



Date: 1 April 2021

**VIRTUAL COACHING CLASSES
ORGANISED BY BOS (ACADEMIC), ICAI**

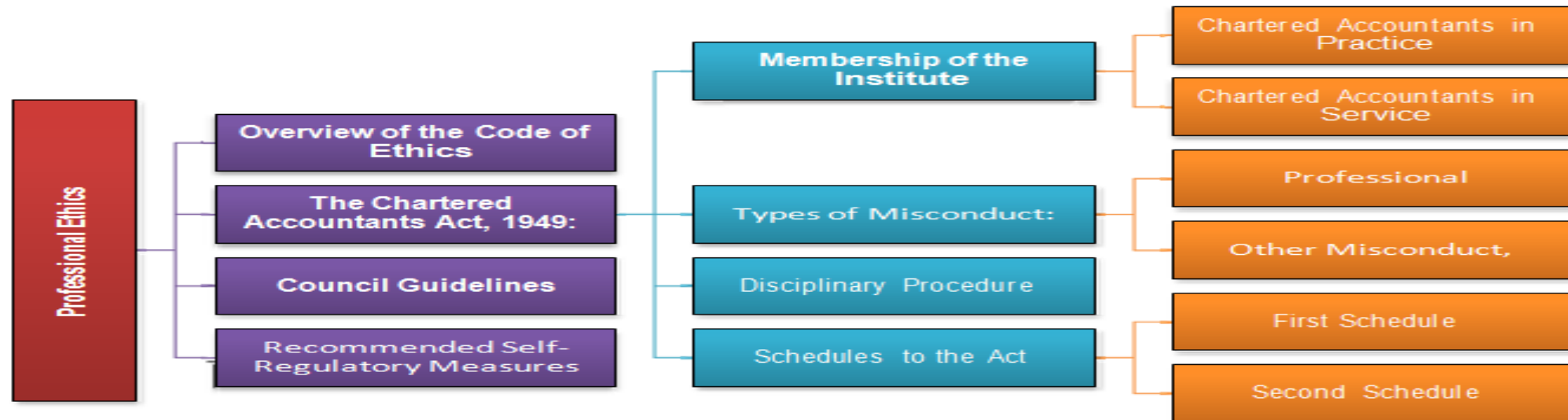
**FINAL LEVEL
CHAPTER 18 – PROFESSIONAL ETHICS**

Faculty: CA Achal Jain



CHAPTER OVERVIEW –

This Professional Ethics 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.





1. INTRODUCTION

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



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



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



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

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



Fig: Professional Ethics*

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



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

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.***
- ***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.

