ies) more stringent condition(s)/restriction(s), the same shall apply instead of the conditions/restrictions specified under these Guidelines.

The above restrictions shall apply in respect of fees for other work(s) or service(s) or assignment(s) payable to the statutory auditors and their associate concern(s) put together.

For the above purpose,

- (i) the term “other work(s)” or “service(s)” or “assignment(s)” shall include Management Consultancy and all other professional services permitted by the Council pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949 but shall not include:-
 - (a) audit under any other statute;
 - (b) certification work required to be done by the statutory auditors; and
 - (c) any representation before an authority;
- (ii) the term “associate concern” means any corporate body or partnership firm which renders the Management Consultancy and all other professional services permitted by the Council wherein the proprietor and/or partner(s) of the statutory auditor firm and/or their “relative(s)” is/are Director/s or partner/s and/or jointly or severally hold “substantial interest” in the said corporate body or partnership;
- (iii) the terms “relative” and “substantial interest” shall have the same meaning as are assigned thereto under Appendix (9) to the Chartered Accountants Regulations, 1988.

In regard to taking up other work(s) or service(s) or assignment(s) of the undertaking/company referred to above, it shall be open to such associate concern or corporate body to render such work(s) or service(s) or assignment(s) so long as aggregate remuneration for such other work(s) or service(s) or assignment(s) payable to the statutory auditor/s together with fees payable to its associate concern(s) or corporate body(ies) do/does not exceed the aggregate of fee payable for carrying out the statutory audit.



A is the auditor of Z Ltd., which has a turnover of ₹ 200 crore. The audit fee for the year is fixed at ₹ 50 lakhs. During the year, the company offers A an assignment of management consultancy within the meaning of Section 2(2)(iv) of the CA Act, 1949 for a remuneration of ₹ 1 crore. A seeks your advice on accepting the assignment.

Appointment as a Statutory Auditor of a PSUs’/Govt Company(ies)/Listed Company(ies) and Other Public Company(ies): As per the Council General Guidelines 2008, under Chapter IX on appointment as statutory auditor a member of the Institute in practice shall not accept the appointment as a statutory auditor of a PSUs’/Govt company(ies)/Listed company(ies) and other public company(ies) having a turnover of ₹ 50 crores or more in a year and where he accepts

any other work(s) or assignment(s) or service(s) in regard to same undertaking(s) on a remuneration which in total exceeds the fee payable for carrying out the statutory audit of the same undertaking. For this purpose the other work/services includes Management Consultancy and all other professional services permitted by Council excluding audit under any other statute, Certification work required to be done by the statutory auditor and any representation before an authority.

Conclusion: In view of the above position it would be a misconduct on A's part if he accepts the management consultancy assignment for a fee of ₹ 1 crore.

Chapter X

Appointment of an auditor when he is indebted to a concern

A member of the Institute in practice or a partner of a firm in practice or a firm shall not accept appointment as auditor of a concern while indebted to the concern or given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding ₹ 10,000/-



D, who conducts the tax audit u/s 44AB of the Income Tax Act, 1961 of M/s ABC, a partnership firm, has received the audit fees of ₹ 25,000 on *progressive basis* in respect of the tax audit for the year ended 31.3.2016. The audit report was, however, signed on 25.5.2016.

Entire Audit Fees Received in Advance: As per Chapter X of Council General Guidelines, 2008 a member of the Institute in practice or a partner of a firm in practice or a firm shall not accept appointment as auditor of a concern while indebted to the concern or given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding ₹ 10,000/-.

However, the Research Committee of the ICAI has expressed the opinion that where in accordance with the terms of engagement of auditor by a client, the auditor recovers his fees on a progressive basis as and when a part of the work is done without waiting for the completion of the whole job, he cannot be said to be indebted to the company at any stage.

Conclusion: In the instant case, Mr. D is appointed to conduct a tax audit u/s 44AB of the Income Tax Act, 1961. He has received the audit fees of ₹ 25,000 in respect of the tax audit for the year ended 31.3.2016 which is on progressive basis. Therefore, Mr. D will not be held guilty for misconduct.

Chapter XI

Directions in case of unjustified removal of auditors

A member of the Institute in practice shall follow the direction given, by the Council or an appropriate Committee or on behalf of any of them, to him being the incoming auditor(s) not to accept the appointment as auditor(s), in the case of unjustified removal of the earlier auditor(s).



10 RECOMMENDED SELF-REGULATORY MEASURES

As the members are aware, the Council has decided upon certain self-regulatory measures in order to ensure a healthy growth of the profession and an equitable flow of professional work among the members. These measures are reviewed from time to time and are published in the Journal of the Institute for observance by the members. The self-regulatory measures are recommendatory. However, considering the spirit underlying these measures, the Council expects that each and every member will effectively implement them. The Council earnestly believes that implementation of these measures would go a long way in ensuring equitable flow of work among the members and would also further enhance the prestige of the profession in the society.

The more important of these recommendations are as under:

10.1 Branch Audits

The branch audits of a company should not be conducted by its statutory auditors consisting of ten or more members, but should be conducted by the local firms of auditors consisting of less than ten members. This should not be understood to mean any restriction on the right of the statutory auditors to have access over branch accounts conferred under the Companies Act, 1956 (now Companies Act, 2013). This restriction may not apply in the following cases.

- (i) where the accounting records of the branches are maintained at the head office of the respective companies, and
- (ii) where significant operations of an undertaking or a company are carried out at its branch office.

10.2 Joint Audit

In the case of large companies the practice of associating a practicing firm with less than five members as Joint auditors should be encouraged. Where a client desires to appoint such a firm as joint auditor, the senior firm should not object to the same.

10.3 Ratio Between Qualified and Unqualified Staff

In the Council's view, a practicing firm of Chartered Accountants engaged in audit work should have at least one member for every five non-qualified members of the staff, excluding articled and audit clerks, typists, peons and other persons not engaged directly in such professional work.

10.4 Disclosure of Interest by Auditors in other Firms

The Council has decided that as a good and healthy practice, auditors should make a disclosure of the payments received by them for other services through the medium of a different firm or firms in which the said auditor may be either a partner or proprietor.

