CHAPTER 19

PROFESSIONAL ETHICS & LIABILITIES OF AUDITORS

LEARNING OUTCOMES

After reading this chapter student shall be able to:

- Understand the Application of the International and Indian Code of Ethics theoretically/practically.
- Learn the Application of Fundamental Principles of Professional Ethics by Professional Accountants in practice, service or otherwise occupied.
- Identifying threats and Safeguards measures while Compliance of Fundamental Principles of Professional Ethics.

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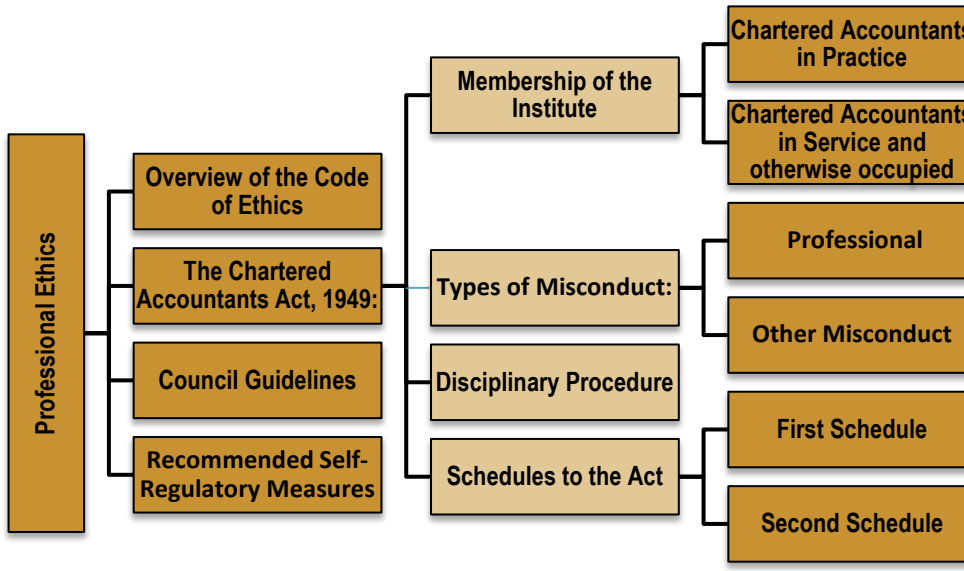
CHAPTER OVERVIEW

This chapter encapsulates the relevant professional ethics guidelines, requirements and the standards of conduct expected from a Chartered Accountant. The Chapter has been divided into various sections to facilitate systematic and easy learning by the students.



CA R is one of the leading practitioners in Varanasi and is a partner in audit firm consisting of 8 partners. The firm is allotted branch audit of a leading public sector bank in the same city having advances of ₹450 crore. Advances portfolio of the branch consist of some reputed export firms.

It is noticed during audit that drawing power in stock statements submitted to bankers by these firms is not arrived at properly. There are no apparent errors as such. The issue he is raising can be overlooked, if he chooses to do so. Besides, his staff also digs out certain frivolous procedural irregularities in relation to these accounts. The accounts of all these firms are, otherwise, operating satisfactorily. He intends to report these accounts as NPAs in memorandum of changes and is creating headache for AGM every other day. Completion of audit is being delayed on one pretext or another. Even informal calls by Circle DGM prove to be futile. The amounts involved are huge and much is at stake for branch management.

Frustrated and harassed AGM of branch advises owners of these firms to meet CA R in his office and sort out the matter themselves. Out of 7 such firms, 3 owners meet him in his office and assure to avail services of his firm in immediate future. They also try to assuage his ego. He leaves out these accounts from reporting. Owners of the remaining firms do not meet him. Peeved by this, their loan accounts are reported as NPA and adverse comments are made in LFAR.

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Is Chartered accountant acting ethically? The answer is resounding NO. He is trying to put his personal benefit and interest above all things. He is overlooking certain matters falling in his discretion selectively for obvious reasons. He is not looking at things objectively. A distinguishing feature of Chartered Accountancy profession is the acceptance of responsibility to act in public interest. Such a behavioural attitude is not expected from professionals. Ethics is something which comes from an individual intrinsically. It has to be ingrained in the temperament of an individual to withstand any selfish motive or temptation. It is a state of mind to act and perform in accordance with moral principles. Spirit of ethics is to be followed and not only what is expressly stated or codified.

Consider another case of a practicing Chartered Accountant who comes to know of certain information by virtue of his association with a client. He is also dealing with another client in same line of business. Can he use information acquired from first client to advantage or disadvantage of second client? Again, answer would be in negative. As by doing so, he could breach confidentiality. It can lead to conflict of interest. A professional accountant is not supposed to allow a conflict of interest to compromise professional or business judgment.

Professional work of accountants could involve ethical situations on a daily basis consisting of perceived benefits, pressures or dilemmas. There could be a thin line of difference between ethical and unethical. It requires judgment in every situation in accordance with spirit of ethics and its principles.

Exhaustive code of ethics is in place for public accountants. It not only contains fundamental principles governing professional ethics along with conceptual framework but also deals with independence requirements for assurance engagements. Besides, there are specific provisions of Chartered Accountants Act, 1949 dealing with professional misconduct.

1. INTRODUCTION

The Oxford Dictionary states ethics as "the moral principle that governs a person's behavior or how an activity is conducted". 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.

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.**

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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.

A distinguishing feature of the accountancy profession is its acceptance of the responsibility to act in the public interest. 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. OVERVIEW OF THE CODE OF ETHICS

The revised Code of Ethics contains the following material:

- **Part 1 –** Complying with the Code, Fundamental Principles and Conceptual Framework, which includes the fundamental principles and the conceptual framework and is applicable to all professional accountants.
- **Part 2 –** Professional Accountants in Service, which sets out additional material that applies to professional accountants in service when performing professional activities. Professional accountants in service include professional accountants employed, engaged or contracted in an executive or non-executive capacity in, for example:
    - Commerce, industry or service.
    - The public sector.
    - Education.

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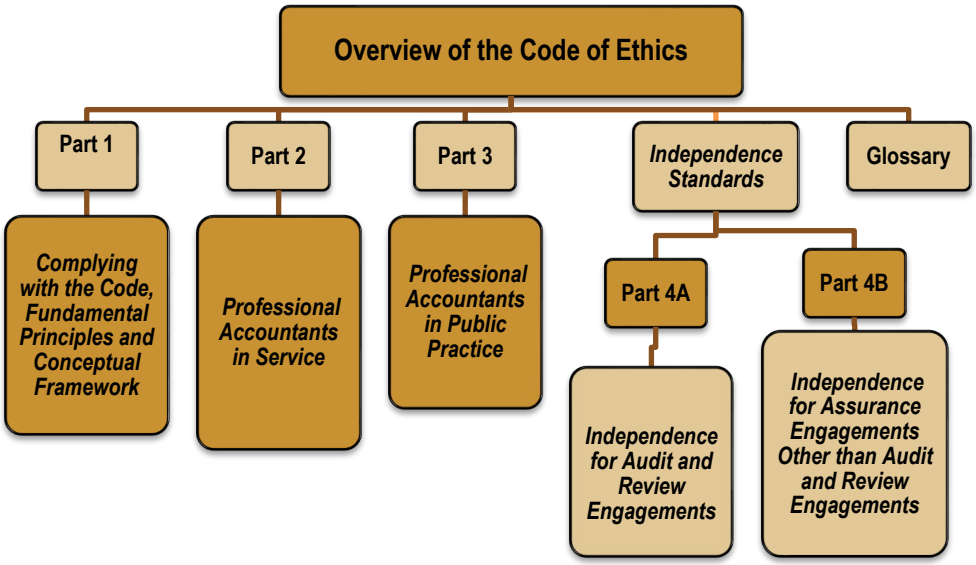
- The not-for-profit sector.
- Regulatory or professional bodies.

Part 2 is also applicable to individuals who are professional accountants in public practice when performing professional activities pursuant to their relationship with the firm as an employee.

- **Part 3 –** Professional Accountants in Public Practice, which sets out additional material that applies to professional accountants in public practice when providing professional services.
  - **Independence Standards,** which sets out additional material that applies to professional accountants in public practice when providing assurance services, as follows:
  - **Part 4A – Independence for Audit and Review Engagements,** which applies when performing audit or review engagements.
  - **Part 4B – Independence for Assurance Engagements Other than Audit and Review Engagements,** which applies when performing assurance engagements that are not audit or review engagements.
- **Glossary,** which contains defined terms (together with additional explanations where appropriate) and described terms which have a specific meaning in certain parts of the Code. For example, as noted in the Glossary, in Part 4A, the term "audit engagement" applies equally to both audit and review engagements. The Glossary also includes lists of abbreviations that are used in the Code and other standards to which the Code refers.



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The Code contains sections which address specific topics. Some sections contain subsections dealing with specific aspects of those topics.

Each section of the Code is structured, where appropriate, as follows:

- **Introduction –** sets out the subject matter addressed within the section, and introduces the requirements and application material in the context of the conceptual framework. Introductory material contains information, including an explanation of terms used, which is important to the understanding and application of each Part and its sections.
- **Requirements –** establish general and specific obligations with respect to the subject matter addressed.
- **Application material –** provides context, explanations, suggestions for actions or matters to consider, illustrations and other guidance to assist in complying with the requirements.

A professional accountant shall comply with the Code. There might be circumstances where laws or regulations preclude an accountant from complying with certain parts of the Code. In such circumstances, those laws and regulations prevail, and the accountant shall comply with all other parts of the Code.

2.1 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:

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(a) Integrity – Subsection 111

1. A professional accountant shall comply with the principle of integrity, **which requires an accountant to be straightforward and honest** in all professional and business relationships. Integrity implies fair dealing and truthfulness.

2. A professional accountant shall not knowingly be **associated with** reports, returns, communications or other information where the accountant believes that the information:

   (a) Contains a materially false or misleading statement;

   (b) Contains statements or information provided negligently; or

   (c) Omits or obscures required information 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.

3. When a professional accountant becomes aware of having been associated with information described in paragraph 2, the accountant shall ***take steps to be disassociated*** from that information.

(b) Objectivity- Subsection 112

A professional accountant shall comply with the principle of objectivity, which requires an accountant not to compromise professional or business judgment because of bias, conflict of interest or undue influence of others.

A professional accountant shall not undertake a professional activity if a circumstance or relationship unduly influences the accountant's professional judgment regarding that activity.

(c) Professional Competence and Due Care – Subsection 113

1. **A professional accountant shall comply with the principle of professional competence and due care,** which requires an accountant to:

   (a) Attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organization receives competent professional service, based on current technical and professional standards and relevant legislation; and

   (b) act diligently in accordance with applicable technical and professional standards.

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2. **Serving** clients and employing organizations **with professional competence** requires **the exercise of sound judgment** in applying **professional knowledge** and **skill** when undertaking professional activities.

3. **Maintaining professional competence** requires a **continuing awareness** and an **understanding** of relevant **technical, professional and business developments**.

4. **Continuing professional development** enables a professional accountant to **develop** and **maintain** the **capabilities** to perform competently within the professional environment.

5. **Diligence** encompasses the **responsibility to act** in accordance **with the requirements** of an assignment, **carefully, thoroughly** and on a **timely** basis.

6. In **complying** with the **principle of professional competence and due care**, a professional accountant shall take reasonable steps to ensure that those working in a professional capacity under the accountant's authority have appropriate training and supervision.

Where appropriate, a professional accountant shall make clients, the employing organization, or other users of the accountant's professional services or activities, aware of the limitations inherent in the services or activities.

(d) Confidentiality- Subsection 114

1. A professional accountant shall comply with the principle of confidentiality, which requires an accountant to respect the confidentiality of information acquired as a result of professional and employment relationships. An accountant shall:

Be alert to the possibility of inadvertent disclosure, including in a social environment, and particularly to a close business associate or an immediate or a close family member;
Maintain confidentiality of information within the firm or employing organization;
Maintain confidentiality of information disclosed by a prospective client or employing organization;
Not disclose confidential information acquired as a result of professional and employment relationships outside the firm or employing organization without proper and specific authority, unless there is a legal or professional duty or right to disclose;
Not use confidential information acquired as a result of professional and employment relationships for the personal advantage of the accountant or for the advantage of a third party;

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Not use or disclose any confidential information, either acquired or received as a result of a professional or employment relationship, after that relationship has ended; and
Take reasonable steps to ensure that personnel under the accountant's control, and individuals from whom advice and assistance are obtained, respect the accountant's duty of confidentiality.

2. Confidentiality serves the public interest because it facilitates the free flow of information from the professional accountant's client or employing organization to the accountant in the knowledge that the information will not be disclosed to a third party. Nevertheless, the following are circumstances where professional accountants are or might be required to disclose confidential information or when such disclosure might be appropriate:

   (a) 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

   (b) Disclosure is ***permitted by law and is authorized by the client*** or the employing organisation;

   (c) There is a ***professional duty or right to disclose***, when not prohibited by law:

      (i) To comply with the requirements of Peer Review or Quality Review of the Institute;

      (ii) To **respond** to an inquiry or investigation by a professional or regulatory body;

      (iii) To **protect** the professional interests of a professional accountant in legal proceedings; or

      (iv) To **comply** with **technical and professional standards**, including ethics requirements.

3. **In deciding whether to disclose confidential information, professional accountants should consider the following points:**

(a) Whether the interests of any party, including third parties whose interests might be affected, could be harmed if the client or employing organization consents to the disclosure of information by the professional accountant;

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(b)	Whether all the relevant information is known and substantiated, to the extent it is practicable; and
(c)	The proposed type of communication, and to whom it is addressed;
(d)	Whether the parties to whom the communication is addressed are appropriate recipients.

4. A professional accountant shall continue to comply with the principle of confidentiality even after the end of the relationship between the accountant and a client or employing organization. When changing employment or acquiring a new client, the accountant is entitled to use prior experience but shall not use or disclose any confidential information acquired or received as a result of a professional or employment relationship.

(e) Professional Behaviour- Subsection 115

1. A professional accountant shall comply with the principle of professional behaviour, which requires an accountant to comply with relevant laws and regulations and avoid any **conduct** that accountant knows or should know might discredit the profession.

   Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.

   A professional accountant shall not knowingly engage in any employment, occupation or activity that impairs or might impair the integrity, objectivity or good reputation of the profession, and as a result would be incompatible with the fundamental principles.

2. When promoting himself and his work, a professional accountant shall not bring the profession into disrepute. A professional Accountant is required to conduct his affairs in a manner that he remains outside the boundaries of professional and other misconduct. A professional accountant shall be honest and truthful and should not make:

   (a) Exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; or

   (b) Disparaging references or unsubstantiated comparisons to the work of others.

   (c) Any direct or indirect measures to advertise any professional/other facts which are in violation of Advertisement Guidelines issued by the Council of the Institute from time to time.

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The professional accountant should ensure that the contents of an advertisement are true to the best of his knowledge and belief, and are in conformity with the Advertisement Guidelines, and be aware that the Institute does not own any responsibility, whatsoever, for such contents or claims by him. However, if a professional accountant is in doubt about whether a form of proposed advertising is appropriate, the accountant is encouraged to consult with the Ethical Standards Board of ICAI.

A professional accountant shall comply with each of the fundamental principles.
The fundamental principles of ethics establish the standard of behaviour expected of a professional accountant.
The conceptual framework establishes the approach which an accountant is required to apply to assist in complying with those fundamental principles.
A professional accountant might face a situation in which complying with one fundamental principle conflicts with complying with one or more other fundamental principles. In such a situation, the accountant might consider consulting, with: • Others within the firm or employing organization. • Those charged with governance. • The Institute • Legal counsel.
However, such consultation does not relieve the accountant from the responsibility to exercise professional judgment to resolve the conflict or, if necessary, and unless prohibited by law or regulation, disassociate from the matter creating the conflict.
The professional accountant is encouraged to document the substance of the issue, the details of any discussions, the decisions made and the rationale for those decisions.

2.2 Threats, Evaluation of Threats and Safeguards

The conceptual framework specifies an approach for a professional accountant to:

(i) Identify threats to compliance with the fundamental principles;

(ii) Evaluate the threats identified; and

(iii) Address the threats by eliminating or reducing them to an acceptable level.

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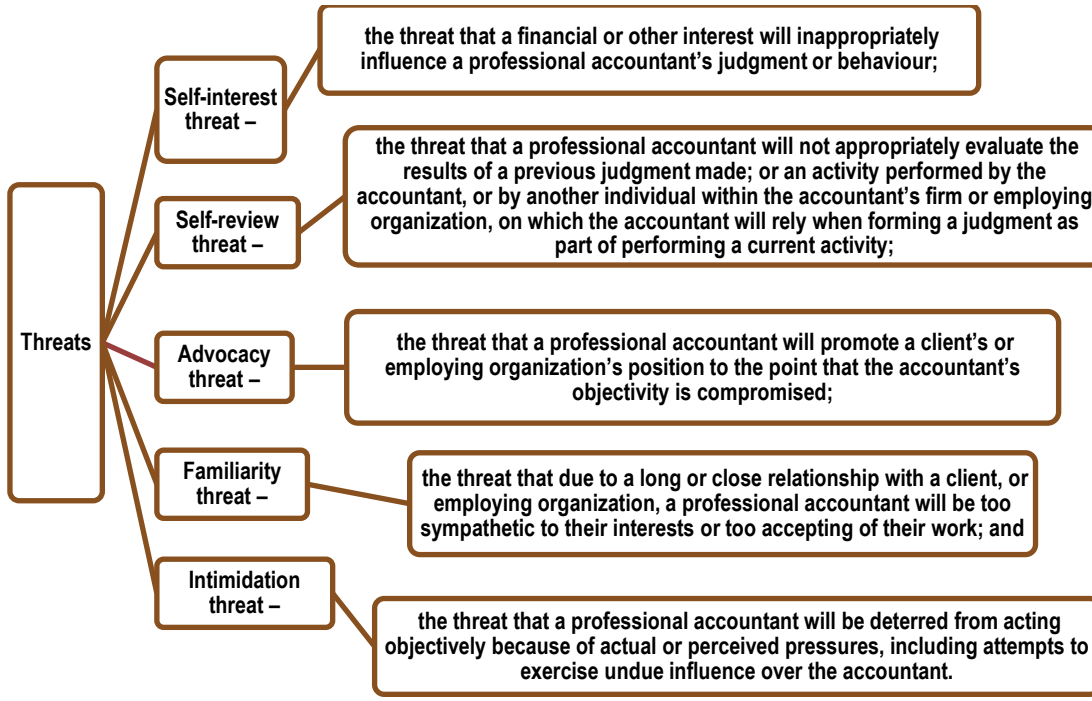
A. Threats

Threats to compliance with the fundamental principles fall into one or more of the following categories:



A. The following are examples of facts and circumstances within each of those categories of threats that might create threats for a professional accountant when undertaking a professional service:

Self-interest Threats:

- A professional accountant having a direct financial interest in a client.
- A professional accountant quoting a low fee to obtain a new engagement and the fee is so low that it might be difficult to perform the professional service in accordance with applicable technical and professional standards for that price.
- A professional accountant having a close business relationship with a client.
- A professional accountant having access to confidential information that might be used for personal gain.
- A professional accountant discovering a significant error when evaluating the results of a previous professional service performed by a member of the **accountant's firm.**

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Self-review Threats

- A professional accountant issuing an assurance report on the effectiveness of the operation of financial systems after implementing the systems.
- A professional accountant having prepared the original data used to generate records that are the subject matter of the assurance engagement.