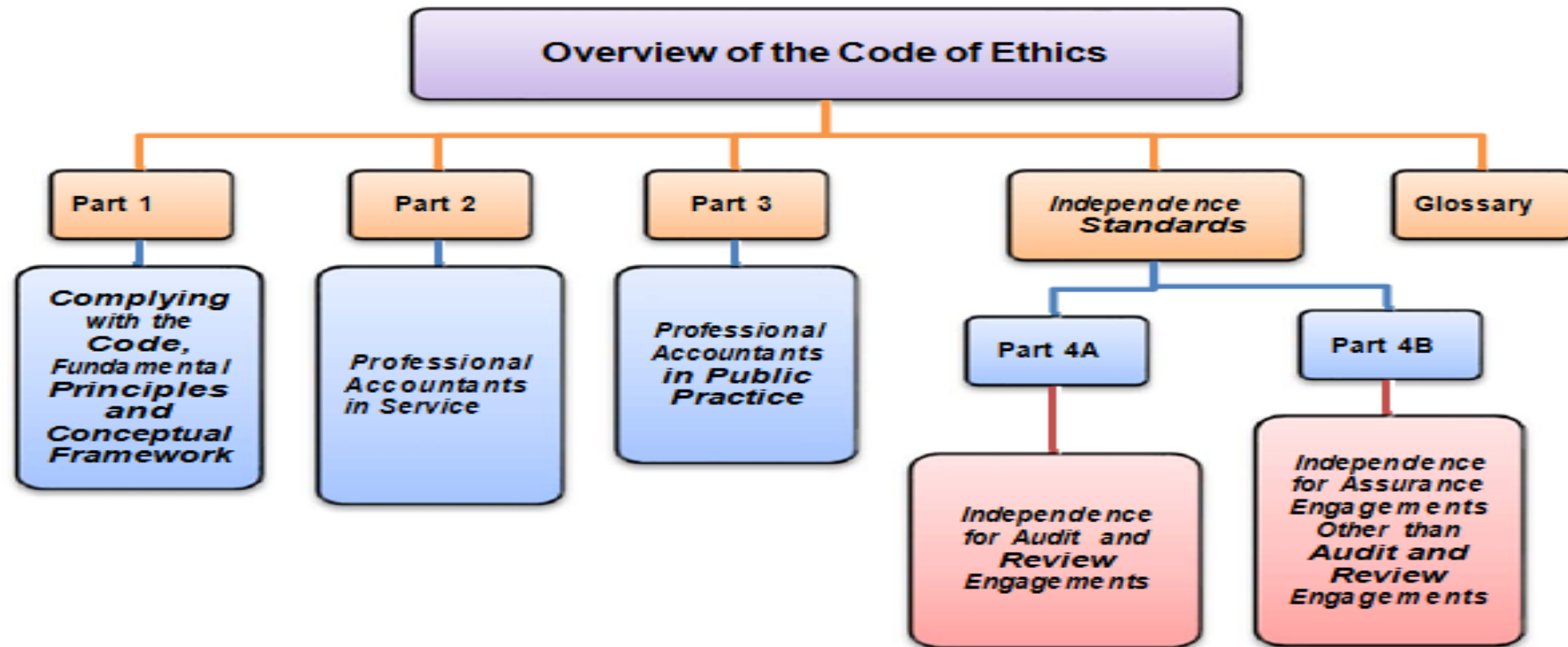


❖ ***Part 3 – Professional Accountants in Public Practice, which sets out additional material that applies to professional accountants in public practice when providing professional services.***

- * ***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.*





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-





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.
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.



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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;

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



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- 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:
- To comply with the requirements of Peer Review or Quality Review of the Institute;
 - To **respond** to an inquiry or investigation by a professional or regulatory body;
 - To **protect** the professional interests of a professional accountant in legal proceedings; or
 - 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:



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|-----|---|
| (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; |
| (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.**



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.



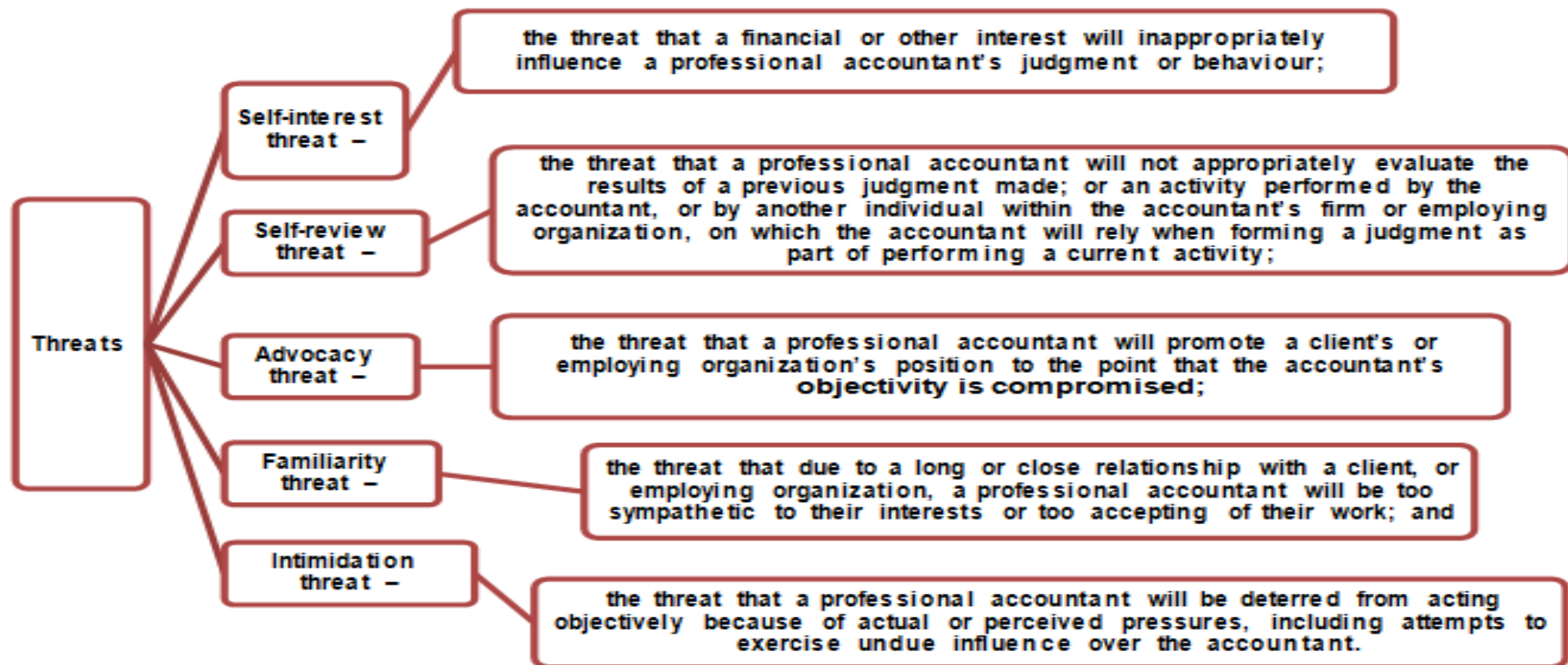
2.2 Threats, Evaluation of Threats and Safeguards