[Important Note: Students may note that, in view of the fact that with effect from 01.04.2014, the Companies Act, 1956 has been replaced with Companies Act, 2013, the "Code of Ethics" issued by ICAI is under revision. Till the time the "Code of Ethics" gets amended in accordance with Companies Act, 2013, students may quote revised provisions along with the old provisions.]

ANNEXURE – 1

The Chartered Accountants Act, 1949

The Chartered Accountants Act, 1949 (No. 38 of 1949) came into force on the 1st day of July, 1949. Later in the year 1959, certain amendments were made therein through the Chartered Accountants (Amendment) Act, 1959 (No.15 of 1959). After about 47 years extensive changes have been made in the Act through the Chartered Accountants (Amendment) Act, 2006 (No.9 of 2006) which have been notified by the Central Government in the Gazette of India (Extra Ordinary) dated 23rd March, 2006. Further, few insertions were made to the principle Act through the Chartered Accountants (Amendment) Act, 2011 (No. 3 of 2012).

The entire Act is divided in nine chapters [Including chapter VIIA inserted by Chartered Accountants (Amendment) Act, 2006].

The Complete enumeration of Contents is given below:

Chapter I - Preliminary

1. Short title, Extent and Commencement
2. Interpretation

This Chapter contains preliminary aspects of the Act like applicability of the Act, definition of various terms like, Chartered Accountant, Council, holder of a restricted certificate, Registered Accountant, etc.

Chapter II - The Institute of Chartered Accountants of India

3. Incorporation of the Institute
4. Entry of names in the Register
5. Fellows and Associates
6. Certificate of Practice
7. Members to be known as Chartered Accountants
8. Disabilities

This chapter deals with various things like who shall be entitled to have his name entered in the register of members of the Institute, who shall be deemed to have become an associate member of the Institute, who shall be entered in the Register as a fellow of the Institute. This Chapter also deals with issues relating to certificate of practice and disabilities of a person for having his name entered in the Register.

Chapter III - Council of the Institute

9. Constitution of the Council of the Institute

10. Re-election or re-nomination to Council [Substituted by Chartered Accountants (Amendment) Act, 2006]
- 10A. Settlement of dispute regarding election [Inserted by Chartered Accountants (Amendment) Act, 2006]
- 10B. Establishment of Tribunal [Inserted by Chartered Accountants (Amendment) Act, 2006]
11. Nomination in default of election or nomination
12. President and Vice-President
13. Resignation of Membership and casual vacancies
14. Duration and dissolution of the Council
15. Function of the Council
- 15A. Imparting education by Universities and Other bodies [Inserted by Chartered Accountants (Amendment) Act, 2006]
16. Officers and employees, salary, allowances etc. [substituted by Chartered Accountants (Amendment) Act, 2006]
17. Committees of the Council
18. Finances of the Council

This Chapter deals with various issues like composition of Council of the Institute, manner of conducting election to the Council, mode of tendering resignation from the membership of the Council mode of filling a casual vacancy, various duties of the Council. This Chapter also deals with the permission accorded to any University established by law or any Body affiliated to the Institute to impart education on the subjects covered by the academic courses of the Institute.

Chapter IV - Register of Members

19. Register of Members
20. Removal from the Register

This chapter deals with the matters relating to register of members and removal from the register the name of any member. The Council has to maintain a Register of Members of the Institute. This Register shall include name, date of birth, domicile, residential and professional address, qualification etc. Also, the Council may remove from the Register the name of any member in certain circumstances like in case of death of the member or if the member does not pay the prescribed fees, or when a member has become subject to any of the disabilities mentioned in section 8.

Chapter V - Misconduct

21. Disciplinary Directorate [Substituted by Chartered Accountants (Amendment) Act, 2006]
- 21A. Board of Discipline [Inserted by Chartered Accountants (Amendment) Act, 2006]

- 21B. Disciplinary Committee [Inserted by Chartered Accountants (Amendment) Act, 2006]
- 21C. Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court [Inserted by Chartered Accountants (Amendment) Act, 2006]
- 21D. Transitional provisions [Inserted by Chartered Accountants (Amendment) Act, 2006]
- 22. Professional or other misconduct defined [Substituted by Chartered Accountants (Amendment) Act, 2006]
- 22A. Constitution of Appellate Authority [Substituted by Chartered Accountants (Amendment) Act, 2006]
- 22B. Term of office of Chairperson and members of Authority [Inserted by Chartered Accountants (Amendment) Act, 2006].
- 22C. Allowances and conditions of service of Chairperson and Members of Authority (Inserted by Chartered Accountants (Amendment) Act, 2006)
- 22D. Procedure to be regulated by Authority [Inserted by Chartered Accountants (Amendment) Act, 2006]
- 22E. Officers and other staff of Authority [Inserted by Chartered Accountants (Amendment) Act, 2006]
- 22F. Resignation and removal of Chairperson and Members [Inserted by Chartered Accountants (Amendment) Act, 2006]
- 22G. Appeal to Authority [Inserted by Chartered Accountants (Amendment) Act, 2006]

In this chapter professional and other misconduct has been defined. As per section 22 of the Act, the expression "professional or other misconduct" shall be deemed to include any act or omission provided in any of the Schedules. In this chapter, Section 21, 22 and 22A have been substituted by new sections 21, 22 and 22A. Other sections (Section 21A, 21B, 21C, 21D, 22B, 22C, 22D, 22E, 22F and 22G) have been inserted by Chartered Accountants (Amendment) Act, 2006. These Sections along with the Schedules deal with the new Disciplinary Mechanism.

Chapter VI - Regional Councils

23. Constitution and Functions of Regional Councils

The Councils may constitute such Regional Councils for the purpose of advising and assisting it on matters concerning its functions. The Regional councils shall exercise prescribed functions.

Chapter VII - Penalties

- 24. Penalty for falsely claiming to be a member etc.
- 24A. Penalty for using name of the Council, awarding degree of Chartered Accountancy etc.
- 25. Companies not to engage in accountancy

26. Unqualified persons not to sign documents
27. Maintenance of branch offices
28. Sanction to prosecute

This chapter lists penalties in various cases like, if a person who is not a member of the Institute and represents himself as a member of the Institute or uses the designation Chartered Accountant, he shall be punishable with fine which may extend to one thousand rupees (on first conviction) and with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both (on subsequent conviction). Other provisions regarding penalties that are included in this chapter provide that a Company (Incorporated in or outside India) shall not practice as Chartered Accountant, a person other than a member of the Institute shall not sign any document on behalf of a Chartered Accountant in practice or a firm of such Chartered Accountants in his or its professional capacity, etc.