Advocacy Threats

- A professional accountant promoting the interests of, or shares in, a client.
- A professional accountant acting as an advocate on behalf of a client in litigation or disputes with third parties.
- A professional accountant lobbying in favor of legislation on behalf of a client.

Familiarity Threats

- A professional accountant having a close or immediate family member who is a director or officer of the client.
- A director or officer of the client, or an employee in a position to exert significant influence over the subject matter of the engagement, having recently served as the engagement partner.

An audit team member having a long association with the audit client.

Intimidation Threats

- A professional accountant being threatened with dismissal from a client engagement or the firm because of a disagreement about a professional matter.
- A professional accountant feeling pressured to agree with the judgment of a client because the client has more expertise on the matter in question.
- A professional accountant being informed that a planned promotion will not occur unless the accountant agrees with an inappropriate accounting treatment.
- A professional accountant having accepted a significant gift from a client and being threatened that acceptance of this gift will be made public.".

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B. The following are examples of facts and circumstances within each of those categories that might create threats for a professional accountant when undertaking a professional activity:

Self-interest Threats

- A professional accountant holding a financial interest in, or receiving a loan or guarantee from, the employing organization.
- A professional accountant participating in incentive compensation arrangements offered by the employing organization.
- A professional accountant having access to corporate assets for personal use.
- A professional accountant being offered a gift or special treatment from a supplier of the employing organization.

Self-review Threats

- A professional accountant determining the appropriate accounting treatment for a business combination after performing the feasibility study supporting the purchase decision.

Advocacy Threats

- A professional accountant having the opportunity to manipulate information in a prospectus in order to obtain favorable financing.

Familiarity Threats

- A professional accountant being responsible for the financial reporting of the employing organization when an immediate or close family member employed by the organization makes decisions that affect the financial reporting of the organization.
- A professional accountant having a long association with individuals influencing business decisions.

Intimidation Threats

- A professional accountant or immediate or close family member facing the threat of dismissal or replacement over a disagreement about:
  - The application of an accounting principle.
  - The way in which financial information is to be reported.
- An individual attempting to influence the decision-making process of the professional accountant, for example with regard to the awarding of contracts or the application of an accounting principle.

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Specific circumstances give rise to unique threats to compliance with one or more of the fundamental principles. Such unique threats 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. Evaluation of Threats:

The conditions, policies and procedures described above might impact the evaluation of whether a threat to compliance with the fundamental principles is at an acceptable level.

(i) **Acceptable level:** An acceptable level is a level at which a professional accountant using the reasonable and informed third party test would likely conclude that the accountant complies with the fundamental principles.

(ii) **Reasonable and Informed Third Party:** The reasonable and informed third party test is a consideration by the professional accountant about whether the same conclusions would likely be reached by another party. Such consideration is made from the perspective of a reasonable and informed third party, who weighs all the relevant facts and circumstances that the accountant knows, or could reasonably be expected to know, at the time the conclusions are made. The reasonable and informed third party does not need to be an accountant but would possess the relevant knowledge and experience to understand and evaluate the appropriateness of the accountant's conclusions in an impartial manner.

C. Addressing Threats

If the professional accountant determines that the identified threats to compliance with the fundamental principles are not at an acceptable level, the accountant shall address the threats by eliminating them or reducing them to an acceptable level. The accountant shall do so by:

(i) Eliminating the circumstances, including interests or relationships, that are creating the threats;

(ii) Applying safeguards, where available and capable of being applied, to reduce the threats to an acceptable level; or

(iii) Declining or ending the specific professional activity.

Actions to Eliminate Threats: Depending on the facts and circumstances, a threat might be addressed by eliminating the circumstance creating the threat. However, there are some situations in which threats can only be addressed by declining or ending the specific professional activity. This is because the circumstances that created the threats cannot be eliminated and safeguards are not capable of being applied to reduce the threat to an acceptable level.

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D. Safeguards:

Safeguards are actions individually or in combination that the accountant takes that effectively reduce threats to an acceptable level. Safeguards vary depending on the facts and circumstances. **Examples of actions that in certain circumstances might be safeguards to address threats include:**

- Assigning additional time and qualified personnel to required tasks when an engagement has been accepted might address a self-interest threat.
- Having an appropriate reviewer, who was not a member of the team, review the work performed or advise as necessary might address a self-review threat.
- Using different partners and engagement teams with separate reporting lines for the provision of non-assurance services to an assurance client might address self-review, advocacy or familiarity threats.
- Involving another firm to perform or re-perform part of the engagement might address self-interest, self-review, advocacy, familiarity or intimidation threats.
- Separating teams when dealing with matters of a confidential nature might address a self-interest threat.

2.3 Non-Compliance with Laws and Regulations (NOCLAR)

In the course of providing a professional service to a client or carrying out professional activities for an employer, a Professional accountant may come across an instance of non-compliance with laws and regulations (NOCLAR) or suspected NOCLAR committed or about to be committed **by the client or the employer**, or by those charged with governance, management or employees of the client or employer.

Non-compliance with laws and regulations ("non-compliance") comprises of acts of omission or commission, intentional or unintentional, which are contrary to the prevailing laws or regulations committed by:

- ☐ a client/professional accountant's employing organisation;
- ☐ those charged with governance of a client or employing organisation;
- ☐ management of a client/ employing organisation; or
- ☐ other individuals working for or under the direction of a client/ employing organisation.

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However, NOCLAR under Revised Code of Ethics does not address the personal misconduct unrelated to the business activities of the client/ employing organisation and non-compliance by parties other than listed out in the definition of NOCLAR.

As per IESBA, following examples would be covered in NOCLAR:-

Fraud, corruption and bribery	Money laundering, terrorist financing and proceeds of crime	Securities markets and trading	Banking and other financial products and services
Data protection	Environmental protection	Public health and safety	Tax and pension liabilities and payments

The objective of NOCLAR is that - turning a blind eye to potential NOCLAR is not an appropriate response from professional accountants, while placing renewed emphasis on the roles of management and those charged with governance in addressing the matter. Further, it increases awareness and understanding among Professional accountant of their legal and regulatory responsibilities when they face NOCLAR.

Some important facts about NOCLAR are given below:

During Course of Providing a Service: NOCLAR will be applicable if a professional accountant encounters, or is made aware of, non-compliance or suspected non-compliance in the course of providing a professional service to a client. He is not required to investigate, nor responsible for ensuring compete compliance.

Expertise of Laws not Required: A professional accountant is expected to apply knowledge and expertise, and exercise professional judgment. However, he is not expected to have a level of knowledge of laws and regulations greater than that which is required to undertake the engagement. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

Certain Matters Expressly out of Purview: Matters that are clearly inconsequential, or relating to personal misconduct pertaining to business activities of the client not covered.

Disclosure, which is Contrary to Law not Required: As per IESBA Code, disclosure of the matter to an appropriate authority would be precluded if doing so would be contrary to law or regulation.

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2.3.1 Applicability of NOCLAR in India:

1. **Responding to Non-Compliance with Laws and Regulations (NOCLAR) applicable to Professional Accountants in service (Section 260):** Applicable to Senior Professional Accountants in service, being employees of listed entities.

   Senior professional accountants in service ("senior professional accountants") are directors, officers or senior employees able to exert significant influence over, and make decisions regarding, the acquisition, deployment and control of the employing organization's human, financial, technological, physical and intangible resources.

   It is further explained that the senior professional accountants refer to key managerial personnel.

2. **Responding to Non-Compliance with Laws and Regulations (NOCLAR) applicable to Professional Accountants in public practice (Section 360) :** Applicable to Audit engagements of entities the shares of which are listed on recognized stock exchange(s) in India and have net worth of 250 crores of rupees or more.

   "For the purpose of Section-360 "Audit" or "Audit engagement" shall mean a reasonable assurance engagement in which a professional accountant in public practice expresses an opinion whether financial statements give a true and fair view in accordance with an applicable financial reporting framework".

2.3.2 NOCLAR vs. SA 250

1. SA 250 is applicable only on Audit, and not on other Assurance engagements. However, NOCLAR is applicable on professional accountants in service, and in practice.

2. SA 250 talks of auditor's responsibilities for laws having direct effect on the determination of material amounts and disclosures in the financial statements (such as tax and labour laws); and other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the financial statements, but compliance with which may be fundamental to the operating aspects of the business. NOCLAR, while being alike to SA 250 till this point, is further ahead of it in that it takes into account non-compliance that causes substantial harm resulting in **serious consequences in financial or non-financial terms.**

3. SA 250 does not define stakeholders. NOCLAR is related to affect of non-compliance on investors, creditors, employees as also the general public.

4. As per NOCLAR, in exceptional circumstances, the professional accountant might become aware of an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. Having first considered whether it would be appropriate to discuss the matter with management or those charged with governance of

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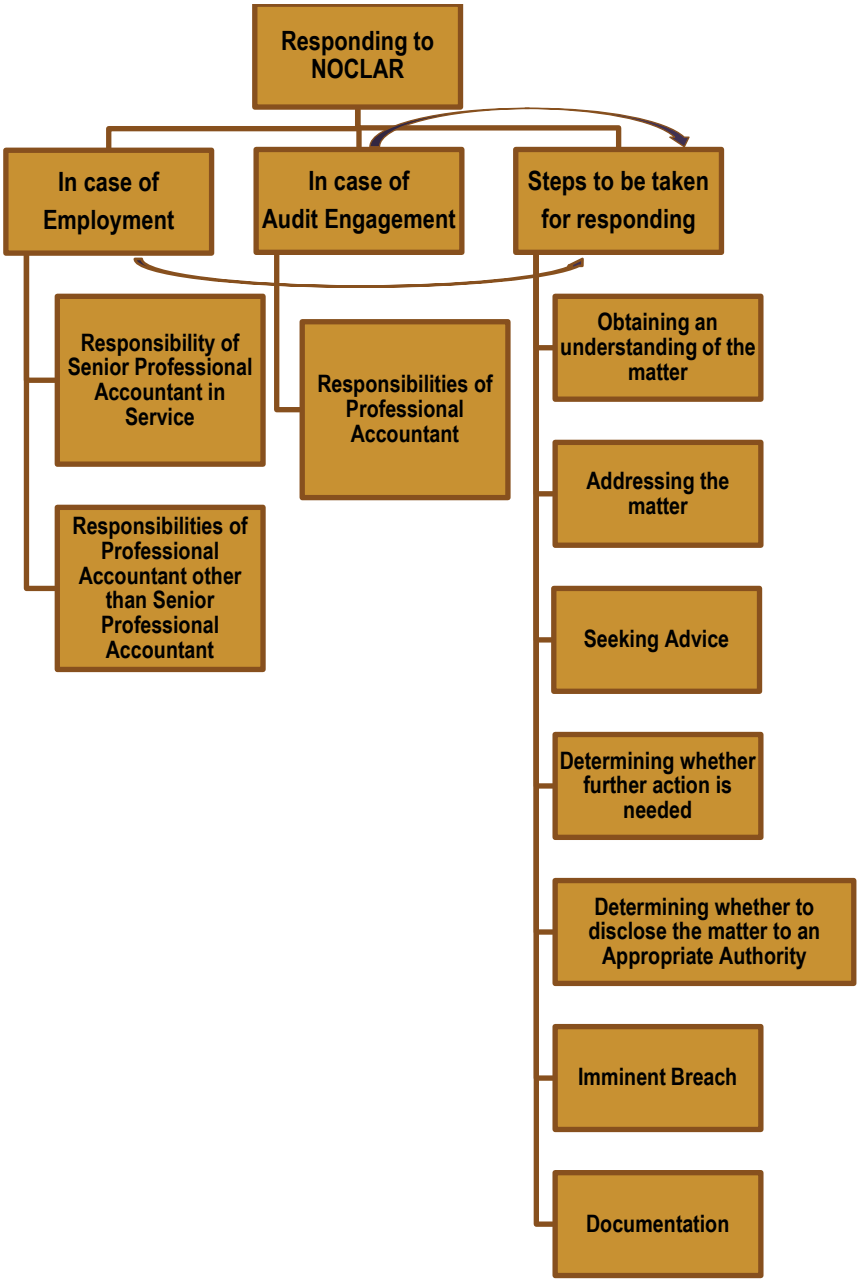
the company, the accountant shall exercise professional judgment and determine whether to disclose the matter immediately to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach. If disclosure is made, that disclosure is permitted. This provision is not existent in SA 250.

2.3.2 Applicability of NOCLAR in India:



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It may also be noted that in a situation where disclosure ought to be made by the Auditor, the "Appropriate authority" for the purpose of disclosure will depend on the nature of the matter. For example, the appropriate authority would be SEBI in the case of fraudulent financial reporting.

Appropriate alignment has been made in the Code with regard to requirements of Confidentiality, as required under Chartered Accountants Act, 1949.

2.3.3 Provisions of Confidentiality under Chartered Accountants Act, 1949

For Members in practice – Clause (1) of 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 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;

For Members in service - Clause (2) of Part-II to the Second Schedule of the Chartered Accountants Act, 1949 : A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he 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;

Documentation Requirements in NOCLAR :

Revised Code over and above require the professional accountant to follow the additional documents requirements as under:

- How management / those charged with governance have responded to the matter.
- The course of action the accountant considered, the judgments made and the decisions that were taken, having regard to the reasonable and informed third party test.
- How the accountant is satisfied that the responsibility of public interest has been fulfilled.

This documentation is in addition to complying with the documentation requirements under applicable auditing standards. SAs, for example, require a professional accountant performing an audit of financial statements to:

- Prepare documentation sufficient to enable an understanding of significant matters arising during the audit, the conclusions reached, and significant professional judgments made in reaching those conclusions;

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- Document discussions of significant matters with management, those charged with governance, and others, including the nature of the significant matters discussed and when and with whom the discussions took place; and
- Document identified or suspected non-compliance, and the results of discussion with management and, where applicable, those charged with governance and other parties outside the entity.

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 Chartered Accountants Act, 1949 provides the particulars to be included in the Register about every member of the Institute, namely-

Full name, date of birth, domicile, residential and professional address;	
Date of entry of name in the Register;	Qualifications;
Whether the member 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 of members; 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, or 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 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

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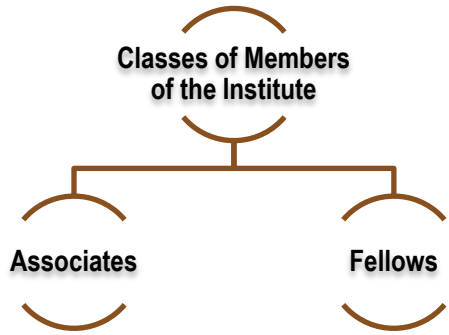
(vi) If he has been removed from membership of the Institute on being found on inquiry to have been guilty of professional or other misconduct;

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 of members, 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 of members 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 possesses 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.

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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 of members, 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 of members 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, 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:

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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.

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4.1 Significance of the Certificate of Practice

Section 6 of the Chartered Accountants Act, 1949 provides that**: -**

(1) No member of the Institute shall be entitled to practise whether in India or elsewhere unless he has obtained from the Council a certificate of practice:

It may be noted that this provision is not applicable to any person who, immediately before the commencement of this Act, has been in practice as a registered accountant or a holder of a restricted certificate until one month has elapsed from the date of the first meeting of the Council.

(2) Every such member shall pay such annual fee for his certificate as may be determined, by notification, by the Council [..], and such fee shall be payable on or before the 1st day of April each year

(3) The certificate of practice obtained under sub-section (1) may be cancelled by the Council under such circumstances as may be prescribed.

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.**

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Illustration 1

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 be 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 practice 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:

(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 30th day of September of the relevant year.

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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.

(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
(iv)	renders such other services as, in the opinion of the Council, are or may be rendered by a Chartered Accountant in practice;

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".

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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.
(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. Acting as Registered Valuer under the Companies Act, 2013 read with The Companies (Registered Valuers and Valuation) Rules, 2017. (incorporated pursuant to decision of Council at its 388th Meeting)
(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

* 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".

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	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:
(a)	Drafting of prospectus and memorandum containing salient futures 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. *Explanation* - For removal of doubts, it is hereby clarified that the activities of broking, underwriting and portfolio management are not permitted.
(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.
(xxvii)	Acting as Insolvency Professional in terms of Insolvency and Bankruptcy Code, 2016 (incorporated pursuant to decision of Council at its 362nd Meeting).
(xxviii)	Administrative Services. (incorporated pursuant to decision of Council at its 388th Meeting) Administrative services involve assisting clients with their routine or mechanical tasks within the normal course of operations. Such services require little to no professional judgment and are clerical in nature.