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.*

A Threats

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



Circumstances that may create self-interest threats



Having a direct **financial interest** in a client



Undue dependence on total fees from a client.



Having a **close business relationship** with a client.



Concern about the **possibility of losing** a client.



Potential employment with a client.



Having access to confidential information of the client that might be used for personal gain.

Examples of Circumstances that may create Self Review Threat



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

Examples of circumstances that may create advocacy threats:



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

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

lobbying in favor of legislation on behalf of a client.

Examples of circumstances that may create familiarity threats



1. A member of the engagement team having a **close or immediate family relationship** with a director or officer of the client.
2. A member of the engagement team having a close or immediate family relationship with an employee of the client who is in a position to exert direct and significant influence over the subject matter of the engagement.

3. A former partner of the firm being a director or officer of the client or an employee in a position to exert direct and significant influence over the subject matter of the engagement.
4. Long association of an audit team member with the audit client.

Examples of circumstances that may create intimidation threats



1. Being threatened with dismissal or replacement in relation to a client engagement because of a disagreement about a professional matter.
2. Being feeling pressured to agree with the judgment of a client because the client has more expertise on the matter in question.
3. Being informed that a planned promotion will not occur unless the accountant agrees with an inappropriate accounting treatment.



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:



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- 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.*



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.*



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 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; or
- ii. If he is of unsound mind and stands so adjudged by a competent court; or
- iii. If he is an undischarged insolvent; or
- iv. If he, being a discharged insolvent, has not obtained from the court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part; or



v. If he has been convicted by a competent Court whether within or without India, of an offence involving moral turpitude and punishable with transportation or imprisonment or of an offence, not of a technical nature, committed by him in his professional capacity unless in respect of the offence committed he has either been granted a pardon or, on an application made by him in this behalf, the Central Government has, by an order in writing, removed the disability; or

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

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

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



3.2 Types of Members of the Institute

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

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

Fellow Member: The name of following types of members shall be entered into the Register as a Fellow of the Institute, on payment of such fees along with the application made and granted in the prescribed manner-



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- 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.

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-



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

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

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



3.4 Restoration of Membership

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

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



Application for restoration and requisite fees are made within the same year of removal

- Restoration shall be with effect from the date on which it was removed from the Register.

Removal of name under the orders of the Board of Discipline or the Disciplinary Committee or the Appellate Authority or the High Court

- Restoration shall be in accordance with such orders.

In other cases

- Restoration shall be with effect from the date on which the application and fee are received.



3.5 Penalty for Falsely Claiming to be a Member etc.

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

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

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



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

4. CHARTERED ACCOUNTANTS IN PRACTICE

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

4.1 Significance of the Certificate of Practice

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 [..]*

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.



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- 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.**



Illustration

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 30 th day of September of the relevant year.



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

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

4.3 Members - deemed to be in Practice

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



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

- (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”.

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-



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- (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.