Chapter VII A Quality Review Board

[Inserted by Chartered Accountants (Amendment) Act, 2006]

- 28A. Establishment of Quality Review Board
- 28B. Functions of Board
- 28C. Procedure of Board
- 28D. Terms and conditions of services of Chairperson and Members of Board and its expenditure

After Chapter VII, the Chapter VIIA has been inserted by the Chartered Accountants (Amendment) Act, 2006. It empowers the Central Government to constitute a Quality Review Board outside the framework of the Institute. It will perform the functions like, to make recommendations to the Council with regard to the quality of services provided by the members of the Institute, to review the quality of services provided by the members of the Institute including audit services and to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

Chapter VIII – Miscellaneous

29. Reciprocity
- 29A. Power of Central Government to make rules.
30. Power to make regulations
- 30A. Powers of the Central Government to direct regulation to be made or to make or amend regulations
- 30B. Rules, Regulations and notification to be laid before Parliament [Substituted by Chartered Accountants (Amendment) Act, 2006]

- 30C. Power of Central Government to issue directions [Inserted by Chartered Accountants (Amendment) Act, 2006]]
- 30D. Protection of action taken in good faith [Inserted by Chartered Accountants (Amendment) Act, 2006]]
- 30E. Members etc. to be public servants [Inserted by Chartered Accountants (Amendment) Act, 2006]]
- 31. Construction of References
- 32. Act not to affect right of accountants to practice as such in Acceding States.
- 33. [Repealed]

This Chapter contains miscellaneous provisions. It empowers the Council to prescribe the conditions subject to which foreign qualifications relating to accountancy shall be recognized for the purpose of entry in the Register. It also empowers the Council to make regulations for the purpose of carrying out the objects of this Act. It also empowers the Central Government to direct the Council to make any regulations or to amend or revoke any regulations already made. Section 30C, 30D, and 30E have been inserted by Chartered Accountants (Amendment) Act, 2006. Section 30C empowers the Central Government to issue directions in the event of non-compliance by the Council of any provisions of the Act. Section 30D protects Central Government, Council, Authority Disciplinary Committee, Tribunal, Board, Board of Discipline, Disciplinary Directorate or any officer thereof, for anything which is in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made there under. Section 30E says that the Chairperson, Presiding officer, Members and other officers and employees of the Authority, Disciplinary Committee, Tribunal, Board, Board of Discipline or the Disciplinary Directorate shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

ANNEXURE – 2

Relevant sections of the Chartered Accountants Act, 1949 with respect to disciplinary procedure are provided below:

Section 21. Disciplinary Directorate –

- (1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.
- (2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct.
- (3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the

Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

- (4) In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.
- (5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or, as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.

Section 21A. Board of Discipline –

- (1) The Council shall constitute a Board of Discipline consisting of -
 - (a) a person with experience in law and having knowledge of disciplinary matters and the profession, to be its presiding officer;
 - (b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy;
 - (c) the Director (Discipline) shall function as the Secretary of the Board.
- (2) The Board of Discipline shall follow summary disposal procedure in dealing with all cases before it.
- (3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:
 - (a) reprimand the member;
 - (b) remove the name of the member from the Register up to a period of three months;
 - (c) impose such fine as it may think fit, which may extend to rupees one lakh.
- (4) The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

Section 21B. Disciplinary Committee –

- (1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from

amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy.

Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.

- (2) The Disciplinary Committee, while considering the cases placed before it shall follow such procedure as may be specified.
- (3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:
 - (a) reprimand the member;
 - (b) remove the name of the member from the Register permanently or for such period, as it thinks fit;
 - (c) impose such fine as it may think fit, which may extend to rupees five lakh.
- (4) The allowances payable to the members nominated by the Central Government shall be such as may be specified.

Section 21C. Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court – For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) the discovery and production of any document; and
- (c) receiving evidence on affidavit.

Explanation: for the purposes of sections 21, 21A, 21B, 21C and 22, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

Section 21D. Transitional provisions – All complaints pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to the commencement of the Chartered Accountants (Amendment) Act, 2006, shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Chartered Accountants (Amendment) Act, 2006.

Section 22. Professional or other misconduct defined – For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

Section 22A. Constitution of Appellate Authority –

- (1) The Central Government shall, by notification, constitute an Appellate Authority consisting of -
 - (a) a person who is or has been a judge of a High Court, to be its Chairperson;
 - (b) two members to be appointed from amongst the persons who have been members of the Council for at least one full term and who are not sitting members of the Council;
 - (c) two members to be nominated by the Central Government from amongst persons having knowledge and practical experience in the field of law, economics, business, finance or accountancy.
- (2) The Chairperson and other members shall be part-time members.

Section 22B. Term of office of Chairperson and members of Authority –

- (1) A person appointed the Chairperson shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.
- (2) A person appointed as a member shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier.

Section 22C. Allowances and conditions of service of Chairperson and members of Authority

– The allowances payable to, and other terms and conditions of service of, the Chairperson and members and the manner of meeting expenditure of the Authority by the Council and such other authorities shall be such as may be specified.

Section 22D. Procedure to be regulated by Authority –

- (1) The office of the Authority shall be at Delhi.
- (2) The Authority shall regulate its own procedure.
- (3) All orders and decisions of the Authority shall be authenticated by an officer duly authorised by the Chairperson in this behalf.

Section 22E. Officers and other staff of Authority –

- (1) The Council shall make available to the Authority such officers and other staff members as may be necessary for the efficient performance of the functions of the Authority.

- (2) The salaries and allowances and conditions of service of the officers and other staff members of the Authority shall be such as may be prescribed.

Section 22F. Resignation and removal of Chairperson and members –

- (1) The Chairperson or a member may, by notice in writing under his hand addressed to the Central Government, resign his office.

Provided that the Chairperson or a member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is earlier.