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Examples of administrative services include:

- Word processing services.
- Preparing administrative or statutory forms for client approval.
- Submitting such forms as instructed by the client.
- Monitoring statutory filing dates, and advising an audit client of those dates.

For example, the functions of a GST practitioner as specified under Rule 83(8) of Central Goods and Services Tax Rules, 2017:-

(a) furnish the details of outward and inward supplies;

(b) furnish monthly, quarterly, annual or final return;

(c) make deposit for credit into the electronic cash ledger;

(d) file a claim for refund;

(e) file an application for amendment or cancellation of registration;

(f) furnish information for generation of e-way bill;

(g) furnish details of challan in form GST ITC-04;

(h) file an application for amendment or cancellation of enrolment under rule 58; and

(i) file an intimation to pay tax under the composition scheme or withdraw from the said scheme.

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'.

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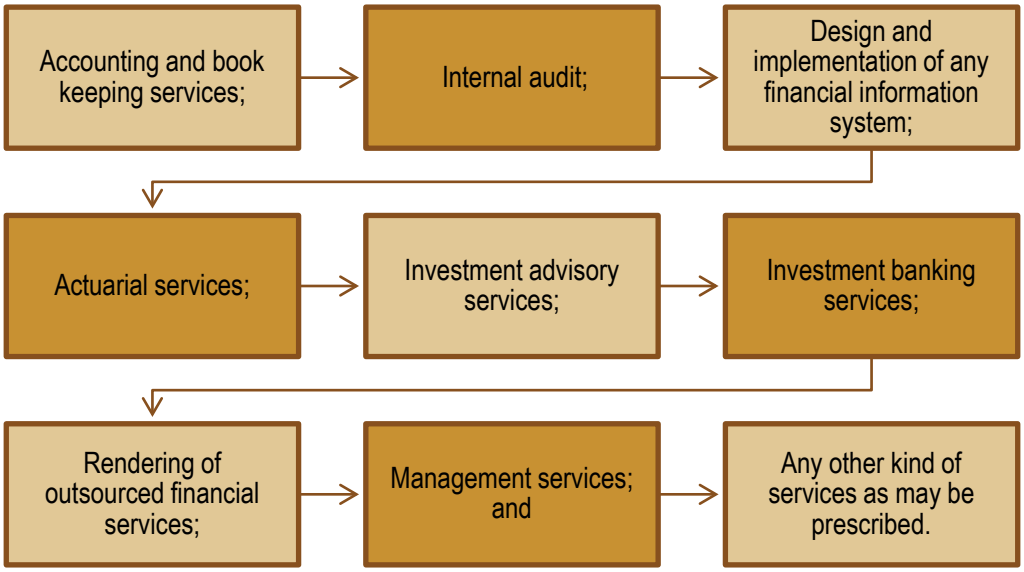
The above provisions need to be correlated with the provisions of section 144 of the Companies Act, 2013 which prohibits an auditor of the company from rendering certain services directly or indirectly to the company or its holding company or its subsidiary company.

Section 144 of the Companies Act, 2013 prescribes certain services not to be rendered by the auditor. An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company), namely (i) accounting and book- keeping services; (ii) internal audit; (iii) design and implementation of any financial information system; (iv) actuarial services; (v) investment advisory services; (vi) investment banking services; (vii) rendering of outsourced financial services;(viii) management services; and (ix) any other kind of services as may be prescribed.



Certain services not to be rendered by the Auditor as per section 144 of the Companies Act 2013.

Illustration 2

Mr. A, a practicing Chartered Accountant agreed to select and recruit personnel, conduct training programmes for and on behalf of a client where he is not providing any assurance service. Is this a professional misconduct?

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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 workloads.

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.

Thought the LLPs are allowed to be appointed as an auditor in accordance with the Companies Act, 2013, however, it cannot be engaged into practice, if it has company as its partner, as per the Chartered Accountants Act, 1949.

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

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4.5 Member in Practice Prohibited from using a Designation other than Chartered Accountant

(i) Members 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 he can 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 *shall be deemed to prohibit any such person from adding any other description or letters to his name, if entitled thereto, to membership of such other Institute of accountancy, whether in India or elsewhere, as may be recognised in this behalf by the Council, or any other qualification that he may possess, or to prohibit a firm, all the partners of which are members of the Institute and in practice, from being known by its firm name as Chartered Accountants.*

Merchant Banker / Advisor to an issue: The members may apply for and obtain registration as category IV Merchant Banker under the SEBI's rules and regulations and act as Advisor or Consultant to an issue. In client Companies' offer documents and advertisements regarding capital issue, name and address of the Chartered Accountant or firm of Chartered Accountants acting as Advisor or Consultant to the Issue could be indicated under the caption "Advisor/Consultant to the Issue". However, the name and address of such Chartered Accountant/firm of Chartered Accountants should not appear prominently.

Directors of Companies, Members of political parties, position in clubs, etc.: The members of the Institute who are also Directors in Companies, members of Political parties or Chartered Accountants Cells in the political parties, holding different positions in clubs or other organisations are not permitted to mention these positions as these would be violative of the provisions of Section 7 of the Act.

Members who are also Cost Accountants: Though a member cannot designate himself as a Cost Accountant, he can use the letters A.C.M.A (Associate) or F.C.M.A (Fellow) after his name, when he is a member of that Institute.

Permission to mention qualifications of certain Institutions: The members are permitted to mention membership of a foreign Institute of Accountancy, which has been recognized by the Council through a Memorandum of Understanding (MoU) / Mutual Recognition Agreement (MRA) with the said Institute.

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Other Qualifications of the member

With regard to the other qualifications of a member, which he is permitted to mention, the following observations of the Supreme Court in Institute of Chartered Financial Analyst of India (ICFAI) vs Council of the Institute of Chartered Accountants of India (ICAI) dated 16th May, 2007 are relevant:

"The expression 'any other qualification that he may possess', therefore, must be read as qualification other than conferred upon the member by other Institutes of Accountancy. Such qualification of accountancy may be conferred even by other Institutes. But as noticed hereinbefore, an exemption had been granted by reason of a resolution of the Institute in relation to the Institute of Cost and Works Accountants. Furthermore, a degree conferred by any university also is subject to an exemption from the rigour of the provisions of Section 7 of the Act. There cannot, therefore, be any doubt whatsoever that 'the other qualification' would mean a qualification other than granted by an Institute of Accountancy, subject of course to recognition thereof by the Institute."

3. For example, though a member cannot designate himself as a Cost Accountant, he can use the letters A.C.M.A.(Associate) or F.C.M.A. (fellow) 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

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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.

Above conditions apply to any additional office situated at a place beyond 50 kms from the municipal limits in which any office is situated.

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.

The requirement of Section 27 in regard to a member being in charge of an office of a Chartered Accountant in practice or a firm of such Chartered Accountants shall be satisfied only if the member is actively associated with such office. Such association shall be deemed to exist if the member resides in the place where the office is situated for a period of not less than 182 days in a year or if he attends the said office for a period of not less than 182 days in a year or in such other circumstances as, in the opinion of the Executive Committee, establish such active association.

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.

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Illustration 3

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 km. 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.*

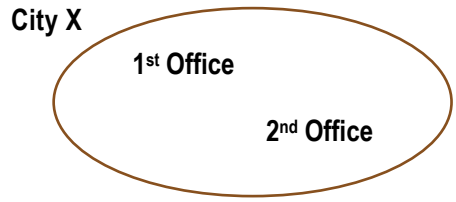
In the given case, partners of XY & Co., put up a name board of the firm in both offices but not in their respective residences.

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

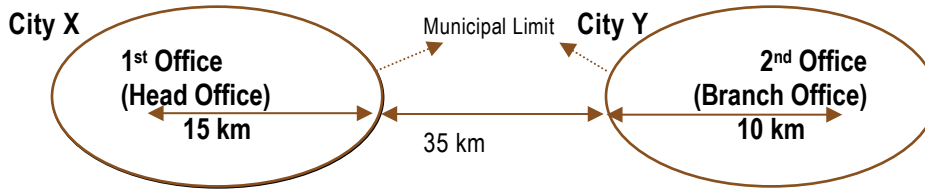
(2) The exemption may be granted to a member or a firm of Chartered Accountants in practice to have a second office without such second office being under the separate charge of a member of the Institute, provided-

(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,



(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

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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.

Illustration 4

Mr. K, Chartered Accountant practicing as a sole proprietor 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 km. 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 km. 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 issued such norms to be observed by the members of the profession who are in practice.

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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 attestation functions.

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

1.	**Where Client is an Individual/ Proprietor** A. General Information - Name of the Individual - PAN No. or Aadhar Card No. of the Individual - Business Description - Copy of last Audited Financial Statement B. Engagement Information - Type of Engagement
2.	**Where Client is a Corporate Entity** A. General Information - Name and Address of the Entity - Business Description - Name of the Parent Company in case of Subsidiary - Copy of last Audited Financial Statement B. Engagement Information - Type of Engagement C. Regulatory Information - Company PAN No. - Company Identification No. - Directors' Names & Addresses - Directors' Identification No.

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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 areas such 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

Sections 21, 21A, 21B, 21C, 22-A and 22-G of the Chartered Accountants Act read with The Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct of Cases) Rules, 2007 have laid down the following procedure in regard to the investigation of misconduct of members which has been summarized as under:-

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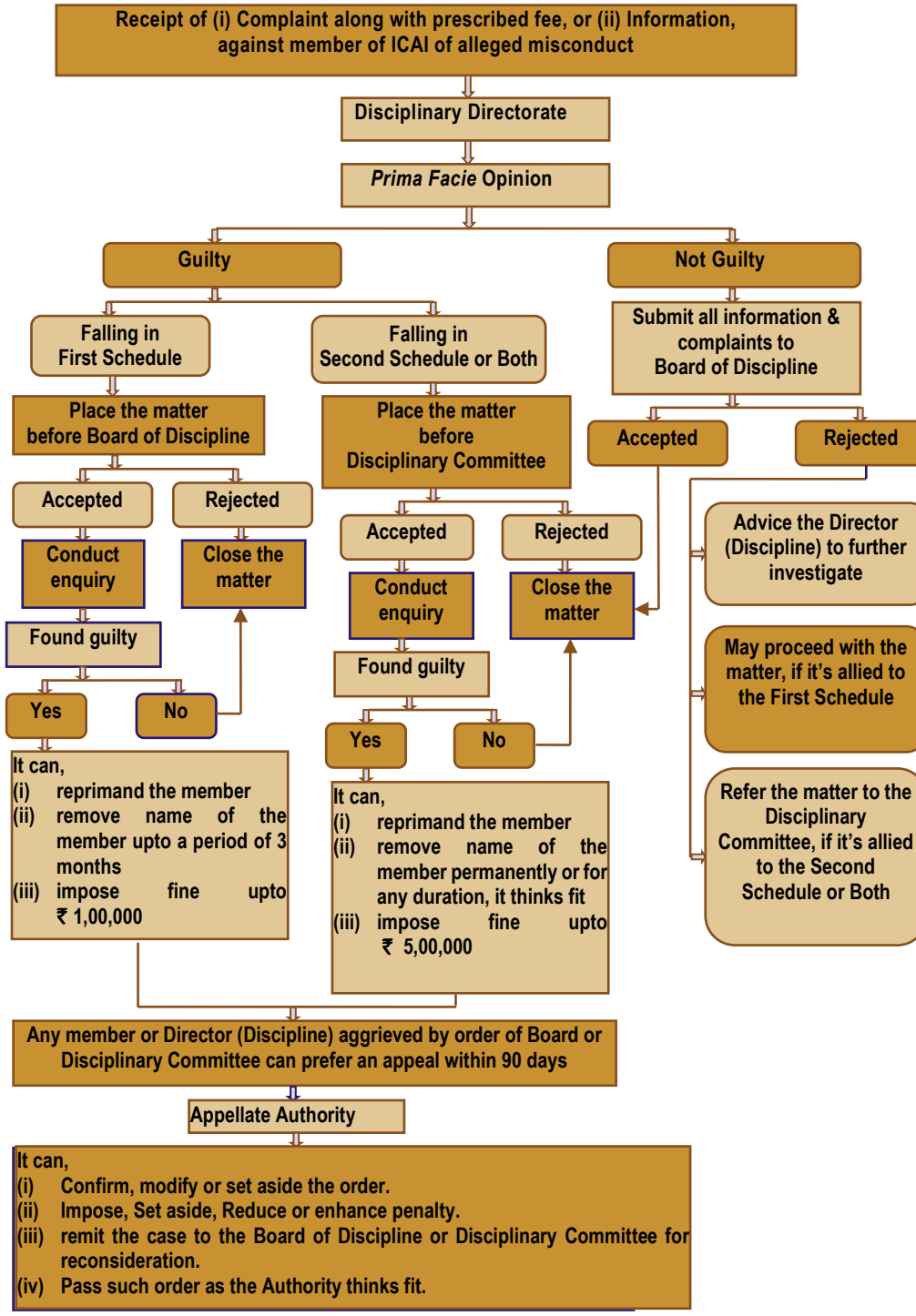
Flow Chart of Discipline Procedure Mechanism



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7 TYPES OF MISCONDUCT: PROFESSIONAL OR OTHER MISCONDUCT

For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act or omission, on the part of any member of the Institute either in his individual capacity or as partner or owner of a firm, as mentioned 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 such member or firm, 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 actions 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.

4. 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].

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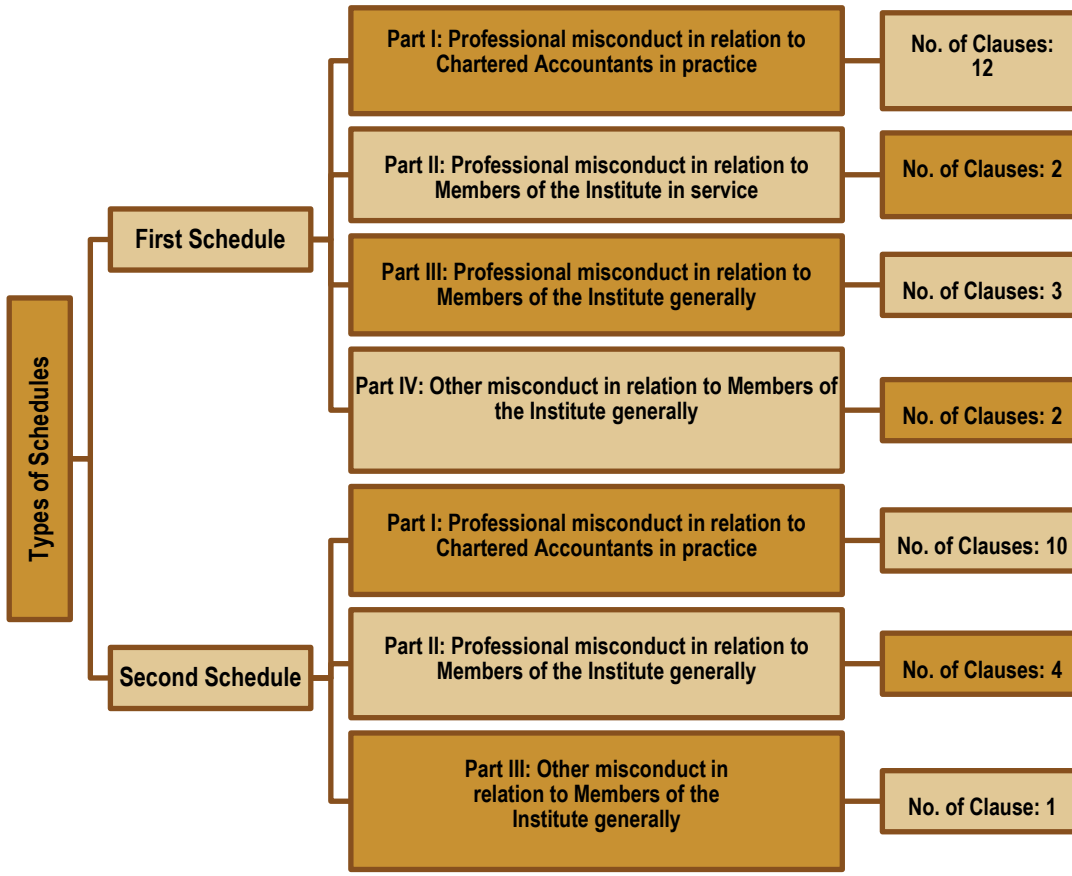
8. SCHEDULES TO THE ACT

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:

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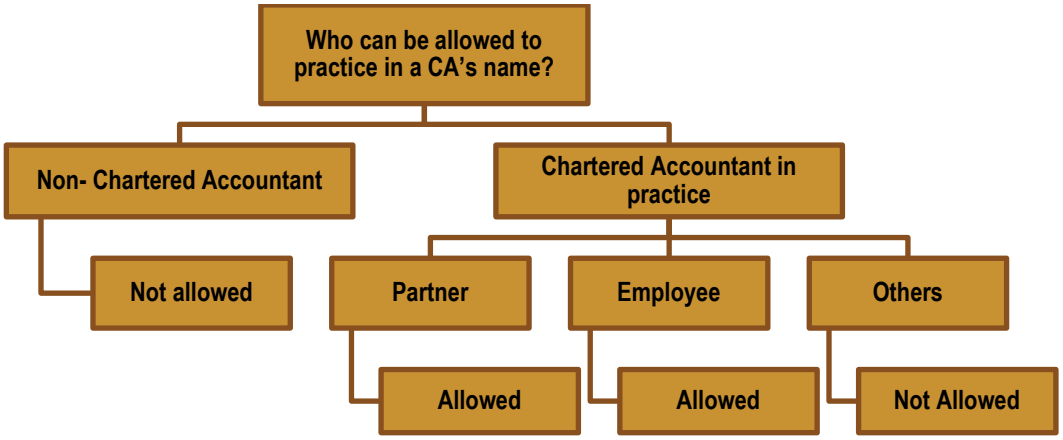
8.1 The First Schedule

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.