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- (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 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:



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- a. Drafting of prospectus and memorandum containing salient features of prospectus. Drafting and filing of listing agreement and completing formalities with Stock Exchanges, Registrar of Companies and SEBI.
 - b. Preparation of publicity budget, advice regarding arrangements for selection of (i) ad- media, (ii) centres for holding conferences of brokers, investors, etc., (iii) bankers to issue, (iv) collection centres, (v) brokers to issue, (vi) underwriters and the underwriting arrangement, distribution of publicity and issue material including application form, prospectus and brochure and deciding on the quantum of issue material (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).
 - c. Advice regarding selection of various agencies connected with issue, namely Registrars to Issue, printers and advertising agencies.



d. Advice on the post issue activities, e.g., follow up steps which include listing of instruments and dispatch of certificates and refunds, with the various agencies connected with the work.

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.***



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;*



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- 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'.

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

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

Illustration

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



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.

Though the LLPs are allowed to be appointed as an auditor in accordance with the Companies Act, 2013, however, it can not 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.

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.

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 Analysts 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."

Eg 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.

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



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

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

4.6 Maintenance of Branch Offices

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

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



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- (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.

Illustration

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-

- 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 km. from the municipal limits of a city, in which the first office is located.



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

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.



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.

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

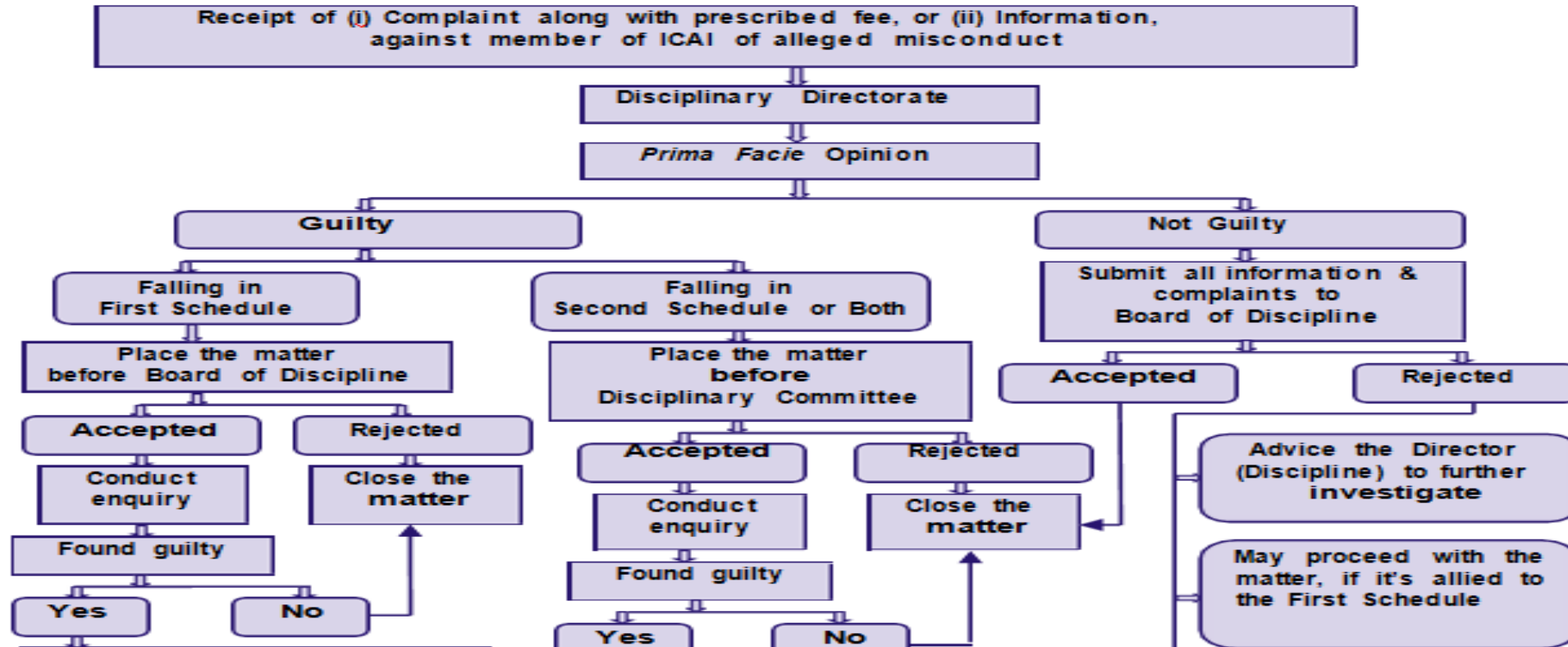
In accordance with the definitions provided under the Code of Ethics, a Professional Accountant in Service or Chartered Accountant in Service means a professional accountant employed or engaged in an executive or non-executive capacity in areas such as commerce, industry, service, the public sector,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