- (2) The Chairperson or a member shall not be removed from his office except by an order of the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by such person as the Central Government may appoint for this purpose in which the Chairperson or a member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

Section 22G. Appeal to Authority –

- (1) Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days of the date on which the order is communicated to him, prefer an appeal to the Authority.

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority, if so authorised by the Council, within ninety days.

Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

- (2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (3) of section 21A and sub-section (3) of section 21B and may -
- (a) confirm, modify or set aside the order;
 - (b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
 - (c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or
- (d) pass such other order as the Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.

ANNEXURE – 3**SCHEDULES TO THE ACT**

Acts or omissions which comprise professional misconduct within the meaning of Section 22 of the Chartered Accountants Act are defined in two Schedules viz. the First Schedule and the Second Schedule.

The First Schedule is divided into four parts, Part I of the First Schedule deals with the misconduct of a member in practice which would have the effect generally of compromising his position as an independent person. Part II deals with misconduct of members in services. Part-III deals with the misconduct of members generally and part IV deals with other misconduct in relation to members of the institute generally. The Second Schedule is divided into three parts. Part I deals with misconduct in relation to a member in practice, Part II deals with misconduct of members generally and part III deals with other misconduct in relation to members of the Institute generally. The implication of the different clauses in the schedules are discussed below:

The First Schedule**PART I - Professional misconduct in relation to Chartered Accountants in practice****A Chartered Accountant in practice is deemed to be guilty of professional misconduct if he:**

Clause (1) allows 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.

Clause (2) pays or allows or agrees to pay or allow, directly or indirectly, 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 a deceased partner, or a member of any other professional body or with such other persons having such qualification as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

Clause (3) accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute.

Clause (4) enters into partnership, in or outside India, with any person other than Chartered Accountant in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (V) of sub-section (1) of section 4 or whose qualifications are recognized by the Central Government or the Council for the purpose of permitting such partnerships.

Clause (5) Secures either through the services of a person who is not an employee of such Chartered Accountant or who is not his partner or by means which are not open to a Chartered Accountant, any professional business.

Provided that nothing herein contained shall be construed as prohibiting any agreement permitted in terms of item (2), (3) and (4) of this part.

Clause (6) Solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.

Provided that nothing herein contained shall be construed as preventing or prohibiting -

- (i) Any Chartered Accountant from applying or requesting for or inviting or securing professional work from another chartered accountant in practice; or
- (ii) A member from responding to tenders or enquiries issued by various users of professional services or organizations from time to time and securing professional work as a consequence.

However, as per the guideline issued by the Council of the Institute of Chartered Accountants of India, a member of the Institute in practice shall not respond to any tender issued by an organization or user of professional services in areas of services which are exclusively reserved for chartered accountants, such as audit and attestation services. However, such restriction shall not be applicable where minimum fee of the assignment is prescribed in the tender document itself or where the areas are open to other professionals along with the Chartered Accountants.

Clause (7) Advertises his professional attainments or services, or uses any designation or expressions other than the Chartered Accountant on professional documents, visiting cards, letter heads or sign boards unless it be a degree of a University established by law in India or recognized by the Central Government or a title indicating membership of the Institute of Chartered Accountants or of any other institution that has been recognized by the Central Government or may be recognized by the Council.

Provided that a member in practice may advertise through a write up, setting out the service provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council.

Clause (8) Accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been Issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing.

Clause (9) Accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 of the Companies Act, 1956, in respect of such appointment have been duly complied with.

(Now Section 139 and 140 read with Section 141 of the Companies Act, 2013. Students may note that till the time Code of Ethics etc. bare documents get updated from Ethical Standard Board of

ICAI in pursuance of the Companies Act, 2013, students are required to understand the basic nature of the provision and quote the same along with the new corresponding provisions.)

Clause (10) Charges or offers to charge, accepts or offers to accept In respect of any professional employment fees which are based on a percentage of profits or which are contingent upon the findings, or results of such employment, except as permitted under any regulations made under this Act.

The Council of the Institute has however framed Regulation 192 which exempts members from the operation of this clause in certain professional services. The said Regulation 192 is reproduced -

192. Restriction on fees - No Chartered Accountant in practice shall charge or offer to charge, accept or offer to accept, in respect of any professional work, fees which are based on a percentage of profits, or which are contingent upon the findings or results of such work, provided that

- (a) In the case of a receiver or a liquidator, the fees may be based on a percentage of the realization or disbursement of the assets;
- (b) In the case of an auditor of a co-operative society, the fees may be based on a percentage of the paid up capital or the working capital or the gross or net income or profits;
- (c) In the case of a valuer for the purposes of direct taxes and duties, the fees may be based on a percentage of the value of property valued;
- (d) in the case of certain management consultancy services as may be decided by the resolution of the Council from time to time, the fees may be based on percentage basis which may be contingent upon the findings, or results of such work;
- (e) in the case of certain fund raising services, the fees may be based on a percentage of the fund raised;
- (f) in the case of debt recovery services, the fees may be based on a percentage of the debt recovered;
- (g) in the case of services related to cost optimisation, the fees may be based on a percentage of the benefit derived; and
- (h) any other service or audit as may be decided by the Council.

Clause (11) Engages in any business or occupation other than the profession of chartered accountant unless permitted by the Council so to engage.

Provided that nothing contained herein shall disentitle a chartered accountant from being a director of a company (Not being managing director or a whole time director) unless he or any of his partners is interested in such company as an auditor.

Clause (12) Allows a person not being a member of the institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any balance sheet, profit and loss account, report or financial statements.

PART II - Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he being an employee of any company, firm or person:

Clause (1) pays or allows or agrees to pay directly or indirectly to any person any share in the emoluments of the employment undertaken by him.

Clause (2) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a chartered accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

[Note: A member in the foregoing circumstances would be guilty of misconduct regardless of the fact that he was in whole-time or part-time employment or that he was holding Certificate of Practice along with his employment.]

PART III - Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he:

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he:

Clause (1) not being a fellow of the Institute, acts as a fellow of the Institute.

Clause (2) does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority.

Clause (3) while inviting professional work from another chartered accountant or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in items (6) and (7) of Part I of this Schedule, gives information knowing it to be false.