Illustration 5

Mr. C, Chartered Accountant, in practice allowed his brother-in-law Mr. P who is not a Chartered Accountant, to practice in the name of CA. C. He also allowed CA T who is employee in his firm to practice in the name. Whether Mr. C is correct in allowing his brother-in-law Mr. P and CA T employee of his firm to practice in his name.

Solution

Allowing to Practice in a Chartered Accountant's name: As per Clause (1) of Part I to the First Schedule to Chartered Accountants' Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he allows any person to practice in his name as a chartered

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accountant unless such person is also a chartered accountant in practice and is in partnership with or employed by him.

In the given situation Mr. C, Chartered Accountant who is in practice allowed a non-Chartered Accountant his brother-in-law Mr. P to practice in the name of CA. C is not correct in view of Clause 1 of Part I to the First Schedule. However, he can allow CA T who is employee in his firm to practice in his name.

Conclusion: Thus, CA. C will be held guilty of professional misconduct for allowing Mr. P who is not a Chartered Accountant to practice in his name as a chartered accountant as per Clause (1) of Part I to the First Schedule.

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.

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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.

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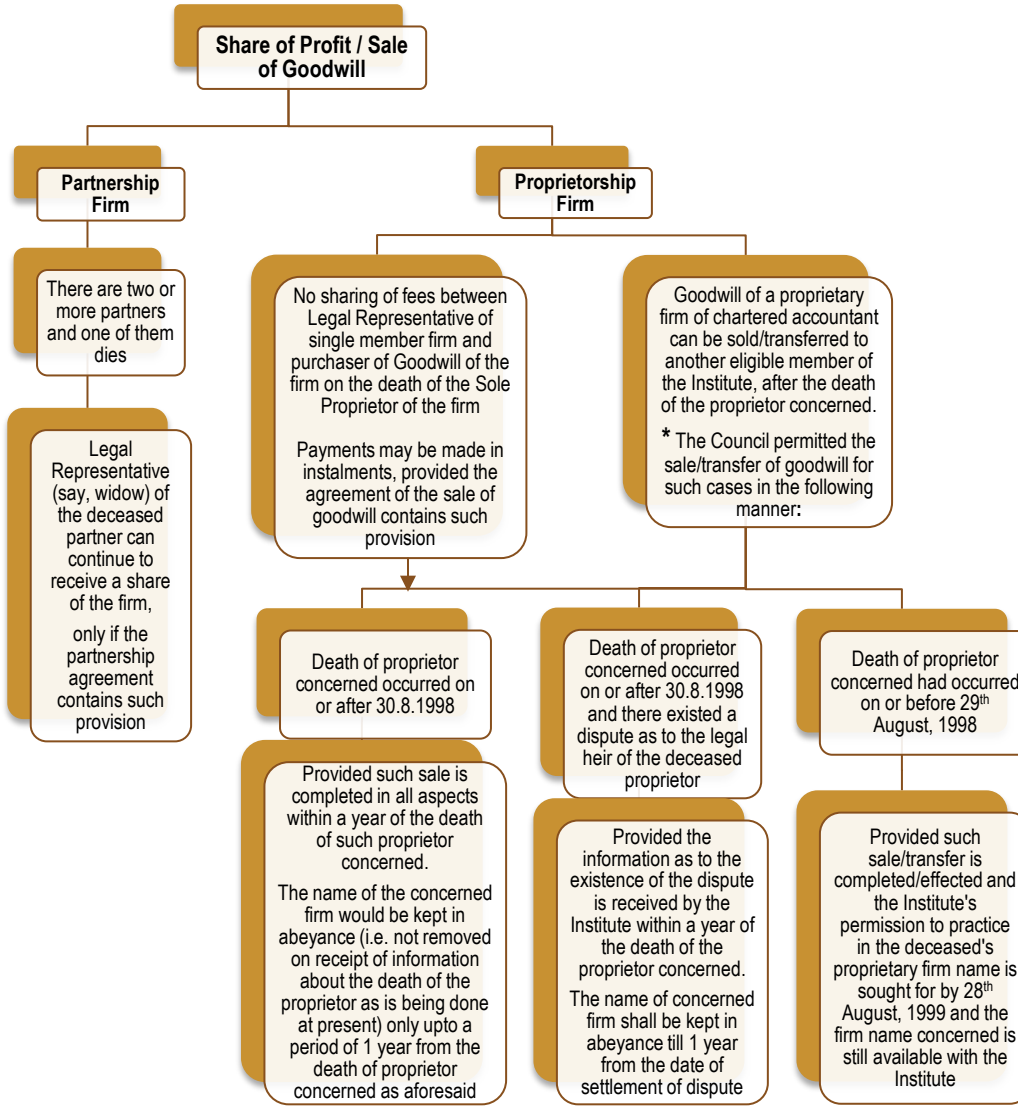
Treatment of Goodwill –



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

Illustration 6

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?

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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 considered 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 lays down that the sale is permitted subject to certain conditions discussed in the above flowchart. 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, the widow of Mr. Qureshi, who has proposed to sell the practice for ₹ 5 lakhs is in effect proposing the 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.

Referral fees amongst members: It is not prohibited for a member in practice to charge Referral Fees, being the fees obtained by a member in practice from another member in practice in relation to referring a client to him.

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-

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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.

A Chartered Accountant in practice is not permitted to enter into partnership with any person other than a Chartered Accountant in practice or such other persons as may be prescribed by the Council from time to time. The members may however take note of the fact that they cannot form Multi-Disciplinary partnerships till such time that Regulators of such other professionals also permit partnership with chartered accountants, and guidelines in this regard are issued by the Council.

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. A

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Chartered Accountant 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).

It may further be noted that the acts of partners and employees of the Firm towards securing professional work are subject to the provisions of Clauses (6) and (7) of Part-I of First Schedule of Chartered Accountants Act, 1949.

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.

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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.

The 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.

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.

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(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 and address(es) of social Networking sites of members. However, mere factual position of experience and area of specialization, relevant to seek response to the advertisement, are permissible.

(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) 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. This is however subject to conditions that may be issued by the Council from time to time.

The Council has issued Guidelines No. 1-CA(7)/03/2016 dated 7th April 2016 (see **Appendix 'J')** which stipulate that 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. *The "minimum fee" for this purpose should be such that it commensurates with size, value, volume, manpower requirement and nature of work*.

EMD/Security Deposit: The Council is of the view that while interference with the practices prevailing for requirement of EMD/Deposit is not required. However, on having received

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complaint/ instance of exorbitant EMD/Deposit, the Ethical Standards Board may look into the matter on case to case basis.

A cost sheet be maintained by members of the Institute responding to tenders, incorporating details of the costs being incurred therein having regard to number of persons involved, hours to be spent, etc, so that the same may be called for by the Institute for perusal.

(d) **Publication of Books, Articles or Presentation:** It is not permissible for a member to mention in a book or an article published by him, or a presentation made by him, any professional attainment(s), whether of the member or the firm of chartered accountants, with which he is associated. However, he may indicate in a book, article or presentation the designation "Chartered Accountant" as well as the name of the firm.

(e) **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 qualifications 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 invitations 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 friends of the members concerned.

(f) **Advertisement for Silver, Golden, Platinum or Centenary celebrations:** It is not permitted to advertise the events organised by a Firm of Chartered Accountants. However, considering the need of interpersonal socialization/relationship of the members through such get together occasions, the advertisement for Silver, Golden, Diamond, Platinum or Centenary celebrations of the Chartered Accountants Firms may be published in newspaper or newsletter.

(g) **Sponsoring Activities**

(a) A member in practice or a Firm of Chartered Accountants is not permitted to sponsor an event. However, such member or Firm may sponsor an event conducted by a Programme Organizing Unit (PoU) of the ICAI, provided such event has the prior approval of Continuing Professional Education (CPE) Directorate of the ICAI.

(b) Members sponsoring activities relating to Corporate Social Responsibility may mention their individual name with the prefix "CA". However, the mention of Firm name or CA Logo is not permitted.

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(h) **Advertisement of Teaching/Coaching activities by members:** The members engaged in teaching /coaching activities, while advertising such teaching /coaching activities, shall comply with the Regulation 190A of the Chartered Accountants Regulations, 1988(discussed in the Chapter in Clause 11).

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.

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.

(i) **Sharing Firm Profile with prospective Client:** It is not permitted to share Firm profile with a prospective Client unless it is in response to a proposed client's specific query, and otherwise not prohibited to be used by the client.

(j) **Television or Movie Credits:** While sharing name of the member or Firm of Chartered Accountants for inclusion in Television or Movie Credits, it must be taken care of that exhibition of name is not made differently as compared to other entries in the credits.

(k) **Soliciting professional work by making roving enquiries:** It is not permissible for a member to address letters, emails or circulars specifically to persons who are likely to require services of a Chartered Accountant since it would tantamount to advertisement.

(l) **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.

(m) **Scope of representation which an auditor is entitled to make under Section 225(3) of the Companies Act, 1956 (Section 140(4) 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

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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 reappointed by the shareholders.

(n) **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.

(o) **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. Any detail which is given must, in addition to meeting the above requirements, be given only as a response to a specific question, and of factual nature only.

(p) **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.

(q) **Educational Videos**: While the videos of educational nature may be uploaded on the internet by members, no reference should be made to the Chartered Accountants Firm wherein the member is a partner/ proprietor. Further, it should not contain any contact details or website address.

Illustration 7

Mr. S, a Chartered Accountant published a book and gave his personal details as the author. These details also mentioned his professional experience.

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

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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, his association with any firm of chartered accountants. In this case, Mr. S, a Chartered Accountant published the book and mentioned his professional experience in detail in the same.

Conclusion: Mr. S being a chartered accountant in practice has committed the professional misconduct by mentioning his professional experience.

Illustration 8

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.

Illustration 9

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. However, on having received complaint/ instance of exorbitant EMD/Deposit, the Ethical Standards Board may look into the matter on case to case basis.

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.

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Illustration 10

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 has not committed any professional misconduct by 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. However, the services can be advertised in a restricted way through a write up subject to the Guidelines of the Council issued from time to time. Refer chapter 3 of the book. It also restrains a member from using

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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.

Other Designations: It is improper for a Chartered Accountant in practice to state on his professional documents that he is an Income-tax Consultant, Cost Accountant, Company Secretary, Cost Consultant or a Management Consultant.

While noting that it had already allowed its members 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".

A member must not use the designation such as 'Member of Parliament', 'Municipal Councilor' nor any other functionary in addition to that of Chartered Accountant.

A member empanelled as Insolvency Professional or Registered Valuer can mention "Insolvency Professional" or "Registered Valuer" respectively on his visiting card and letter head.

Permission to mention qualifications of certain Institutions: The members are permitted to mention a title on their visiting cards to indicate membership of a foreign Institute of Accountancy, which has been recognised by the Council e.g. South African Institute of Chartered Accountants (SAICA), Institute of Certified Public Accountants (CPA Ireland) and Institute of Chartered Accountants in England and Wales (ICAEW).

Date of setting-up practice: The date of setting up the practice by a member or the date of establishment of the firm on the letter heads and other professional documents etc. should not be mentioned.

Practice as Advocate: Members of the Institute in practice who are otherwise eligible may practise 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.**

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

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It is clarified that in the event of the permission being granted to a member in practice to also hold COP of sister Institute(s)/Bar Council, such a member be treated as a member in full-time practice.

Mention of Firm name except on Professional Documents: It is not proper for a Firm of Chartered Accountants to use the designation 'Chartered Accountant' except on professional documents, visiting cards, letter heads or sign boards and under the circumstances clarified under Clause (6). However, an individual member may use the prefix "CA" with his name.

Notice in the Press relating to the Success in an Examination: 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 assistant or an employee or the member or the firm with whom he was 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, examination 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.

Reports and Certificates: The reports and certificates issued by a Chartered Accountant bring 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 publication of certificates are limited to what is necessary to enable the report or certificate to serve its proper purpose. The members may however note that they should use letterhead of their Firm for issuing reports and certificates.

Appearance of Chartered Accountants on Electronic Media (including Internet): Members may appear on television, films and Internet 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 specialised knowledge directly relevant to the subject matter of the programme may also be given. Firm name may also be mentioned, however, any exaggerated claim or any kind of comparison is not permissible. What he may say or write must not be promotional of him 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 members generally. Members giving talks or lectures or attending conference may describe

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themselves as Chartered Accountants only when they are acting in their capacity as Chartered Accountants. However, reference to the professional firm of the member should not be given.

Organising Training Courses, Seminars etc. for his staff: A Chartered Accountant in practice holding training courses, seminars etc. for his staff may also invite the staff of other Chartered Accountants and clients to attend the same. However, undue prominence should not be given to the name of the Chartered Accountant in any booklet or document issued in connection therewith.

Writing Articles or Letters to the Press: Members writing articles or letters to the Press on subjects connected with the profession may give their names and use the description Chartered Accountants.

Size of Sign Board: With regard to the size of sign board for his office that a member can put up, it is a matter in which the members should exercise their own discretion and good taste while keeping in mind the appropriate visibility and illumination (limited to the sake of visibility). However, use of glow signs or lights on large-sized boards as is used by traders or shop-keepers is not permissible. 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.

Public Announcements with details of Directors: 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, specialisation and knowledge in any particular field or add appellations or adjectives to their names. Attention of the members in this context is invited to the provisions of Clause (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

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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, specialisation and knowledge in any particular field or other appellations 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.

Network Firms and Networking Guidelines: ***The Council has permitted Network amongst the Firms registered with the Institute. A member of the Network may advertise to the extent permitted by the Advertisement Guidelines issued by Institute.***

Note:
Students are required to refer Para 9 of this Chapter for Guidelines for Networking discussed in Chapter XV of Council General Guidelines 2008.
Advertisement Guidelines issued by Institute are being given in details in the Chapter

Use of Logo: For use of logos by Members on letter heads, visiting cards etc. the Council had decided that the logos unconnected with the first letter of the name of the firm or its partners or proprietors would not be permitted for use by members in practice/firms of Chartered Accountants on their letter heads, visiting cards etc. as the same would have amounted to advertisement or smacking of publicity. 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 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.

Common CA Logo: To promote the brand of CA profession and responding to the long felt need to have a symbol of CA Profession in India, ICAI came up with a unique logo which could be used by all members, whether in practice or not. Encapsulating the current beliefs, attitudes and values of the profession, the CA Logo seeks to enhance the identity of the members. The logo consists of the

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letters 'CA' with a tick mark (upside down) inside a rounded rectangle with white background. The letters 'CA' have been put in blue, the corporate colour which not only stands out on any background but also denotes creativity, innovativeness, knowledge, integrity, trust, truth, stability and depth. The upside down tick mark, typically used by the chartered accountants, has been included to symbolize the wisdom and value of the professional. The green colour in the tick mark signifies growth, prosperity, harmony and freshness. Members are encouraged to use this logo. The Council has decided that use of CA logo in the stamp is permissible, subject to CA logo guidelines.

[Students are advised to refer Chapter XVI on Logo Guidelines under Para no 9 Council Guidelines.]

Guidelines for elected Members of the Council/ office Bearers of the Regional Council in the context of use of designation etc. and manner of Printing of Letter-heads and visiting cards.

The guidelines/directions laid down by the Council as revised by the Council from time to time for use of designation etc. and manner of printing letter-heads and visiting cards of the President, Vice-President of the Institute, Members of the Council, Chairmen of various non-standing Committees of the Institute; Chairmen, other office bearers and Members of the Regional Councils; Chairmen, other office-bearers and Members of the Managing Committees of the Branches are appearing in **Appendix 'F'** to Code of Ethics publication.

Illustration 11

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

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recognised professional membership by the Central Government or the Council.

Illustration 12

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.

Illustration 13

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.

Advertisement of Professional Attainments: 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 misconduct and liable for disciplinary action.*

Illustration 14

A Chartered Accountant in practice, empanelled as an Insolvency Professional (IP) has mentioned the same on his visiting cards, letter heads and other communications also. A person

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residing in his neighbourhood, has filed a complaint for professional misconduct against the said member for such mention of IP.

Using Designation of Insolvency Professional: As per Clause (7) of Part I of First Schedule to the Chartered Accountants Act, 1949, a CA in practice is deemed to be guilty of professional misconduct if he (i) advertises his professional attainments or services or (ii) uses any designation or expressions other than '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 ICAI or of any other institution that has been recognized by the Central Government or may be recognized by the council.

Here, a Chartered Accountant empaneled as IP (Insolvency Professional) can mention "Insolvency Professional" on his visiting cards, letter heads and other communication, as this is a title recognised by the Central Government in terms of Clause 7 of Part 1 of First Schedule to the Chartered Accountants Act, 1949.

Conclusion: Thus, complaint of neighbor is not enforceable/ valid.

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

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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 may be root cause of an auditor being changed. 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. However, in the case of an undisputed audit fees for carrying out the statutory audit under the Companies Act, 2013 or various other statutes having not been paid, the incoming auditor should not accept the appointment unless such fees are paid. In respect of other dues, the incoming auditor should in appropriate circumstances use his influence in favour of his predecessor to have the dispute as regards the fees settled. The professional reasons for not accepting an audit would be:

(a) Non-compliance of the provisions of Sections 139 and 140 of the Companies Act, 2013 as mentioned in Clause (9) of the Part - I of First Schedule to The Chartered Accountants Act, 1949; and

(b) 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, 2013 or various other statutes; and

(c) Issuance of a qualified report.