PART IV- Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he:

- (1) is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months.
- (2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

These clause (1) & (2) are self explanatory and any of the member of the Institute is found guilty by any civil or criminal court and prosecuted for an imprisonment in an offence involving moral turpitude or his acts bring disrepute to the profession or the Institute, irrespective of the fact whether such acts are related to profession or not, such member will be deemed to be guilty of other misconduct in Part IV of Schedule I.

The important point to note is that if imprisonment tenure exceeds six months, this case will be covered in the clause of Part III of Schedule II.

The Second Schedule

PART I -Professional misconduct in relation to chartered Accountant in practice

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he:

Clause (1) Discloses Information acquired in the course of his professional engagement to any person other than his client so engaging him without the consent of his client or otherwise than as required by any law for the time being in force.

Clause (2) If he certifies or submits in his name or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee In his firm or by another chartered accountant in practice.

Clause (3) Permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in manner which may lead to the belief that he vouches for the accuracy of the forecast.

Clause (4) Expresses his opinion on financial statements of any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest.

Clause (5) Fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement not misleading where he is concerned with that financial statement in a professional capacity.

Clause (6) Fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity.

Clause (7) Does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.

Clause (8) Fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.

Clause (9) Fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances.

Clause (10) Fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

PART II - Professional misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he:

Clause (1) contravenes any of the provisions of this Act or the regulations made there under or any guidelines issued by the Council.

Clause (2) being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment except as and when required by any law for the time being in force or except as permitted by the employer.

Clause (3) Includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false.

Clause (4) Defalcates or embezzles money received in his professional capacity.

Part III - Other misconduct in relation to members of the Institute generally

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.

Imprisonment awarded for a term exceeding six months in any civil/criminal matter treated as a major offence under 'other misconduct' is included in this Schedule.

Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the second schedule or in both the Schedule, he shall place the matter before the Disciplinary Committee.

Recent Decisions of Ethical Standards Board

1. A Chartered Accountant in practice may be an equity research adviser, but he cannot publish retail report, as it would amount to other business or occupation.
2. A Chartered Accountant, who is a member of a Trust, cannot be the auditor of the said trust.
3. A Chartered Accountant in practice may engage himself as Registration Authority (RA) for obtaining digital signatures for clients.

4. A Chartered accountant can hold the credit card of a bank when he is also the auditor of the bank, provided the outstanding balance on the said card does not exceed rupees 10000 beyond the prescribed credit period limit on credit card given to him.
5. A Chartered Accountant in practice can act as mediator in Court, since acting as a “mediator” would be deemed to be covered within the meaning of “arbitrator”; which is inter-alia permitted to members in practice as per Regulation 191 of the Chartered Accountants Regulations, 1988.
6. A Chartered Accountant in practice is not permitted to accept audit assignment of a bank in case he has taken loan against a Fixed Deposit held by him in that bank.
7. The Ethical Standards Board in 2013 generally apply the stipulations contained in the then amended Rule 11U of Income Tax generally, wherein statutory auditor /tax auditor cannot be the valuer of unquoted equity shares of the same entity.

The Board has at its recent Meeting (January, 2017) has reviewed the above, and decided that where law prohibits for instance in the Income Tax Act and the rules framed thereunder, such prohibition on statutory auditor/tax auditor to be the valuer will continue, but where there is no specific restriction under any law, the said eventuality will be permissible, subject to compliance with the provisions, as contained in the Code of Ethics relating to independence.

8. The Ethical Standards Board had in 2011 decided that it is not permissible for a member who has been Director of a Company, upon resignation from the Company to be appointed as an auditor of the said Company, and the cooling period for the same may be 2 years.

The Board has at its recent Meeting (January, 2017) has reviewed the above, and noted that the Section 141 of Companies Act, 2013 on disqualification of auditors does not mention such prohibition; though threats pertaining to the said eventuality have been mentioned in Code of Ethics.

Further, the Board was of the view that a member may take decision in such situation based on the provisions of Companies Act, 2013 and provisions of Code of Ethics.

9. A chartered accountant in practice cannot become Financial Advisors and receive fees/commission from Financial Institutions such as Mutual Funds, Insurance Companies, NBFCs etc.
10. A chartered accountant cannot exercise lien over the client documents/records for non-payment of his fees.
11. It is not permissible for CA Firm to print its vision and values behind the visiting cards, as it would result in solicitation and therefore would be violative of the provisions of Clause (6) of Part-I of First Schedule to the Chartered Accountants Act, 1949.
12. It is not permissible for chartered accountants in practice to take agencies of UTI, GIC or NSDL.

13. It is permissible for a member in practice to be a settlor of a trust.
14. A member in practice cannot hold Customs Brokers Licence under section 146 of the Customs Act, 1962 read with Customs Brokers Licensing Regulations, 2013 in terms of the provisions of Code of Ethics.
15. A Chartered accountant in service may appear as tax representative before tax authorities on behalf of his employer, but not on behalf of other employees of the employer.
16. A chartered accountant who is the statutory auditor of a bank cannot for the same financial year accept stock audit of the same branch of the bank or any of the branches of the same bank or sister concern of the bank, for the same financial year.
17. A CA Firm which has been appointed as the internal auditor of a PF Trust by a Government Company cannot be appointed as its Statutory Auditor.
18. A concurrent auditor of a bank 'X' cannot be appointed as statutory auditor of bank 'Y', which is sponsored by 'X'.
19. A CA/CA Firm can act as the internal auditor of a company & statutory auditor of its employees PF Fund under the new Companies Act (2013).
20. The Ethical Standards Board while noting that there is requirement for a Director u/s 149(3) of the Companies Act, 2013 to reside in India for a minimum period of 182 days in the previous calendar year, decided that such a Director would be within the scope of Director Simplificitor (which is generally permitted as per ICAI norms), if he is non – executive director, required in the Board Meetings only, and not paid any remuneration except for attending such Board Meetings.
21. Internal Auditor not to undertake GST Audit simultaneously.

TEST YOUR KNOWLEDGE

Theoretical Questions

1. P, a Chartered Accountant in practice provides management consultancy and other services to his clients. During 2019, looking to the growing needs of his clients to invest in the stock markets, he also advised them on Portfolio Management Services whereby he managed portfolios of some of his clients.
2. Mr. G, a Chartered Accountant in practice as a sole proprietor has an office in Mumbai near Church Gate. Due to increase in professional work, he opens another office in a suburb of Mumbai which is approximately 80 kilometers away from the municipal limits of the city. For running the new office, he employs three retired Income-tax Officers.
3. Write a short note on Other Misconduct.
4. Mr. K, a practicing Chartered Accountant gave 50% of the audit fees received by him to a non-Chartered Accountant, Mr. L, under the nomenclature of office allowance and such an arrangement continued for a number of years.
5. Mr. X who passed his CA examination of ICAI on 18th July, 2017 and started his practice from August 15, 2017. On 16th August 2017, one female candidate approached him for articleship. In addition to monthly stipend, Mr. X also offered her 1 % profits of his CA firm. She agreed to take both 1 % profits of the CA firm and stipend as per the rate prescribed by the ICAI. The Institute of Chartered Accountants of India sent a letter to Mr. X objecting the payment of 1 % profits. Mr. X replies to the ICAI stating that he is paying 1 % profits of his firm over and above the stipend to help the articled clerk as the financial position of the articled clerk is very weak. Is Mr. X Liable to professional misconduct?
6. M/s XYZ, a firm in practice, develops a website “xyz.com”. The colour chosen for the website was a very bright green and the web-site was to run on a “push” technology where the names of the partners of the firm and the major clients were to be displayed on the web-site without any disclosure obligation from any regulator.
7. A partner of a firm of chartered accountants during a T.V. interview handed over a bio-data of his firm to the chairperson. Such bio-data detailed the standing of the international firm with which the firm was associated. It also detailed the achievements of the concerned partner and his recognition as an expert in the field of taxation in the country. The chairperson read out the said bio-data during the interview. Discuss whether this action by the Chartered Accountant would amount to misconduct or not.
8. (a) An advertisement was published in a Newspaper containing the photograph of Mr. X, a member of the institute wherein he was congratulated on the occasion of the opening ceremony of his office.

- (b) Mr. X, a Chartered Accountant and the proprietor of X & Co., wrote several letters to the Assistant Registrar of Co-operative Societies stating that though his firm was on the panel of auditors, no audit work was allotted to the firm and further requested him to look into the matter.
9. A practising Chartered Accountant uses a visiting card in which he designates himself, besides as Chartered Accountant, Cost Accountant.
10. Mr. Nigal, a Chartered Accountant in practice, delivered a speech in the national conference organized by the Ministry of Textiles. While delivering the speech, he told to the audience that he is a management expert and his firm provides services of taxation and audit at reasonable rates. He also requested the audience to approach his firm of chartered accountants for these services and at the request of audience he also distributed his business cards and telephone number of his firm to those in the audience. Comment.
11. Mr. 'A' is a practicing Chartered Accountant working as proprietor of M/s A & Co. He went abroad for 3 months. He delegated the authority to Mr. 'Y' a Chartered Accountant his employee for taking care of routine matters of his office. During his absence Mr. 'Y' has conducted the under mentioned jobs in the name of M/s A & Co.
- (i) He issued the audit queries to client which were raised during the course of audit.
 - (ii) He issued production certificate to a client under GST Act, 1944.
 - (iii) He attended the Income Tax proceedings for a client as authorized representative before Income Tax Authorities.
- Please comment on eligibility of Mr. 'Y' for conducting such jobs in name of M/s A & Co. and liability of Mr. 'A' under the Chartered Accountants Act, 1949.
12. XYZ Co. Ltd. has applied to a bank for loan facilities. The bank on studying the financial statements of the company notices that you are the auditor and requests you to call at the bank for a discussion. In the course of discussions, the bank asks for your opinion regarding the company and also asks for detailed information regarding a few items in the financial statements. The information is available in your working paper file. What should be your response and why?

Multiple Choice Questions

1. AJ & Co LLP is a firm of Chartered Accountants. The firm has 10 Partners. The firm has a good portfolio of clients for statutory audits, but the same clients had some other firms as their tax auditors. In the current year (FY 2019-20), many existing clients for whom AJ & Co LLP happens to be the statutory auditor have requested the firm to carry out their tax audits as well. The firm is expecting the no of tax audits to increase significantly this year. One of the partners of the firm has also raised a point that the firm can accept tax audits upto a maximum limit. However, other partners are of the strong view that limits on audits is

applicable in case of statutory audits and not for tax audits. This needs to be decided as soon as possible so that the appointment formalities can also be completed.

You are requested to advise the firm in this matter.

- (a) There is no limit on no of tax audits in case of LLP.
 - (b) All the partners of the firm can collectively sign 450 tax audit reports.
 - (c) All the partners of the firm can collectively sign 600 tax audit reports.
 - (d) All the partners of the firm can collectively sign 450 tax audit reports. However, one partner can individually sign maximum 60 tax audit reports.
2. CA. D, a chartered accountant in practice availed of a loan against his personal investments from a bank. He issued 2 cheques towards repayment of the said loan as per the instalments due. However, both the cheques were returned back by the bank with the remarks "Insufficient funds". As per Chartered Accountants Act, 1949, under which clause CA D is liable for misconduct .
- (a) Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949
 - (b) Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949
 - (c) Clause (12) of Part I of the First Schedule to the Chartered Accountants Act, 1949
 - (d) Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949
3. CA. Intelligent, a Chartered Accountant in practice, provides part-time tutoring under the coaching organization of the Institute. On 30th June, 2019, he was awarded 'Best Faculty of the year' as gratitude from the Institute. Later on, CA. Intelligent posted his framed photograph on his website wherein he was receiving the said award from the Institute. As per Chartered Accountants Act, 1949, under which clause Intelligent is liable for misconduct .
- (a) Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949
 - (b) Clause (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949
 - (c) Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949
 - (d) Clause (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949
4. Mr. Hopeful, an aspiring student of ICAI, approached Mr. Witty, a practicing Chartered Accountant, for the purpose of articleship. Mr. Witty, the principal, offered him stipend at the rate of ₹ 2,000 per month to be paid every sixth month along with interest at the rate of 10% per annum compounded monthly to compensate such late payment on plea that cycle of professional receipts from clients is six months. Mr. Hopeful agreed for such late payment in the hope of getting extra stipend in the form of interest. Mr. Witty, however, used to disburse salary to all of his employees on time. As per Chartered Accountants Act, 1949, under which clause Mr. Witty is liable for misconduct.