In the first two cases, an auditor who accepts the audit would be guilty of professional misconduct. In this connection, attention of members is invited to the Council General Guidelines, 2008 appearing in Chapter-4. In the said Guidelines, Council has explained that the *provision for audit fee in accounts signed by both the auditee and the auditor along with other expenses, if any, incurred by the auditor in connection with the audit*, *shall* be considered as *"undisputed audit fee"* and *"sick unit"* shall mean *a unit registered for not less than five years, which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.*

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 had qualified the report for good and valid reasons, he should refuse to accept the audit. There is no rule, written or unwritten, which would prevent an auditor from accepting the appointment offered to him in these circumstances. However, before accepting the audit, he should ascertain the 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-emphasised.

Where the Previous Auditor is not available for accepting payment of undisputed audit fees, and it is not otherwise possible to transfer the payment to him electronically, the Incoming Auditor may

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advise the client to purchase Demand Draft of the amount equivalent to undisputed Audit Fees of retiring auditor, and may accept the Audit assignment after verifying the same. It will be the duty of the Incoming auditor to ensure the payment of undisputed Audit Fees of the retiring auditor at the earliest possibility.

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 had 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 learnt 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 are any circumstances which warrant him not to accept the appointment.

5. 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:

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"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, the following would in the normal course provide such evidence:-

(a) Communication by a letter sent through "Registered Acknowledgement due", or

(b) By hand against a written acknowledgement, or

(c) Acknowledgement of the communication from retiring auditor's vide email address registered with the Institute or his last known official email address, or

(d) Unique Identification Number (UDIN) generated on UDIN portal (subject to separate guidelines to be issued by the Council in this regard)

Premises found Locked: The communication received back by the Incoming Auditor with **"Office found Locked"** written on the Acknowledgement Due shall be deemed as having been delivered to the retiring auditor.

Firm not found at the given Registered address : If the Communication sent by the Incoming auditor is received back with remarks "No such office exists at this address", and the address of communication is the same as registered with the Institute on the date of dispatch, the letter will be deemed to be delivered, unless the retiring auditor proves that it was not really served and that he was not responsible for such non-service.

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.

Special Audit under Income Tax Act, 1961: It would be a healthy practice if a Tax Auditor appointed for conducting special audit under the Income Tax Act,1961 communicates with the member who has conducted the Statutory Audit.

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

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Communication required for all kinds of audit: 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, GST Audit, Internal Audit, Concurrent Audit or any other kind of audit.

Communication in case of Assignments done by other professionals: A Communication is mandatorily required for all types of Audit/Report where the previous auditor is a Chartered Accountant. In case of assignments done by other professionals not being Chartered Accountants, it would also be a healthy practice to communicate.

Lack of time in acceptance of Government Audits: 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 Companies/ banks or their branches, if the appointment is made well in time to enable the obligation cast under this clause to be fulfilled, such 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.

Illustration 15

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

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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.

Conclusion: Therefore, Mr. X will be held guilty of professional misconduct.

Illustration 16

W, a Chartered Accountant had 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 (1 of 1956), in respect of such appointment have been duly complied with;

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 Section 139 and 140 of Companies Act, 2013 Act (erstwhile Section 225 of Companies Act, 1956) and the Council has notified that the provisions to be complied with under Clause (9) are those contained in Sections 139 and 140 of the Act. Section 139 contains several provisions in the matter of appointment of auditors in different circumstances and situations whereas

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Section 140 lays down the procedure which must be followed whenever a Company desires to change its auditors. 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:-

Clause (9) of Part I of the First Schedule to 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 Sections 139 and 140 of the Companies Act, 2013, in respect of such appointment have been duly complied with. Under this clause it is obligatory on the incoming auditor to ascertain from the Company that the appropriate procedure in the matter of his appointment has been duly complied with so that no shareholder or retiring auditor may, at a later date, challenge the validity of such appointment.

The steps to be taken by an Auditor of a Company who is appointed in the following circumstances are indicated in the paragraphs below:

(a) When the auditor appointed is the First Auditor of the Company.

(b) 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.

(c) 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.

(d) When one or more of the auditors appointed by the Company was/were not holding this office earlier.

Note : Students are advised to refer Intermediate level Paper 2 Corporate and Other Law for more details regarding Section 139 and 140, Section 139 of the Companies Act, 2013 laid down the procedure to be followed by a Company for appointment of an auditor and Section 140 of the Companies Act, 2013 lays down the procedure for appointment of auditor other than the retiring auditor and for removal of existing auditor.

The procedure to be followed by the Company is given below:-

- If a member of the Company wants that the retiring auditor should not be reappointed or that an auditor other than the retiring auditor should be appointed, he has to give a special notice

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u/s 140(4) of Companies Act, 2013 to the Company for a resolution at the Annual General Meeting for this purpose.

- Such special notice is also required to be given if a member of the Company wants to remove the auditor before the expiry of his term of office. The special notice should be given before the date of the General Meeting when the question of appointment or reappointment of the auditor is to be considered.
- On receipt of the special notice of such a resolution, the Company has to send a copy of the same to the retiring auditor forthwith, as required u/s 140(4) of Companies Act, 2013.
- The Company is also required to send the special notice to the members of the Company at least seven days before the Meeting as per the provisions of Section 115 read with Section 20 of the Companies Act, 2013. According to these provisions, a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed.
- After receipt of the above notice, the retiring auditor can submit his representation to the members of the Company. Such representation, on receipt by the Company, is required to be sent to its members as required under Section 140(4) of the Companies Act.
- The representation received from the retiring auditor will have to be considered at the General Meeting of the Company before the resolution proposed by the concerned member is passed. The resolution proposed by the concerned member can be passed only in accordance with the provisions of Section 114 of the Companies Act, 2013.
- 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 139 and, 140 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.

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It is suggested that the incoming auditor should verify the following records of the Company:-

If the appointment of the auditor is being made for the first time after incorporation of the Company, the auditor should verify as to whether the Board of Directors have passed the resolution for his appointment within thirty days of the date of registration of the Company.

If the Board of Directors have not appointed the first auditor but the appointment is being made by a general meeting of the Company, the auditor should verify as to whether a proper notice convening the general meeting has been issued by the Company and whether the resolution has been validly passed at the general meeting of the Company.

If the appointment is being made to fill a casual vacancy, the incoming auditor should verify as to whether the Board of Directors have powers to fill the casual vacancy and whether the Board of Directors have passed the resolution filling the casual vacancy.

If the vacancy has arisen due to resignation of the auditor, the incoming auditor should see as to whether a proper resolution filling the vacancy has been passed at the General Meeting of the Company.

If the vacancy has arisen as a result of removal of the auditor before the expiry of his term of office, the incoming auditor should see that special resolution has been passed at the General Meeting of the Company and that the previous approval of the Central Government has been obtained by the Company.

Where the auditor other than the retiring auditor is proposed to be appointed, the incoming auditor should ascertain whether the provisions of Sections 139 and 140 have been complied with. These provisions equally apply where an auditor who was jointly holding office with another auditor or auditors and any one or more of such joint auditors has not been reappointed.

For the purpose of ascertaining whether the Company has complied with the provisions of Section 140 of the Companies Act the incoming auditor should verify the records of the Company in respect of the following matters:-

a. Whether a member of the Company has given special notice of the resolution as required under Section 140 (4) of the Companies Act, 2013. The notice shall be sent by members to the company not earlier than three months but at least fourteen days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting. A true copy of this notice should be obtained by the incoming auditor.

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b. Whether this special notice has been sent to all the members, of the Company as required under Section 115 of Companies Act, 2013 at least 7 days before the date of the General Meeting.

c. Whether this special notice has been sent to the retiring auditor forthwith as required under Section 140 (4).

d. Whether the representation received from the retiring auditor has been sent to the members of the Company as required under Section 140 (4) .

e. Whether the representation received from the retiring auditor has been considered at the general meeting and the resolution proposed by the special notice has been properly passed at the general meeting.

As regards the mode of sending the notice of the resolution to the members of the Company as provided in Sections 139 and 140 and section 20 to be followed for service of documents, which is as under:-

(A) A document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed.

(B) As regards the mode of sending the notice of the resolution to the retiring auditor as provided in Sections 224 & 225 of Companies act, 1956 (equivalent Sections being Section 139 & 140 of Companies 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 Accountants 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 u/s 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 that the copy of the special notice u/s 225(2) of the Act should be sent to the retiring auditors by Registered A/D post."

(C) Accordingly, it is necessary for the incoming auditor to satisfy himself that the notice provided for in Sections 139 & 140 of 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 with A.D.). Production of a certificate of posting by the Company would not be adequate

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for the purpose of the incoming auditor satisfying himself about compliance with Sections 139/140. Acknowledgement received from the outgoing auditor would be one of the forms in which such satisfaction can be obtained.

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.

Sometimes the annual general meeting is adjourned without conducting any business or after conducting business in respect of some of the items on the agenda. The items in respect of which the business is conducted may or may not include the item relating to appointment of auditors. Under Section 139(1) the retiring auditor holds office till the conclusion of every sixth annual general meeting. Therefore, when the annual general meeting is adjourned in the circumstances stated above, the retiring auditor will continue to hold the office of auditor till the adjourned meeting is held and the business listed in the agenda of the meeting is concluded. In case a new auditor is appointed at the original meeting (which is adjourned) such auditor can assume office only after the conclusion of such adjourned meeting.

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 115 of the Companies Act, 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 115 undoubtedly is the original meeting. Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company mentioned in Section 139.

If the incoming auditor is satisfied that the Company has complied with the provisions of Sections 139 and 140 of the Companies Act, 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.

Unjustified removal of auditors: In order to examine various ethical issues and safeguard the independence of the Auditors, the Council has set up a Ethical Standards Board (ESB). This Board 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 Board are forwarded to the Council for its consideration. This Board 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.

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The following guidelines have been issued for the Board 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 therefor, if he considers that there are professional reasons connected with his resignation or not offering himself for re-appointment which, in his opinion, should be brought to the notice of the Board of Directors, 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 of Directors and consider the same before accepting the appointment.
B. Where an auditor, though willing for re-appointment 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 Ethical Standards Board, on a review of the communications referred to in paras (A) and (B), 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.

[Note: Students are advised to refer Appendix 'G' For the Mission Statement, Terms of Reference and Procedure to be followed by the Board for dealing with the cases of Unjustified Removal of Auditors.]

Illustration 17

CA Raja was appointed as the Auditor of Castle Ltd. for the year 2022-23. 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.

Appointment of Auditor by Board: 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.

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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.

Illustration 18

Mr. X is a Chartered Accountant accepted the appointment as Statutory Auditor of the Company ABC Ltd. without communicating with the previous auditor before accepting the audit. He also failed to ascertain the compliance of requirement of Section 139 and 140 of the Companies Act, 2013 in respect of the appointments have been duly complied with.

Communication by incoming auditor with 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.

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 and 140 of the Companies Act, 2013), in respect of such appointment have been duly complied with.

Under this clause it is obligatory on the incoming auditor to communicate with previous auditor and ascertain from the Company that the appropriate procedure in the matter of his appointment has been duly complied with so that no shareholder or retiring auditor may, at a later date, challenge the validity of such appointment.

In this case Mr. X accepted the appointment as Statutory Auditor of the Company ABC Ltd. without communicating with the previous auditor. Further, he accepted the appointment without first ascertaining whether the requirement of Section 139 and 140 of the Companies Act, 2013 in respect of the appointments have been duly complied with.

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Conclusion: Therefore, Mr. X is liable for misconduct under clause 8 and Clause 9 since he accepted the appointment without communicating with previous auditor as well as for not verifying the compliance of statutory requirements.

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;

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(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. [**Following activities have been decided by the Council under "h" above :-(i) Acting as Insolvency Professional;(ii) Non-Assurance Services to Non-Audit Clients]**

Illustration 19

Mr. P a practicing chartered accountant acting as liquidator of AB & Co. charged his professional fees on percentage of the realization of assets.

Restriction on fees based on a Percentage: According to Clause (10) 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 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.

However, CA Regulation allow the Chartered Accountant in practice to charge the fees in respect of any professional work which are based on a percentage of profits, or which are contingent upon the findings or results of such work, in the case of a receiver or a liquidator, and the fees may be based on a percentage of the realization or disbursement of the assets.

In the given case, Mr. P, a practicing Chartered Accountant, has acted as liquidator of AB & Co. and charged his professional fees on percentage of the realisation of assets.

Conclusion: Therefore, Mr. P shall not be held guilty of professional misconduct as he is allowed to charge fees on percentage of the realisation of assets being a liquidator.

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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.

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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.

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(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) provided that the member and/or any of his relatives do not hold substantial interest in such concern.

(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 -

  (i) 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 profits) carrying not less than twenty per cent 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:

    (a) One or more relatives of the member;

    (b) Any concerns in which any of the persons referred to above has a substantial interest;

  (ii) 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

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above are entitled in the aggregate, at any time during the relevant years to not less than twenty percent 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 who is not a Managing Director or Whole time Director and is required only in the Board Meetings of the company and not paid any remuneration except for attending such meetings.

(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 unless he or any of his partners is interested in such Company as an auditor, 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 cannot engage (unless permitted by the Council so to engage) in any business or occupation other that the profession of Chartered Accountant but he can be a director of a Company (not being a managing director or

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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 Accountants. Therefore, members are not required to obtain specific permission of the Council in such cases. It must be clarified that under Section 25 of the Chartered Accountants Act, no Company can practise as a Chartered Accountant.

(c) Member in practice in a HUF doing business - "A member of the Institute can acquire interest in family business in any of the following manner:

(i) as a proprietary firm

(ii) as a partnership firm

(iii) in the name and style of Hindu Undivided Family as its Karta or a member.

It would be necessary for the members to provide evidence that interest in the family business concern devolved on him as a result of inheritance/succession/partition of the family business. It is also necessary for the member to show that he was not actively engaged in carrying on the said business and that the family business concern in question was not created by himself.

To establish his case, the member should furnish a declaration in the prescribed format and the documents evidencing above for consideration to the concerned Decentralized Office."

A member in practice engaged as Karta of a HUF doing family business, will be within the limit prescribed by Council if he makes investments from the funds pertaining to HUF only, provided, he is not actively engaged in the management of the said business.

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

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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.

Illustration 20

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.

Specific Permission to be Obtained: 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.

Illustration 21

Mr. A, a practicing Chartered Accountant, took over as the executive chairman of Software Company on 1.4.2023. On 10.4.2023 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 01.04.2023 and applied for

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permission on 10.04.2023. On the basis of these facts, he was engaged in other occupation between the period 01.04.2023 and 10.04.2023, 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.

Illustration 22

CA. 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'.

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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.

(viii) 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.

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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. It may be noted that the revised SA 700 mandates mentioning of Membership No. and Firm Registration No. Members' attention is also drawn towards UDIN Guidelines of the Institute in 2018.

Illustration 23

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.

Illustration 24

CA. Smart, a practicing Chartered Accountant was on Europe tour between 15-9-23 and 25-9-23. On 18-9-23 a message was received from one of his clients requesting for a stock certificate to be produced to the bank on or before 20-9-23. 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.

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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 dose not restricts 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.

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[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.]

Illustration 25

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

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unreplied. Held that he was guilty under Clause (11) of Part I and Clauses (1) and (3) of Part III of the First Schedule.

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.

Illustration 26

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.

Illustration 27

Mr. X, a Chartered Accountant, employed as a paid Assistant with a Chartered Accountant firm, leaves the services of the firm on 31st December, 2023. 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.

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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 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.

Illustration 28

YKS & Co., a proprietary firm of Chartered Accountants was appointed as a concurrent auditor of a bank. YKS, the proprietor, used his influence to get a loan and thereafter failed to repay the loan.

Disrepute to the Profession: 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

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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 Accountants 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. The accountant's duty not to disclose continues even after the completion of his assignment.

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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 does 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 sought from 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.

There is a difference between sharing of working papers and sharing of information. So far as the information is concerned, he can provide the same to the client or to a Regulatory body after obtaining the consent of the client.

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

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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.

Illustration 29

Mr. P, 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. Ph 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) 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.

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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.

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.

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

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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 2019)"** issued by the Council in January 2019. This Guidance Note provides guidance on compliance with the provisions of the Companies Act, 2013 and the **Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018** relating to the reports required to be issued by chartered accountants in prospectus issued by the companies for the offerings made in India.

A Chartered Accountant issued 97 Projection Statements for certain Individuals without verifying the basic documents and on the basis of which the Bank had extended the loan amount. Afterwards, the Bank revealed that persons for whom the Respondent had issued Financial Statements did not have any business/source for repayment of loan. Accordingly, Chartered Accountant will be held, guilty of professional misconduct falling within the meaning of Clauses (3), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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.

(i) If the opinions of auditors are to command respect and the confidence of the public, it is essential that it must be free of any interest which is likely to affect their independence. Since financial interest in the business can be a substantial interest and one of the important factors which may disturb independence, the existence of such an interest direct or indirect affects the opinion of the auditors. As per this clause, an auditor should not express his opinion on financial statements of any business or enterprise wherein he has a substantial interest. This is intended to assure the public as regards the faith and confidences that could be reposed on the independent opinion expressed by the auditors.

(ii) For the purpose of this Clause, the expression "Substantial Interest" shall have meaning as is assigned thereto, under Appendix (9) of the Chartered Accountants Regulations, 1988. (**see Clause 11 of Part I of First Schedule**).

(iii) The words "financial statements" used in this clause would cover both reports and certificates usually given after an examination of the accounts or the financial statement or any attest function 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

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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.

(iv) 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.

(v) Member must take care to see that they do not land themselves in situations where there could be conflict of interest and duty.

6. For example, where a Chartered Accountant is appointed the Liquidator of a Company, he should not qua a Chartered Accountant himself, audit the Statement of Accounts to be filed under Section 348(1) of the Companies Act, 2013. The audit in such circumstances should be done by a Chartered Accountant other than the one who is the Liquidator of the Company.

(vi) In this connection, the Council has decided not to permit a Chartered Accountant in employment to certify the financial statements of the concern in which he is employed, or of a concern under the same management as the concern in which he is employed, even though he holds certificate of practice and that such certification can be done by any Chartered Accountant in practice. This restriction would not however apply where the certification is permitted by any law. The Council has also decided that a Chartered Accountant should not by himself or in his firm name:-

a. accept the Auditorship of a college, if he is working as a part-time lecturer in the college.

b. accept the Auditorship of a Trust where his partner is either an employee or a trustee of the Trust.

The Council has, in this connection, issued the following guidelines:

Requirements of Clause applicable to all Attest Functions

(vii) Many new areas of professional work have been added, e.g., Tax Audit, GST 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.

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(viii) Some of the situations which may arise in the applicability of Clause (4) read with the definition of "Substantial Interest" (**see Clause 11 of Part I of First Schedule**).and other statutory prohibitions 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 (not being a company).

   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.

   (a) An enterprise/concern of which a member is either an owner or a partner

   The holding of interest in the business or enterprise (not being a company) 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 shall not audit financial statements of such business or enterprise.

   (b) 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 (not being a company) 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, desist 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.

   (a) Where the member is holding a position in the Company as Director, officer or employee

   Section 141(3)(b) of the Companies Act, 2013 specifically prohibits a member from auditing the accounts of a Company in which he is an officer or employee of the Company, or in the employment of an officer or an employee of the

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Company (irrespective of the question of substantial interest).

Moreover, in case the member who is Director Simplicitor (general permission) in a Company, the Council has prohibited such member from auditing the accounts of a Company, whether or not he holds substantial interest in the Company.

In case the member seeks specific permission of the Council to be Whole Time or Managing Director in a Company, he would, on grant of such permission, not be entitled either to engage in attest functions (which includes audit), or to hold substantial interest in the Company. 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.

(b) Where the member is not holding a position in the Company, but holding any security or interest

Section 141(3) (d)(i) of Companies Act, 2013 disqualifies a person from being Auditor of a Company, if he holds any security or interest in the Company, or its subsidiary, or holding or associate company or a subsidiary of such holding Company.

(c) Where the partner of the member is an officer or employee of a company

Section 141(3)(c) of Companies Act, 2013 disqualifies a member from being the auditor of a Company, where the partner of such member is an officer or employee of the Company.

(d) Where the partner of the member is holding any security or interest in the Company

Section 141(3) (d)(i) of Companies Act, 2013 bars a person from being auditor of a Company, if his partner holds any security or interest in the Company, or its subsidiary, or holding or associate company or a subsidiary of such holding Company.

(e) Where the relative of the member is a director or is in the employment of the Company as a director or key managerial person

Section 141 (3) (f) of Companies Act, 2013 bars a person from accepting audit of a Company where the relative of the member is director or is in the

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employment of the Company as a director or key managerial person.

(f) Where the relative of the member is holding any security or interest in the Company

Section 141(3)(d) (i) of Companies Act, 2013, read with Rule 10 of Companies (Audit and Auditors) Rules, 2014 bars a person from being auditor of a Company, if his relative holds security or interest in the Company, or its subsidiary, or holding or associate company or a subsidiary of such holding Company of face value exceeding Rupees One Lakh.

(ix) It is not permissible for a member to undertake the assignment of certification, wherein the client is relative of the member. The "relative" for this purpose would refer to the definition mentioned in Accounting Standard (AS)-18.

(x) An accountant is expected to be no less independent in the discharge of his duties as a tax consultant or as a financial adviser than as auditor. In fact, it is necessary that he should bear the same degree of integrity and independence of mind in all spheres of his work. Unless this is done, the accounts of entities audited by Chartered Accountants or statements made by them during the course of assessment proceedings would not be relied upon as correct by the authorities.

(xi) **Members not to write Books of Account for auditee clients:** The Council has clarified that the members are not permitted to write the books of account of their auditee clients.

(xii) **Statutory auditor not to be the Internal Auditor simultaneously**: An Auditor appointed by an entity under the Companies Act or any other statute shall not be the Internal Auditor of the same entity.

(xiii) **Internal auditor not to be the Tax auditor simultaneously:** An Internal Auditor of an assessee, whether working with the organization or an independently practicing Chartered Accountant irrespective of being an individual Chartered Accountant or a firm of Chartered Accountants cannot be appointed as its Tax Auditor.

(xiv) **Internal Auditor not to be the GST Auditor simultaneously:** The Internal Auditor of an entity cannot undertake GST Audit of the same entity.

(xv) **Cooling off period after completion of tenure as Director:** A member shall not accept the assignment of audit of a Company for a period of two years from the date of completion of his tenure as Director, or resignation as Director of the said Company.

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(xvi) **Members to satisfy whether appointment is as per the statute:** 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 and regulations made thereunder.

(xvii) In case the appointment is to be authorised by the regulatory authorities such as in the case of co-operative societies, trusts etc. then the member must satisfy whether such regulatory authorities have authorised 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 concerns, the member must ensure that a letter of appointment/engagement is given by the firm/sole proprietor before he accepts the appointment/ engagement.

(xviii) Section 288 of Income Tax Act, 1961 describe the disqualifications for the purpose of Tax Audit.

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 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

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employers in the normal course of their duties and not meant to be submitted to any outside authority.

Illustration 30

Mr. J, 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. J 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. J has failed to disclose this fact in his report, he is attracted by the provisions of professional misconduct under Clause (5.

Conclusion: Mr. J will be liable 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.

Illustration 31

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

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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.

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Illustration 32

CA C who conducted statutory 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.

Failed to exercise 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".

In the instant case, CA C 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 C is guilty of professional misconduct as per Clause (7) of Part I of Second Schedule of Chartered Accountants Act, 1949.

Illustration 33

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).

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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.

Conclusion: 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 chartered 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.

7. 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."

For manner of auditor's reporting in such situations, reference may be made to SA 705(Revised), "Modifications to the Opinion in the Independent Auditor's Report".

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

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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 aforestated certificates. Thus, he was guilty under clause (7) and (8).

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)]*

Where the Respondent had failed to report on the Bank Account which was opened by the client in the capacity as a proprietor which included lot of variations, i.e., Account Number was different and the capacity in which Account was opened was also different. As a Professional, the Respondent ought to have copies of Bank Account which could easily establish the fact that the Bank Account was opened and operated proprietary name but he could not do that. Hence, it was observed that the Respondent was not only negligent in his duties in respect of auditing of bank transactions but also, failed to obtain sufficient information for expressing an opinion. The Respondent was held guilty of professional misconduct falling within the meaning of Clauses (7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act 1949. *[P. Arun vs. N. Raja Ganesh, (2014)]*

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Illustration 34

Mr. A, a Chartered Accountant was the auditor of 'A Limited'. During the financial year 2022-23, the investment appeared in the Balance Sheet of the company of ₹ 12 lakh 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 (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

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terms from the various pronouncements of the Institute is issued by way of Engagement and Quality Control Standards, Statements, General Clarifications, Guidance Notes Technical Guides, Practice Manuals, Studies and Other Papers. (ref.)

Audit of Listed Companies: Pursuant to SEBI Notification, Statutory Audit of Listed Companies under the Companies Act, 2013 shall be done by only those auditors who have subjected themselves to the Peer Review process of the Institute, and hold a valid certificate issued by the Peer Review Board of the ICAI.

FRN and Membership No.: The members are required to mention the Membership number and Firm registration number to all reports issued pursuant to any attestation engagements, including certificates, issued by them as proprietor of/ partner in the said firm.

Unique Document Identification Number (UDIN): The members may note that UDIN is mandatory from 1st July, 2019 on all Corporate/ Non- Corporate Audit, Attest and Assurance Functions. Thus, a member of the Institute in practice shall generate Unique Document Identification Number (UDIN) for all kinds of the certification, GST and Tax Audit Reports and other Audit, Assurance and Attestation functions undertaken/signed by him.

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.

8. 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:

Certifying figures of circulation of Newspapers etc.: 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.

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Verification on behalf of Banks: 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.

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 ***short*** 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.

Illustration 35

A charitable institution entrusted ₹10 lakhs with its auditors M/s R & Co., a Chartered Accountant firm, to invest in a specified securities. The auditors 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

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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 R & 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 R & 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 and Guidelines made by Council thereunder. Any violation either of these Guidelines or the Act or the Regulations by a member would amount to misconduct under this part.

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

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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.

Where a Chartered Accountant who was employed as a manager of a firm of Registered Accountants, applied for admission as Fellow of the Institute stating that he was a partner, while he was not. Held that the Chartered Accountant was guilty of misconduct as he had made the statement that he was a partner knowing it to be false. *[J.R. Chatrath, (1952)]*

A Member had during the course of the hearing before Disciplinary Committee given a wrong statement duly verified and also a statement on oath knowing it to be false. He was found guilty in terms of this clause. *[K.S. Dugar, (1987)]*

In spite of repeated reminders a Chartered Accountant failed to reply to the letters of the Institute asking him to confirm the date of leaving the services by the Paid Assistant. Held, the Chartered Accountant was guilty of professional misconduct under the Clause. *[A. Umanath Rao, [1965)]*

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.

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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** ***(issued under Clause (1) of Part-II of Second Schedule to The Chartered Accountants Act, 1949) 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, 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

This Chapter is being omitted.

Chapter IV

Opinion on financial statements when there is substantial interest

This Chapter is being omitted.

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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.

Illustration 36

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

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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, 44ADA[1] *and 44AE 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.

[1] As inserted by the Council pursuant to decision at its 368th Meeting held on 10th to 12th Aug., 2017 (Section 44AF, earlier appearing, was repealed).

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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 **assessment** year in the format as may be prescribed by the Council.

The limit on number of tax audit assignments per partner in a CA Firm may be distributed between the partners in any manner whatsoever. However, it should be in accordance with the Standard on Quality Control (SQC) 1: Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements.

Illustration 37

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

During the assessment year 2022-23, Mr. G 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 whosoever 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

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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. G has signed 290 tax audit reports consisting of both corporate and non-corporate assesse 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. G 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, 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 **along with other expenses, if any, incurred by the auditor in connection with the audit, shall be considered as "undisputed audit fees".**

Explanation 2: For this purpose, "sick unit" shall mean a unit registered for not less than five years, which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.

Illustration 38

Mr. C accepted the statutory audit of M/s PSU Ltd., whose net worth is negative for the year 2021-22. The audit was to be conducted for the year 2022-23. The audited accounts for the year 2022-23 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.

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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 2021-22.

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 141 of the Companies Act 2013.

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.

Explanation:

1. For the above purpose, the "specified number of audit assignments" means –

   (a) in the case of a Chartered Accountant in practice or a proprietary firm of Chartered Accountant, 30 audit assignments whether in respect of private Companies or other Companies, with the exception of one person Companies and dormant companies.

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(b) in the case of Chartered Accountants in practice, 30 audit assignments per partner in the firm, whether in respect of private Companies or other Companies, with the exception of One person Companies and dormant companies[2].

2. 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.

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

[2] As incorporated pursuant to decision of Council at its 388th Meeting held on 6th and 7th Feb., 2020.

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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.

Illustration 39

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.

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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 accepts 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 include 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 or a relative of such member or partner 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 ₹ 100,000/-.

Illustration 40

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 ₹ 2,50,000 on progressive basis in respect of the tax audit for the year ended 31.3.2023. The audit report was, however, signed on 25.5.2023.

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 ₹ 1,00,000/-.

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.

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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 ₹ 2,50,000 in respect of the tax audit for the year ended 31.3.2023 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).

Chapter XIII
Guidelines on Tenders

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.

Chapter XIV
Unique Document Identification Number (UDIN) Guidelines

Whereas, to curb the malpractice of false certification/attestation by the unauthorized persons & to eradicate the practice of bogus certificates and to save various regulators, banks, stakeholders etc. from being misled, the Council of the Institute decided to implement an innovative concept to generate Unique Document Identification Number (UDIN) mandatorily for all kinds of the certificates/GST and Tax Audit Reports and other attest function in phased manner, for which members of the ICAI were notified through the various announcements published on the website of ICAI www.icai.org at the relevant times.

A member of the Institute in practice shall generate Unique Document Identification Number (UDIN) for all kinds of the certification, GST and Tax Audit Reports and other Audit, Assurance and Attestation functions undertaken/signed by him which made mandatory from the following dates through announcements published on the website of the ICAI www.icai.org at the relevant time: -

- For all Certificates w.e.f. 1st February, 2019.
- For all GST and Tax Audit Reports w.e.f. 1st April, 2019.
- For all other Audit, Assurance and Attestation functions w.e.f. 1st July, 2019.

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Chapter XV
Guidelines for Networking

Concept: To enhance their ability to provide professional services, firms frequently form larger structures with other firms and entities. Whether these larger structures create a network depends on the particular facts and circumstances and does not depend on whether the firms and entities are legally separate and distinct.

For example, a larger structure may be aimed only at facilitating the referral of work, which in itself does not meet the criteria necessary to constitute a network. Alternatively, a larger structure might be such that it is aimed at co-operation and the firms share a common brand name, a common system of quality control, or significant professional resources and consequently is deemed to be a network.

The judgment as to whether the larger structure is a network shall be made in light of whether a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that the entities are associated in such a way that a network exists. This judgment shall be applied consistently throughout the network.

Where the larger structure is aimed at co-operation and it is clearly aimed at profit or cost sharing among the entities within the structure, it is deemed to be a network. However, the sharing of immaterial costs does not in itself create a network. In addition, if the sharing of costs is limited only to those costs related to the development of audit methodologies, manuals, or training courses, this would not in itself create a network. Further, an association between a firm and an otherwise unrelated entity to jointly provide a service or develop a product does not in itself create a network.

Where the larger structure is aimed at cooperation and the entities within the structure share common ownership, control or management, it is deemed to be a network. This could be achieved by contract or other means.

Where the larger structure is aimed at co-operation and the entities within the structure share common quality control policies and procedures, it is deemed to be a network. For this purpose, common quality control policies and procedures are those designed, implemented and monitored across the larger structure.

Where the larger structure is aimed at co-operation and the entities within the structure share a common business strategy, it is deemed to be a network. Sharing a common business strategy involves an agreement by the entities to achieve common strategic objectives. An entity is not deemed to be a network firm merely because it co- operates with another entity solely to respond jointly to a request for a proposal for the provision.

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Where the larger structure is aimed at co-operation and the entities within the structure share the use of a common brand name, it is deemed to be a network. A common brand name includes common initials or a common name. A firm is deemed to be using a common brand name if it includes, for example, the common brand name as part of, or along with, its firm name, when a partner of the firm signs an audit report.

Even though a firm does not belong to a network and does not use a common brand name as part of its firm name, it may give the appearance that it belongs to a network if it makes reference in its stationery or promotional materials to being a member of an association of firms. Accordingly, if care is not taken in how a firm describes such memberships, a perception may be created that the firm belongs to a network.

Where the larger structure is aimed at co-operation and the entities within the structure share a significant part of professional resources, it is deemed to be a network. **Professional resources include:**

- Common systems that enable firms to exchange information such as client data, billing and time records;
- Partners and staff;
- Technical departments that consult on technical or industry specific issues, transactions or events for assurance engagements;
- Audit methodology or audit manuals; and
- Training courses and facilities.

The determination of whether the professional resources shared are significant, and therefore the firms are network firms, shall be made based on the relevant facts and circumstances. Where the shared resources are limited to common audit methodology or audit manuals, with no exchange of personnel or client or market information, it is unlikely that the shared resources would be significant. The same applies to a common training endeavor. Where, however, the shared resources involve the exchange of people or information, such as where staff are drawn from a shared pool, or a common technical department is created within the larger structure to provide participating firms with technical advice that the firms are required to follow, a reasonable and informed third party is more likely to conclude that the shared resources are significant.

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Forms of the Network :

The different forms of Network can be as under:-
A network can be constituted as a mutual entity which will act as a facilitator for the constituents of the Network. In such a case the Network itself will not carry out any professional practice.
A network can be constituted as a partnership firm subject to the condition that the total number of partners does not exceed twenty.
A network can be constituted as a Limited Liability Partnership subject to the provision of the Chartered Accountant Act and Rules and such other laws as may be applicable.
A network can be constituted as company subject to the guidelines prescribed by Institute for corporate form of practice and formation of management consultancy services company.
Network Firms shall consist of sole Practitioner/proprietor, partnership or any such entity of professional accountants as may be permitted by the Act.
A firm is allowed to join only one network.
Firms having common partners shall join only one Network.

Approval of Name of Network amongst firms registered with Institute:

1. The Network may have distinct name which should be approved by the Institute. To distinguish a "Network" from a "firm" of Chartered Accountants, the words "& Affiliates" shall be used after the name of the network and the words "& Co." / "& Associates" shall not be used. The prescribed format of application for approval of Name for Network is at Form 'A' (enclosed). The names of the network may be as mentioned in Appendix II.

2. Provisions of Regulation 190 of the Chartered Accountants Regulations, 1988 shall be applicable to the name of Network. However, even if a name is approved and subsequently it is found that the same is undesirable then, the said name may be withdrawn at any time by the Institute. The Institute shall reject any undesirable name and the provisions in respect of names of companies as prescribed in the Companies Act, 1956 shall be applicable in spirit.

3. The Institute shall approve or reject the name of the Network and intimate the same to the Network at its address mentioned in Form 'A' within a period which shall not be later than 30

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days from the date of receipt of the said Form.

4. Mere approval of the name of the Network shall not entitle the Network to carry on practice in its own name.

Registration of Network with entities in India

1. **After the name of a Network is approved as per provision under Guideline 5, the Institute same shall reserve such name for a period of three (3) months from the date of approval.**
2. **The Network shall get itself registered with the Institute by applying in Form B within the period of 3 months, failing which the name assigned shall stand cancelled on the expiry of the said period.**
3. **Registration of Network with Institute is mandatory.**
4. **If different Indian firms are networked with a common Multinational Accounting Firm, they shall be considered as a part of network.**

Listing of Network with entities outside India

1. **The duly authorized representative(s) of the Indian Member firm (s)/Member constituting the Network with entities outside India shall file a declaration with the Institute in Form `D' for Listing of such Network within 30 days from the date of entering into the Network arrangement.**
2. **Proprietary/individual members, partnership firms as well as members in LLP or any such other entity of members as may be permitted by the Act, shall be permitted to join such network with entities outside India provided that the proprietary/individual members, partnership firms as well as members in LLP or any such other entity of members are allowed to join only one network and firms having common partners shall join only one such network.**

Change in constitution of registered Network:

In case of change in the constitution of registered Network on account of any entry into or exit from the Network, the network shall communicate the same to the Institute by filing Form 'C' within a period of thirty (30) days from the date of change in the constitution.