- (a) Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949
 - (b) Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949
 - (c) Mr. Witty is paying interest thus he is not liable for misconduct
 - (d) Clause (10) of Part I of the Second Schedule to the Chartered Accountants Act, 1949
5. CA Ram is practicing in the field of financial management planning for over 12 years. He has gained expertise in this domain over others. Mr. Ratan, a student of Chartered Accountancy course, is very much impressed with the knowledge of CA. Ram. He approached CA. Ram to take guidance on some topics of financial management subject related to his course. CA. Ram, on request, decided to spare some time and started providing private tutorship to Mr. Ratan along with some other aspirants for 3 days in a week and for 2 hours in a day. However, he forgot to take specific permission for such private tutorship from the Council. Later on, he came to know that the Council has passed a Resolution under Regulation 190A granting general permission (for private tutorship, and part-time tutorship under Coaching organization of the Institute) and specific permission (for part-time or full time tutorship under any educational institution other than Coaching organization of the Institute). Such general and specific permission granted is subject to the condition that the direct teaching hours devoted to such activities taken together should _____ in order to be able to undertake attest functions.
- (a) not exceed 25 hours a week
 - (b) not exceed 21 hours a week
 - (c) not exceed 25 hours a month
 - (d) not exceed 21 hours a month

Answers to Theoretical Questions

1. **Advising on Portfolio Management Services:** The Council of the Institute of Chartered Accountants of India (ICAI) pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949 has passed a resolution permitting "Management Consultancy and other Services" by a Chartered Accountant in practice. A clause of the aforesaid resolution allows Chartered Accountants in practice to act as advisor or consultant to an issue of securities including such matters as drafting of prospectus, filing of documents with SEBI, preparation of publicity budgets, advice regarding selection of brokers, etc. It is, however, specifically stated that Chartered Accountants in practice are not permitted to undertake the activities of broking, underwriting and portfolio management services. Thus, a chartered accountant in practice is not permitted to manage portfolios of his clients.

Conclusion: In view of this, P would be guilty of misconduct under the Chartered Accountants Act, 1949.

2. In terms of section 27 of the Chartered Accountants Act, 1949, if a chartered accountant in practice has more than one office in India, each one of these offices should be in the separate charge of a member of the Institute. There is however an exemption for the above if the second office is located in the same premises, in which the first office is located; or the second office is located in the same city, in which the first office is located; or the second office is located within a distance of 50 kms from the municipal limits of a city, in which the first office is located. Since the second office is situated beyond 50 kms of municipal limits of Mumbai city, he would be liable for committing a professional misconduct.
3. Refer Para 7.2
4. **Sharing of Audit Fees with Non-Member:** As per Clause (2) of Part I of First Schedule to the Chartered Accountants Act, 1949 a member shall be held guilty if a Chartered Accountant in practice pays or allows or agrees to pay or allow, directly or indirectly, 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 a deceased partner, or a member of any other professional body or with such other persons having such qualification as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

In the instant case, Mr. K, a practising Chartered Accountant gave 50% of the audit fees received by him to a non-Chartered Accountant, Mr. L, under the nomenclature of office allowance and such an arrangement continued for a number of years. In this case, it is not the nomenclature to a transaction that is material but it is the substance of the transaction, which has to be looked into.

The Chartered Accountant had shared his profits and, therefore, Mr. K will be held guilty of professional misconduct under the Clause (2) of Part I of First Schedule to the Chartered Accountants Act, 1949.

5. **Sharing Fees with an Articled Clerk:** As per Clause (2) of Part I of First Schedule to the Chartered Accountants Act 1949, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he pays or allows or agrees to pay or allow, directly or indirectly, 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 a deceased partner, or a member of any other professional body or with such other persons having such qualification as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

In view of the above, the objections of the Institute of Chartered Accountants of India, as given in the case, are correct and reply of Mr. X, stating that he is paying 1 % profits of his firm over and above the stipend to help the articled clerk as the position of the articled clerk is weak is not tenable.

Hence, Mr. X is guilty of professional misconduct in terms of Clause (2) of Part I of First Schedule to the Chartered Accountants Act 1949.

6. **Posting of Particulars on Website:** The Council of the Institute had approved posting of particulars on website by Chartered Accountants in practice under Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949 subject to the prescribed guidelines. The relevant guidelines in the context of the website hosted by M/s XYZ are:

- ◆ No restriction on the colours used in the website;
- ◆ The websites are run on a “pull” technology and not a “push” technology;
- ◆ Names of clients and fees charged not to be given.

However, disclosure of names of clients and/or fees charged, on the website is permissible only where it is required by a regulator, whether or not constituted under a statute, in India or outside India, provided that such disclosure is only to the extent of requirement of the regulator. Where such disclosure of names of clients and/or fees charged is made on the website, the member/ firm shall ensure that it is mentioned on the website [in italics], below such disclosure itself, that “This disclosure is in terms of the requirement of [name of the regulator] having jurisdiction in [name of the country/area where such regulator has jurisdiction] vide [Rule/ Directive etc. under which the disclosure is required by the Regulator].

In view of the above, M/s XYZ would have no restriction on the colours used in the website but failed to satisfy the other two guidelines. Thus, the firm would be liable for professional misconduct since it would amount to soliciting work by advertisement.

7. Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 prohibits solicitation of client or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means since it shall constitute professional misconduct. The bio-data was handed over to the chairperson during the T.V. interview by the Chartered Accountant which included details about the firm and the achievements of the partner as an expert in the field of taxation. The chairperson simply read out the same in detail about association with the international firm as also the achievements of the partner and his recognition as an expert in the field of taxation. Such an act would definitely lead to the promotion of the firms’ name and publicity thereof as well as of the partner and as such the handing over of bio-data cannot be approved. The partner would be held guilty of professional misconduct under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
8. (a) **Publishing an Advertisement Containing Photograph:** As per Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of misconduct if he solicits clients or professional work either directly or indirectly by a circular, advertisement, personal communication or interview or by any other means.