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Ethical Compliance:

Once the relationship of network arises, it will be necessary for such a network to comply with all applicable ethical requirements prescribed by the Institute from time to time in general and the following requirements in particular: -

1. If one firm of the network is the statutory auditor of an entity then the associate [including the networked firm(s)] or the said firm directly/indirectly shall not accept the internal audit or book-keeping or such other professional assignments which are prohibited for the statutory auditor firm.
2. The guidelines of ceiling on Non-audit fees is applicable in relation to a Network as follows: -
   i) For a Network firm who is doing statutory audit (including its associate concern and/or firm(s) having common partnership), it shall be the same as mentioned in the said notification; and
   ii) For other firms of the same Network collectively, it shall be 3 times of the fee payable for carrying out the statutory audit of the same undertaking/ company.
3. In those cases where rotation of firms is prescribed by any regulatory authority, no member firm of the network can accept appointment as an auditor in place of any member firm of the network which is retiring.
4. The Network may advertise the Network to the extent permitted by the Advertisement Guidelines issued by Institute. The firms constituting the network are permitted to use the words "Network Firms" on their professional stationery.
5. The constituent member firms of a Network and the Network shall comply with all the Ethical Standards prescribed by the Council from time to time.

Consent of Client:

The effect of registration of network with Institute will be deemed to be a public notice of the network and therefore consent of client will be deemed to be obtained.

Framework of Internal Byelaws of Network:

To streamline the networking, a network shall formulate operational bye-laws. Bye-laws may contain the following clauses on which the affiliates of the network may enter into a written agreement among themselves:

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(i) Appointment of a Managing Committee, from among the managing partners of the member firms of the network and the terms and conditions under which it should function. The minimum and maximum number of members of the Managing Committee shall also be agreed upon.

(ii) Administration of the network

(iii) Contribution of membership fees to meet the cost of the administration of the network.

(iv) Identifying a partner of any of the member firms of the network to be responsible for the assignment (engagement partner)

(v) Dispute settlement procedures through arbitration and conciliation

(vi) Development of training materials for members of the network

(vii) Issue of News-letters for staff and clients

(viii) Development of software for different types of assignments

(ix) Development and maintenance of data bases relevant for different types of assignments

(x) Library

(xi) Appointment of a technical director to whom references can be made

(xii) Determining the methodology for drawing resources from each member firm

(xiii) Determining compensation to member firms for resources to be drawn from them

(xiv) Peer review of the member firms

These clauses are illustrative.

9. Illustrative examples of names of Network: -

(a) If the Network is a Mutual Entity or Partnership Firm:

AB & Affiliates

(b) If the Network is a LLP:

AB Affiliates LLP

(c) If the Network is a Limited Company:

AB Affiliates P. Ltd/Limited

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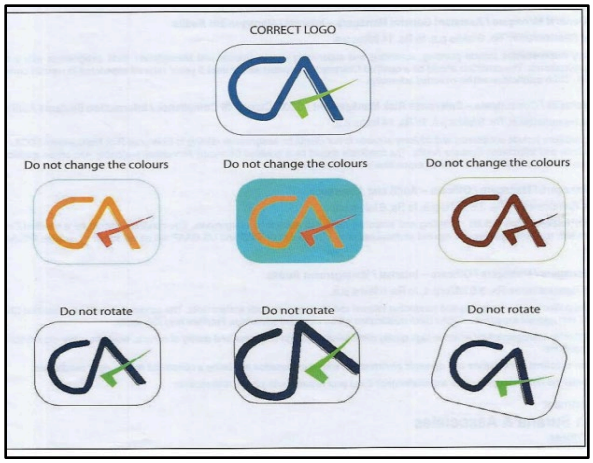
Chapter XVI
Logo Guidelines

The logo consists of letter 'CA' with a tick mark inside a rounded rectangle with white background. The letters CA have been put in blue, the corporate colour which not only stands out on the background but also denotes creativity, innovativeness, knowledge, integrity, trust, truth, stability and depth. The upside down tick mark typically used by Chartered Accountants, has been used to symbolize the wisdom and value of the professional. The green colour in the tick mark signifies growth, prosperity, harmony and freshness.

Members are encouraged to use the new logo, as published here as it is. Do not change the design and colours, including the white background. Refrain from rotating or tilting the logo. The correct and incorrect usage of the logo is explained as under:



Chapter XVII
Guidelines for Corporate Form of Practice

The Council decided to allow members in practice to hold the office of Managing Director, Whole-time Director or Manager of a body corporate within the meaning of the Companies Act provided that the body corporate is engaged exclusively in rendering Management Consultancy and Other Services permitted by the Council in pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949 and complies with the conditions(s) as specified by the Council from time to time in this regard.

The members can retain full time Certificate of Practice besides being the Managing Director, Whole-time Director or Manager of such Management Consultancy Company. There will be no restriction on the quantum of the equity holding of the members, either individually and/ or along with the relatives, in such Company. Such members shall be regarded as being in full- time practice and

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therefore can continue to do attest function either in individual capacity or in Proprietorship/Partnership firm in which capacity they practice and wherein they are also entitled to train articled/audit assistants.

The name of the Management Consultancy Company is required to be approved by the Institute and such Company has to be registered with the Institute. The guidelines alongwith the prescribed application forms for approval of name and registration, provisions of ethical compliance and other details have been issued and the same will come into force w.e.f. 1.10.2006.

On abundant caution, it may be clarified that no audit practice can be done in Corporate Form. The consultancy practice hitherto done in Individual or Firm Status alone is now intended to be permitted in Corporate Form also.

Ethical Compliance: (i) Once the Management Consultancy Company is Registered with the Institute as per the Guidelines, it will be necessary for such a Company to comply with the following requirements: -

(a) If the individual practitioner/sole-proprietorship firm/partnership firm is the statutory auditor of an entity then the Management Consultancy Company should not accept the internal audit or book-keeping or such other professional assignments, which are prohibited for the statutory auditor firm.

(b) The Notification No. 1-CA(7)/60/2002 dated 8th March, 2002 (enclosed) in respect of ceiling on Non-audit fees is applicable in relation to a Management Consultancy Company.

(c) The Management Consultancy Company shall comply with clauses (6) & (7) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 and such other directives as may be issued by the Institute from time to time.

(ii) The Management Consultancy Company shall give an undertaking that it shall comply with clauses (6) & (7) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 and such other directives as may be issued by the Institute from time to time.

Object of Management Consultancy Company: The Management Consultancy Company shall engage itself only in Management Consultancy & Other Services. The Management Consultancy Company shall give an undertaking that it shall render only Management Consultancy & Other Services prescribed by the Council pursuant to powers under section 2 (2)(iv) of the Chartered Accountants Act, 1949.

Note: Students are advised to refer Appendix 'D' of the Code for more details.

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9.1 Council Guidelines for Advertisement, 2008

1. Write up -

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 will neither approve a propose write-up, nor owns any responsibility whatsoever for such contents or claims by the writer Member(s)/ Firm(s).

The write-up shall comply with the following conditions:-

A. It shall be honest and truthful.

B. There shall be no exaggerated claims for the services offered by the member or the Firm, or the qualifications or experience of the member or any of the partners or any other person associated with the Firm.

C. It must not make any disparaging references or unsubstantiated comparisons to the work of others.

D. It should not be of a nature that may bring the profession into disrepute.

E. It should not contain testimonials or endorsements concerning Member(s) or names of clients (both the past and present) or the fees charged.

F. It should not contain any information about achievements /awards (except the awards given by the Central or State Governments or Regulatory bodies) or any other position held, or accreditation(s) granted by any organisation.

G. Monogram of any kind or use of any kind of catch words is not permissible.

H. The Membership No./FRN (as may be applicable) is mandatory to be mentioned in the write-up.

I. It should not be of font size exceeding 14.

J. It must not be violative of any provisions of Chartered Accountants Act, 1949, Chartered Accountants Regulations, 1988, Code of Ethics, 2020 or any Guideline of the Council

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The Institute of Chartered Accountants of India may issue a reasoned directive for removal or withdrawal of the whole write-up or of any part(s) thereof.

Advertisement through write-up

While advertising the services or details of Firms, the write-up may include only the following information:

(A) For Members

(i) CA……..Name

(ii) Membership No. with Institute

(iii) Age

(iv) Date of becoming ACA

(v) Date of becoming FCA

(vi) Date from which COP held

(vii) Recognized qualifications

(viii) Languages known

(ix) Telephone/Mobile/Fax No.

(x) Professional Address

(xi) Website

(xii) E-mail

(xiii) CA Logo

(xiv) Passport *style*[3] photograph

(xv) Details of Employees (Nos. -)

(a) Chartered Accountants -

(b) Other Professionals –

(c) Articles/Audit Assistants

(d) Other Employees

3 As ameanded by Council at its 388th Meeting held on 6th and 7th Feb., 2020.

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(xvi) Names of the employees and their particulars on the lines allowed for a member as stated above.

(xvii) Services provided

(a) .....

(b) .....

(c) .....

(xviii) Position held as Director or Managing Director in a Management Consultancy Company registered with the Institute[4].

(B) For Firms

(i) Name of the Firm ..... Chartered Accountants

(ii) Firm Registration No. with Institute

(iii) Year of establishment.

(iv) Professional Address(s) registered with the Institute (both Head Office and Branches)

(v) Working Hours

(vi) Tel. No(s)/Mobile No./Fax No(s)

(vii) E-mail

(viii) No. of partners

(ix) Name of the proprietor/partners and their particulars on the lines allowed for a member as stated above including passport *style*[5] photograph.

(x) CA Logo

(xi) Details of Employees (Nos. -)

(a) Chartered Accountants -

(b) Other professionals –

(c) Articles/Audit Assistants

(d) Other employees

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[4] As incorporated pursuant to decision of Council at its 388th Meeting held on 6th and 7th Feb., 2020.

[5] As amended by Council at its 388th Meeting held on 6th and 7th Feb., 2020.

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(xii) Names of the employees of the firm and their particulars on the lines allowed for a member as stated above.

(xiii) Services provided:

(a) .....

(b) .....

(c) .....

(xiv) Affiliation with a Network registered with the Institute[6]

The write-up may have the Signature, Name of the Member/ Name of the Partner signing on behalf of the firm, Place and Date.

2. Website of the CA Firms7

The Council has approved the detailed guidelines for posting the particulars on Website by Chartered Accountant(s) in practice and firm(s) of Chartered Accountants in practice :-

1. The Chartered Accountants and/or Chartered Accountants' Firms would be free to create their own Website. The following stipulations will be applicable on such websites:-
2. 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.
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

[6] As incorporated pursuant to decision of Council at its 388th Meeting held on 6th and 7th Feb. 2020.

[7] As amended and included under Guidelines for Advertisement pursuant to decision of Council at its 388th Meeting held on 6th and 7th Feb., 2020.

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Website. The Chartered Accountants would, however, be permitted to mention their Website address on their professional stationery and email.

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 assistants. (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. While the mention of names of clients is not permissible, members may take note of the following with regard to website of the Firm:-

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

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regulator and is made only till such period that the member works under the purview of such Regulator/ such requirements of the Regulator are in force. 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].

7. Display of Passport style photograph is permitted.

8. The members may include articles, professional information, bulletin boards, professional updation and other matters of larger importance or of professional interest on the website. Educational videos on topics of professional relevance are permissible.

9. 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. The Firms can provide document management facility with distinct log in and password facility to the clients to access copies of their documents on the Firm website.

10. The Firm can provide link of its page on Social Networking site. However, the members should not solicit people to visit or like their respective page(s) on such social Networking site.

11. The members/firms can provide on line advice to their clients who specifically request for the advice whether free of charge or on payment.

12. 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 moto or on complaint as provided under the Chartered Accountants Act, 1949.

13. The Website should ensure adequate secrecy of the matters of the clients handled through Website.

14. No Advertisement in the nature of banner or any other nature will be permitted on the Website.

15. 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.

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16. 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.

17. 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. But it should not amount to soliciting clients or professional work or advertisement of professional attainments or services. The Ethical Standards Board (ESB) of ICAI will decide in case there is any difficulty.

18. The Website should mention the information which is not at material variance from the information as per the ICAI's records.

3 Online Third Party Platforms

A number of non-Chartered Accountants' firms, corporates 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. No other service, besides consultancy and advice can be rendered through such 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.

4. Publication of Name or Firm Name by Chartered Accountants in the Telephone or other Directories published by Telephone Authorities or Private Bodies

The Chartered Accountants and Chartered Accountants Firms may have entries made in a Telephone Directory (in printed and electronic form) 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 subject to the following additional restrictions :-

(i) The entry should not appear in any other section/category except that of 'Chartered Accountants'.

(ii) The member/firm should belong to the town/city in respect of which the directory is being published.

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(iii) The order of the entries should not be in any manner other than alphabetical.

(iv) The entry should not be made in a differential or prominent manner giving the impression of publicity/advertisement.

(v) The entries should not be restricted and should be open to all the Chartered Accountants/firms of Chartered Accountants in the particular city/town in respect whereof the directory is published.

(vi) The members can also include their names in trade/ social directories.

6. Application based Service provider Aggregators

It is not permissible for members to list themselves with online Application based service provider Aggregators, wherein other categories like businessmen, technicians, maintenance workers, event organizers etc. are also listed.

7. Specialised Directories for limited circulation

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, directorships held and reasonable personal details and may state his outside interests. He should not, however, give the names of any of his clients.

8 Exemptions

1 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 name of 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) Advertisement for recruiting staff in the member's own office.

(b) Advertisement inserted on behalf of clients requiring staff or wishing to acquire or dispose of business or property.

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(c) Advertisement for the sale of a business or property by a member acting in a professional capacity as trustee, liquidator or receiver.

2 When advertising for staff, it is desirable that members should avoid the expression such as "a well-known firm", since this would savour of advertisement. Similar considerations apply to advertisements for articled assistants. 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.

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, 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.

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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 ***assistants,*** 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.

10.5 *Recommended Minimum Scale of Fees

The Institute has issued revised Minimum scale of Fees for the professional assignments of the members of ICAI. The recommended scale of Fees is to be charged as per the work performed for various professional assignments. The Fees has been recommended separately for Class-A, B and C cities.

10.5.1 Fees - Relative Size:

Differentiated disclosure requirements for non public interest entities and public interest entities are following:-

1. **For non Public Interest Entities (PIE)-**Disclosure is required where for two consecutive years, the gross annual professional fees from an audit client represent more than 40% of the total fees of the firm.

2. **For public interest entities-** Disclosure is required where for two consecutive years, the gross annual professional fees from an audit client represent more than 20% of the total fees of the firm.

Exemption from applicability of the above provision will be in case where total Fees received by Firm does not exceed 20 lacs of rupees.

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In addition, exemption from applicability of the above provision is also given in the case of audit of government Companies, public undertakings, nationalised banks, public financial institutions, regulators or where appointments of auditors are made by the Government.

Case Scenario

Synopsis: The case scenario underscores ethical and quality requirements to be complied with by statutory auditor of a listed company. Failure to perform audit of financial statements in accordance with Standards on Auditing can result in breakdown of trust of investors and public at large. The case involves issue of non-adherence to requirements of *SA 501, SA 550 and SA 505* by statutory auditor of a listed company.

Only major lapses have been considered for developing this case scenario for the sake of brevity.

The case scenario is presented in the following manner: -

I. Relevant provisions of Companies Act, 2013 and requirements of relevant Standards on Auditing

II. Relevant Clauses of Part I of Second Schedule to Chartered Accountants Act, 1949

III. Facts of the case

IV. Major lapses pointed out by NFRA, engagement partner's submissions and NFRA's contentions/findings

V. Conclusion including its basis

I. Relevant provisions of Companies Act, 2013 and requirements of relevant Standards on Auditing

[1] Section 132(4) of Companies Act, 2013

NFRA has power to investigate into matters of professional or other misconduct committed by any member or firm of chartered accountants registered under Chartered Accountants Act, 1949 for certain classes of bodies corporate. By virtue of this section, it has also got power to impose penalty on erring members and debarring members of firm from undertaking audit work.

[2] Relevant requirements of Standards on Auditing

- SA 501 requires that when inventory is material to the financial statements, the auditor shall obtain sufficient appropriate audit evidence regarding the existence and condition of inventory by attendance at physical inventory counting *unless impracticable*.

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It further requires that if attendance at physical inventory counting is *impracticable,* the auditor shall perform *alternative audit procedures* to obtain sufficient appropriate audit evidence regarding the existence and condition of inventory. If it is not possible to do so, the auditor shall *modify the opinion* in the auditor's report in accordance with SA 705.

- SA 550 requires auditor to obtain sufficient appropriate audit evidence about whether related party relationships and transactions have been appropriately *identified, accounted for and disclosed in the financial statements* in accordance with the applicable financial reporting framework.
- SA 505 requires that in case management refuses to allow the auditor to send a confirmation request, reasons adduced by management need to be inquired and audit evidence has to be sought for as to validity and reasonableness of reasons. Further, implications of such refusal on risks of material misstatement *including risk of fraud* and on nature, timing and extent of other audit procedures are to be evaluated.

  It further requires auditor to perform *alternative audit procedures* designed to obtain relevant and reliable audit evidence.

II. Relevant clauses of Part I of Second Schedule to Chartered Accountants Act, 1949

- Under clause 7 of Part I of Second Schedule to Chartered Accountants Act, 1949, a chartered accountant in practice shall be 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.
- Under clause 8 of Part I of Second Schedule to Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he 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 9 of Part I of Second Schedule to Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances.

III. Facts of the case

NFRA initiated action u/s 132(4) of Companies Act, 2013 for investigating into professional misconduct of engagement partner of an audit firm pursuant to information received from ROC,

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Mumbai regarding investigation conducted by Regional Director into affairs of WNLL, listed on SME segment of BSE. The key financial data for company for financial year 2016-17 was as under: -

Particulars	Amount (in ₹ crores)
Revenue from Operations	51.77
PBT	1.44
Inventory	20.60
Trade receivables	14.93
Trade payables	13.78

The engagement partner had issued an unmodified opinion for financial year 2016-17. The engagement partner was requested on 18.02.2022 to submit audit file and SQC1 policy of firm which was submitted by him vide email dated 18.03.2022. Subsequently, a show-cause notice was issued to engagement partner charging him with professional misconduct for failure to perform his duties as engagement partner.

IV. Major lapses pointed out by NFRA, engagement partner's submissions and NFRA's contentions/findings

[1] Failure to obtain audit evidence regarding existence and condition of inventory

The EP was charged with failure to obtain sufficient appropriate audit evidence regarding existence and condition of inventory by not attending physical inventory counting in accordance with SA 501.

	EP's submissions	*NFRA's contentions/findings*
1.	The appointment as statutory auditor was made on 18.4.2017. Therefore, it was not possible to attend physical verification of inventories as on 31.3.2017.	SA 501 requires if attendance at physical inventory count is ***impracticable***, ***alternative audit procedures*** shall be performed to obtain sufficient appropriate audit evidence regarding existence and condition of inventories. If it is not possible to so, the auditor shall ***modify*** opinion in accordance with SA 705. There was no documentation in audit file of audit procedures having been performed in this respect. Reliance was also placed on decision of PCAOB, US regulator in a similar case.

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2.	Inventory holding level was in accordance with past trends. Stock records were cross verified in respect of selected items and reconciled with entries of receipts and issue in books of accounts.	There was no documentation in audit file of audit procedures having been performed in this respect.

[2] Failure to identify related party and related party transactions

The EP was charged with failure to identify related parties and transactions with them. The company made almost 100% of sales to a related party which was not identified as such in annual report of the company for FY 2016-17.

	EP's submissions	*NFRA's contentions/findings*
1.	It was tried to be ascertained from management regarding existence of related parties and previous audit reports were also relied upon in this regard.	The related party to whom 100% of sales was made was previously identified as related party in financial statements for FY 2013-14. Since almost 100% of sales were to this party, EP should have applied ***professional skepticism*** to probe further into antecedents of the party. There is no evidence in audit file regarding this. Reliance was also placed on similar decision of PCAOB where it was held that auditor must evaluate whether related party transactions have been properly accounted for and disclosed in financial statements.

[3] Failure to obtain external confirmations for Trade receivables and Trade payables

The EP was charged with gross negligence for not obtaining direct confirmations of balances from debtors and creditors and with failure to perform any alternative audit procedure in absence of confirmations from debtors and creditors in accordance with SA 505.

	EP's submissions	*NFRA's contentions/findings*
1.	The company management had denied contact details of parties due to fear of losing the business information. Further, all debtors and creditors were outstanding for less than 6 months.	It shows that management had imposed a ***limitation on scope*** of audit. Limitations imposed by management may have other implications for audit such as ***evaluation of fraud risks and continuance of engagement as per SA 705.*** No assessment of fraud risk having been evaluated is available in audit file and there is no evidence of additional procedures

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		being performed by EP in absence of external confirmations. Reliance was also placed on PCAOB order in ***Satyam case*** in which failure during audit to obtain external confirmation of bank balances was highlighted.

V. Conclusion including its basis

The engagement partner did not comply with provisions of Chartered Accountants Act, 1949 and showed gross negligence and lack of due diligence in performing statutory audit. He didn't ensure audit quality and was grossly negligent of professional duties by not adhering to requirements laid down in relevant Standards on Auditing as discussed above. It led to issuance of audit report that was not backed by valid audit evidence and was lacking in audit quality.

The engagement partner was held guilty of professional misconduct under clauses 7, 8 and 9 of Part I of Second Schedule to Chartered Accountants Act, 1949. He was also penalized and debarred for a period of two years from undertaking any audit of financial statements or internal audit of the functions and activities of any company or body corporate.

Key Takeaways

- 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.
- A distinguishing feature of the accountancy profession is its acceptance of the responsibility to act in the public interest. Code of Ethics seeks to protect the interests of the profession as a whole. It is a shield that enables us to command respect.
- Part 1 of Code of ethics deals with requirements relating to complying with the Code, Fundamental Principles and Conceptual Framework, and is applicable to all professional accountants.
- The Code delineates integrity, objectivity, professional competence and due care, confidentiality and professional behaviour as fundamental principles governing professional ethics.

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- Part 2 of Code of ethics sets out requirements and application material for professional accountants in service when applying the conceptual framework. It does not describe all of the facts and circumstances, including professional activities, interests and relationships that could be encountered by professional accountants in service, which create or might create threats to compliance with the fundamental principles. Therefore, the conceptual framework requires professional accountants in service to be alert for such facts and circumstances.
- Part 3 of Code of ethics sets out requirements and application material for professional accountants in public practice when applying the conceptual framework.
- Part 4A and 4B of Code of ethics deal with independence standards for audit and review engagements (Part 4A) and assurance engagements other than audit and review engagements (Part 4B) respectively.
- There are specific provisions in Chartered Accountants Act, 1949 dealing with professional misconduct and other misconduct.
- Acts or omissions which comprise professional misconduct within the meaning 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.

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

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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]

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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 impact 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.

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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.

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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 an 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

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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,

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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

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.

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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 then 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 close (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

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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.

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.

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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.

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(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.

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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

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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. It is permissible for a practicing Chartered Accountant holding Certificate of Practice to become a member of the 'Board of Management' in Primary (Urban) Co-operative Banks.The Ethical Standards Board noted that the position of a member of 'Board of Management' in Primary (Urban) Co-operative banks (UCBs) and the role attached to that position is similar to that of a Director-Simiplicitor; where there is no involvement of a member in the day-to-day functioning/operations and not signatory etc. and only sitting fees for the services rendered are provided.
2. Member in practice cannot act as Trademark or Patent Attorney. However, Professional advice in relation to Intellectual Property Rights (IPR) is a routine professional work for a Chartered Accountants in practice and same is permissible under the provisions of the Chartered Accountants Act, 1949.
3. It is not permissible for a member in practice to accept the appointment of statutory audit of the society wherein immediate family member i.e., spouse or dependent, of member hold honorary position of one of the managing committee of the institutes governed by the society.
4. The Council decided that for the purpose of Appointment of an auditor when he is indebted to a concern, as dealt with under Chapter X of the Council General Guidelines, 2008, the term “auditor’ shall not include internal auditor, concurrent auditor or an auditor giving report to the Management. In other words, the provision relating to criteria/limit of indebtedness shall apply only to statutory audits.
5. A CA Firm may register itself on Udyog Aadhar, a web portal of Ministry Micro, Small and Medium Enterprises.
6. There is no prohibition for internal auditor of a company to acquire/purchase shares of the said Company.
7. It is not permissible for a member to use Messaging Applications to send messages to make people aware about his practice, and mention the services provided therein.
8. A Chartered Accountant in practice being Director Simplicitor in a Company cannot sign ROC Forms of the Company as it is a direct conflict of role.
9. A Chartered Accountant in practice can act as Authorized Representative of a Foreign Company, provided he is not the auditor of the said Company.

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10. It is permissible for two or more Chartered Accountants in practice collectively to have joint training session for their clients on GST, and share the fees collected from the clients thereof.

11. A chartered accountant in practice can provide services through kiosk only if the services provided are professional activities of a practicing chartered accountant, permitted under the Act.

12. A Chartered Accountant in service is allowed to take e-return registration if it does not conflict with employment obligation. However, he cannot certify the return.

13. In case where Chartered Accountant in practice is a non-executive director in a company, he or a Firm in which he is a partner, should not accept the appointment as a statutory auditor of a Company which is a joint venture of the original Company, as it would impact independence.

14. 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.

15. There is no conflict of interest in a Chartered Accountant, who is a member of a Trust, being the auditor of the said trust. It is subject to the exception where a particular statute governing a Trust prescribes prohibition on the member of the Trust to be its Auditor or otherwise where there is conflict of interest as per the provisions of Code of Ethics.

16. A Chartered Accountant in practice may engage himself as Registration Authority (RA) for obtaining digital signatures for clients.

17. 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 Rs 100,000* beyond the prescribed credit period limit on credit card given to him. (*As per the limit of indebtedness existing as on date.)

18. 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.

19. 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.

20. 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

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(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.

21. 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.

22. A chartered accountant in practice cannot become Financial Advisors and receive fees/commission from Financial Institutions such as Mutual Funds, Insurance Companies, NBFCs etc.

23. A chartered accountant cannot exercise lien over the client documents/records for non-payment of his fees.

24. 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.

25. It is not permissible for chartered accountants in practice to take agencies of UTI, GIC or NSDL.

26. It is permissible for a member in practice to be a settlor of a trust.

27. 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.

28. 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.

29. A chartered accountant who is the statutory auditor of a bank cannot for the same financial year accept stock audit/inspection 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.

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30. 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.

31. A concurrent auditor of a bank 'X' cannot be appointed as statutory auditor of bank 'Y', which is sponsored by 'X'.

32. 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).

33. 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 Simplicitor (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.

TEST YOUR KNOWLEDGE

Theoretical Questions

1. *P, a Chartered Accountant in practice provides management consultancy and other services to his clients. During 2023, 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. Is P guilty of professional misconduct?*

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. Is Mr. G guilty of professional misconduct?*

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. Discuss this in the light of Professional Ethics issued by ICAI.*

5. *Mr. X who passed his CA examination of ICAI on 18th July, 2022 and started his practice from August 15, 2022. On 16th August 2022, one female candidate approached him for*

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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. Is this website in compliance with guidelines issued by ICAI in this regard?*

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. Is this a misconduct?*

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.*

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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 the GST Act.

    (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?*

13. *Mr. A, a newly qualified Chartered Accountant, started his practice and sought clients through telephone calls from his family and friends, almost all of them employed in one or the other retail trade business. One of his friends Mr. X gave him an idea to start online services and give stock certifications to traders with Cash Credit Limits in Banks. Mr. A started a website with colorful catchy designs and shared the website address on his all social media posts and stories and tagged 30 traders of his local community with the caption "Easy Online Stock Certification Services". Besides, Mr. A entered in an agreement with a Digital Marketer to give him 5% commission on each service procured through him. Discuss if the actions of Mr. A are valid in the light of the Professional Ethics and various pronouncements and guidelines issued by ICAI.*

14. *Mr. D, a practicing CA, is appointed as a Director Simplicitor in XYZ Pvt. Ltd. After one year of appointment, Mr. D resigned as the Director and accepted the Statutory Auditor position of the company. Is Mr. D right in accepting the auditor position?*

15. *Mr. F, a Chartered Accountant, gave advisory services to PQR Pvt. Ltd. Further, he gave them GST consultancy, compilation engagement for historical financial information and helped in ERP set up. Later, the company turned out to be a part of a group of companies involved in money laundering. Mr. F was asked to provide details of the companies. Mr. F*

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refused on the grounds that he gave only consultancy services to the company and wasn't supposed to keep any information about the company. Is Mr. F right as per the guidelines issued by the ICAI?

16. *Mr. S, the auditor of ABC Pvt. Ltd. has delegated following works to his articles and staff:*

    i. *Issue of audit queries during the course of audit.*

    ii. *Issue of memorandum of cash verification and other physical verification.*

    iii. *Letter forwarding draft observations/financial statements.*

    iv. *Issuing acknowledgements for records produced.*

    v. *Signing financial statements of the company.*

    Is this correct as per the Professional Ethics and ICAI's guidelines and pronouncements?

17. *Mr. S is a practising chartered accountant based out of Chennai. During the weekends, he involved himself in equity research and used to advise his friends, relatives and other known people who are not his clients. Apart from this, he was also involved as a paper-setter for Accountancy subject in the school in which he studied. He also owned agricultural land and was doing agriculture during his free time. During the year 20X1, heavy losses were incurred in agricultural activity due to natural calamities and misfortune, and he lost almost all of his wealth and became undischarged insolvent. After a few court hearings, finally, in the year 20X3, he was declared discharged insolvent and obtained a certificate from the court stating that his insolvency was caused by misfortune without any misconduct on his part. You are required to comment on the above situation with reference to the Chartered Accountants Act, 1949 and Schedules thereto, (especially from the point of section 8: Entry of name in Register of Members).*

Hints/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,

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underwriting and portfolio management services. Thus, a chartered accountant in practice is not permitted to manage portfolios of his clients.

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

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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

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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 miscount 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.

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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 Illustration 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

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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 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

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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. As per Clause (1) of Part I of the Second Schedule of the Chartered Accountants Act, 1949, a Chartered Accountant in practice is 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.

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

Mr. A is wrong in seeking clients through family and friends. Creating a website is not a non-compliance provided it is in line with the guidelines issued by the Institute in this regard. One of the guidelines is that the website should not be in push mode. Further, mentioning of clients' names is also prohibited as per the guidelines.

In the given situation, Mr. A shared the website address on his all social media posts and stories and tagged 30 traders of his local community with the caption "Easy Online Stock

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Certification Services" mentioning his current clients as well. This is in complete contravention of the guidelines on website issued by the ICAI.

Thus, CA A would be held guilty of professional misconduct under clause 6 of Part 1 of First Schedule of the Chartered Accountants Act, 1949.

14. As per Clause (4) of Part I of the Second Schedule of the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he 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.

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.

As per the clarifications issued by the Council, a member shall not accept the assignment of audit of a Company for a period of two years from the date of completion of his tenure as Director, or resignation as Director of the said Company.

In the instant case, Mr. D, a practicing CA, is appointed as a Director Simplicitor in XYZ Pvt. Ltd. After one year of appointment, Mr. D resigned as the Director and accepted the Statutory Auditor position of the company. In view of above provisions Mr. D cannot accept the Directorship of the company until the completion of two years after his resignation.

Thus, CA D would be held guilty of professional misconduct under clause 4 of Part 1 of Second Schedule of the Chartered Accountants Act, 1949.

15. 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 issued such norms to be observed by the members of the profession who are in practice.

In the given situation, CA. F, gave GST consultancy, compilation engagement for historical financial information and helped in ERP set up along with advisory services to PQR Pvt. Ltd. Mr. F was asked to provide details of the companies as the company, turned out to be a part of a group of companies, involved in money laundering. Contention of Mr. F that he gave only consultancy services and compilation engagement for historical financial information to the company and wasn't supposed to keep any information about the company is not valid as

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Mr. F should have kept following information in compliance with KYC Norms which are mandatory in nature and shall apply in all assignments pertaining to attestation functions.

In the given case of PQR Pvt. Ltd., a Corporate Entity, Mr. F should have kept following information:

A. General Information

- Name and Address of the Entity
- Business Description
- Name of the Parent Company in case of Subsidiary
- Copy of last Audited Financial Statement

B. Engagement Information

- Type of Engagement

C. Regulatory Information

- Company PAN No.
- Company Identification No.
- Directors' Names & Addresses
- Directors' Identification No.

16. 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.

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.

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(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.

In the instant case, Mr. S, the auditor of ABC Pvt. Ltd. has delegated certain task to his articles and staff such as issue of audit queries during the course of audit, issue of memorandum of cash verification and other physical verification, letter forwarding draft observations/financial statements, issuing acknowledgements for records produced and signing financial statements of the company.

Therefore, Mr. S is correct in allowing first four tasks i.e. issue of audit queries during the course of audit, issue of memorandum of cash verification and other physical verification, letter forwarding draft observations/financial statements, issuing acknowledgements for records produced to his staff and articles.

However, if the person signing the financial statements on his behalf is not 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, Mr. S is wrong in delegating signing of financial statements to his staff.

Conclusion: In view of this, S would be guilty of professional misconduct for allowing the person signing the financial statements on his behalf to his articles and staff under Clause 12 of Part 1 of First Schedule of the Chartered Accountants Act, 1949.

17. Given situation can be visualised in following parts:

(A) Mr. S used to involve himself in equity research and used to advise his friends, relatives and other known people: As per the recent decisions taken by the Ethical Standards Board of ICAI, a Chartered Accountant in practice may be an equity research adviser, but he cannot publish a retail report, as it would amount to other business or occupation.

In the given case, though Mr. S is involved in doing equity research and in advising people, it is clear that he does not publish any retail report of his research. Hence, this act of Mr. S shall not make him guilty of professional misconduct.

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(B) Mr. S is involved in paper-setting for the Accountancy subject in the school where he studied. He also owns agricultural land and does agriculture activities: As per Clause 11 of Part I of First Schedule of Chartered Accountants Act and regulation 190A of Chartered Accountants Regulations, 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.

Further, Regulation 190A mentions the 'Permissions granted Generally' to engage in a certain category of occupations, for which no specific permission of Council is required. Those cases include:

- Valuation of papers, acting as paper-setter, head examiner or a moderator, for any examination.
- Owning agricultural land and carrying out agricultural activities.

Therefore, in the given case, the activities of Mr. S as a paper-setter and involvement in agricultural activities do not make him guilty of professional misconduct.

(C) **Mr. S was discharged insolvent: 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, 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. Here 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 aforementioned disabilities would constitute professional misconduct. The name of the person, who is found to have been subject at any time to any of the disabilities discussed in section 8, can be removed from the Register of Members by the Council.

In the given case, it is clearly stated that Mr. S was discharged insolvent, and he has also obtained from the court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part. Hence, Mr. S has not violated the provisions of Section 8, and he is not debarred from having his name entered in the Register of Members.

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