In the given case, Mr. X published an advertisement in a Newspaper containing his photograph on the occasion of the opening ceremony of his office. On this context, it may be noted that the advertisement which had been put in by the member is quite prominent. If soliciting of work is allowed, the independence and forthrightness of a Chartered Accountant in the discharge of duties cannot be maintained.

The above therefore amounts to soliciting professional work by advertisement directly or indirectly. Mr. X would be therefore held guilty under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

- (b) **Soliciting Professional Work:** As per Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of misconduct if he solicits clients or professional work either directly or indirectly by a circular, advertisement, personal communication or interview or by any other means.

In the given case, Mr. X, a Chartered Accountant and proprietor of M/s X and Co., wrote several letters to the Assistant Registrar of Co-operative Societies, requesting for allotment of audit work. In similar cases, it was held that the Chartered Accountant would be guilty of professional misconduct under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949. The writing of continuous letter to ascertain the reasons for not getting the work is quite alright but in case such either amount to request for allowing the work then Mr. X will be liable for professional misconduct.

Consequently, Mr. X would therefore be held guilty under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

9. **Cost Accountant:** As stated in the case study given in clause 7 with reference to tax consultant, this would also constitute misconduct under section 7 of the Act read with Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949. A chartered accountant in practice cannot use any other designation than that of a chartered accountant. Nevertheless, a member in practice may use any other letters or descriptions indicating membership of accountancy bodies which have been approved by the Council. Thus, it is improper for a chartered accountant to state in his documents that he is a "Cost Accountant". However as per the Chartered Accountants Act, 1949, the Council has resolved that the members are permitted to use letters indicating membership of the Institute of Cost and Works Accountants but not the designation "Cost Accountant".
10. **Using Designation Other Than a CA and Providing Details of Services Offered:** Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 states that a Chartered Accountant in practice shall be deemed to be guilty of misconduct if he solicits clients or professional work either directly or indirectly by a circular, advertisement, personal communication or interview or by any other means. Such a restraint has been put so that the

members maintain their independence of judgment and may be able to command respect from their prospective clients.

Section 7 of the Chartered Accountants Act, 1949 read with Clause (7) of Part I of the First Schedule to the said Act prohibits advertising of professional attainments or services of a member. It also restrains a member from using any designation or expression other than that of a chartered accountant in documents through which the professional attainments of the member would come to the notice of the public. Under the clause, use of any designation or expression other than chartered accountant for a chartered accountant in practice, on professional documents, visiting cards, etc. amounts to a misconduct unless it be a degree of a university or a title indicating membership of any other professional body recognised by the Central Government or the Council.

Member may appear on television and films and agree to broadcast in the Radio or give lectures at forums and may give their names and describe themselves as Chartered Accountants. Special qualifications or specialized knowledge directly relevant to the subject matter of the programme may also be given but no reference should be made, in the case of practicing member to the name and address or services of his firm. What he may say or write must not be promotional of his or his firm but must be an objective professional view of the topic under consideration.

Thus, it is improper to use designation "Management Expert" since neither it is a degree of a University established by law in India or recognised by the Central Government nor it is a recognised professional membership by the Central Government or the Council. Therefore, he is deemed to be guilty of professional misconduct under both Clause (6) and Clause (7) as he has used the designation "Management Expert" in his speech and also he has made reference to the services provided by his firm of Chartered Accountants at reasonable rates. Distribution of cards to audience is also a misconduct in terms of Clause (6).

11. **Delegation of Authority to the Employee:** As per Clause (12) of Part I of the First Schedule of the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct "if he allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any balance sheet, profit and loss account, report or financial statements".

In this case CA. 'A' proprietor of M/s A & Co., went to abroad and delegated the authority to another Chartered Accountant Mr. Y, his employee, for taking care of routine matters of his office who is not a partner but a member of the Institute of Chartered Accountants

The Council has clarified that the power to sign routine documents on which a professional opinion or authentication is not required to be expressed may be delegated and such delegation will not attract provisions of this clause like issue of audit queries during the course of audit, asking for information or issue of questionnaire, attending to routing matters in tax practice, subject to provisions of Section 288 of Income Tax Act etc.

- (i) In the given case, Mr. 'Y', a chartered accountant being employee of M/s A & Co. has issued audit queries which were raised during the course of audit. Here "Y" is right in issuing the query, since the same falls under routine work which can be delegated by the auditor. Therefore, there is no misconduct in this case as per Clause (12) of Part I of First schedule to the Act.
- (ii) Further, issuance of production certificate to a client under GST Act, 1944 by Mr. "Y" being an employee of M/s A & Co. (an audit firm), is not a routine work and it is outside his authorities. Thus, CA. 'A' is guilty of professional misconduct under Clause (12) of Part I of First Schedule of the Chartered Accountants Act, 1949.
- (iii) In this instance, Mr. "Y", CA employee of the audit firm M/s A & Co. has attended the Income tax proceedings for a client as authorized representative before Income Tax Authorities. Since the council has allowed the delegation of such work, the chartered accountant employee can attend to routine matter in tax practice as decided by the council, subject to provisions of Section 288 of the Income Tax Act. Therefore, there is no misconduct in this case as per Clause (12) of Part I of First schedule to the Act.
12. Clause (1) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 states that a chartered accountant in practice shall be deemed to be guilty of professional misconduct if he discloses information acquired in the course of his professional engagement to any person other than his client, without the consent of the client or otherwise than as required by law for the time being in force. SA 200 on " Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing" also reiterates that, "the auditor should respect the confidentiality of information acquired in the course of his work and should not disclose any such information to a third party without specific authority or unless there is a legal or professional duty to disclose". In the instant case, the bank has asked the auditor for detailed information regarding few items in the financial statements available in his working papers. Having regard to the position stated earlier, the auditor cannot disclose the information in his possession without specific permission of the client. As far as working papers are concerned, working papers are the property of the auditor. The auditor may at his discretion, make portions of or extracts from his working papers available to his client". Thus, there is no requirement compelling the auditor to divulge information obtained in the course of audit and included in the working papers to any outside agency except as and when required by any law.

Answers to Multiple Choice Questions

1. (c) 2. (d) 3. (a) 4. (a) 5. (a)