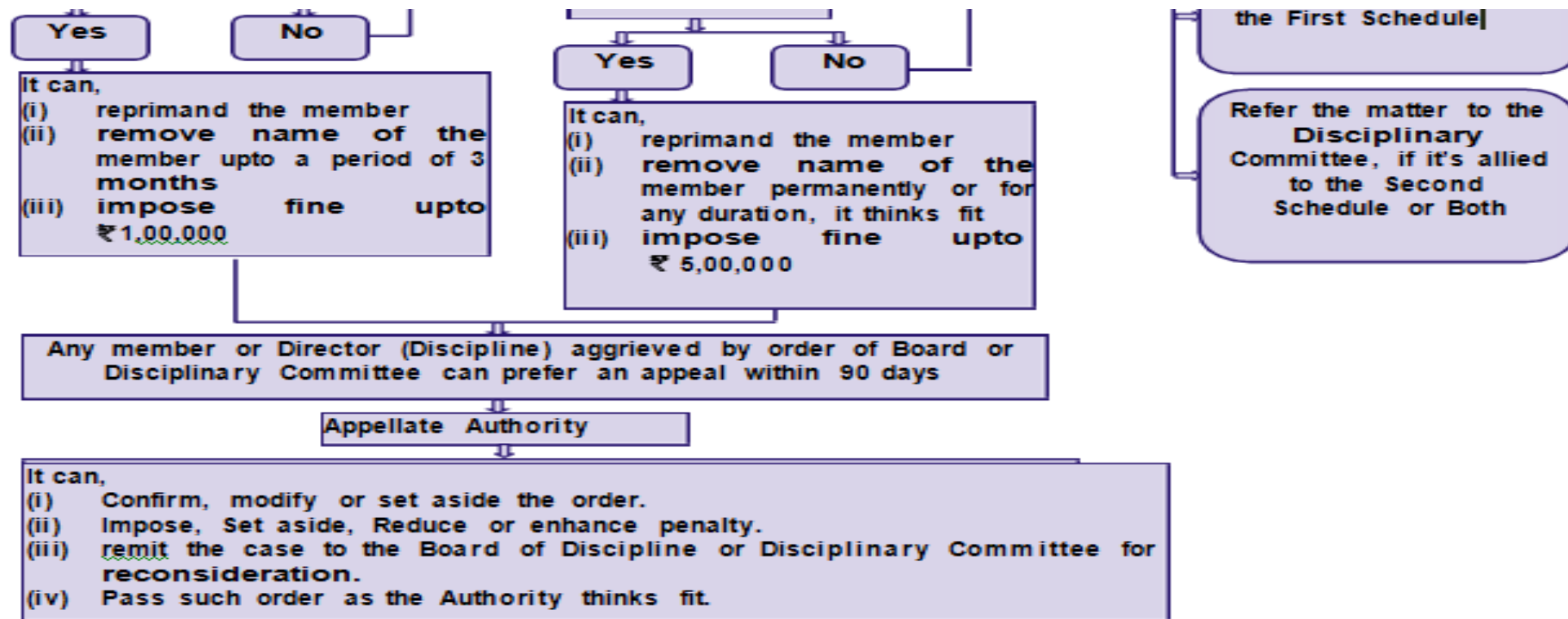
6. DISCIPLINARY PROCEDURE

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:-



Flow Chart of Discipline Procedure Mechanism







7. TYPES OF MISCONDUCT: PROFESSIONAL OR OTHER MISCONDUCT

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

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

7.1 Professional Misconduct

Professional misconduct has been defined in part I, II and III of the First Schedule; and part I and II of the Second Schedule. A member who is engaged in the profession of accountancy whether in practice or in service should conduct/restrict his 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.

Eg 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].

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

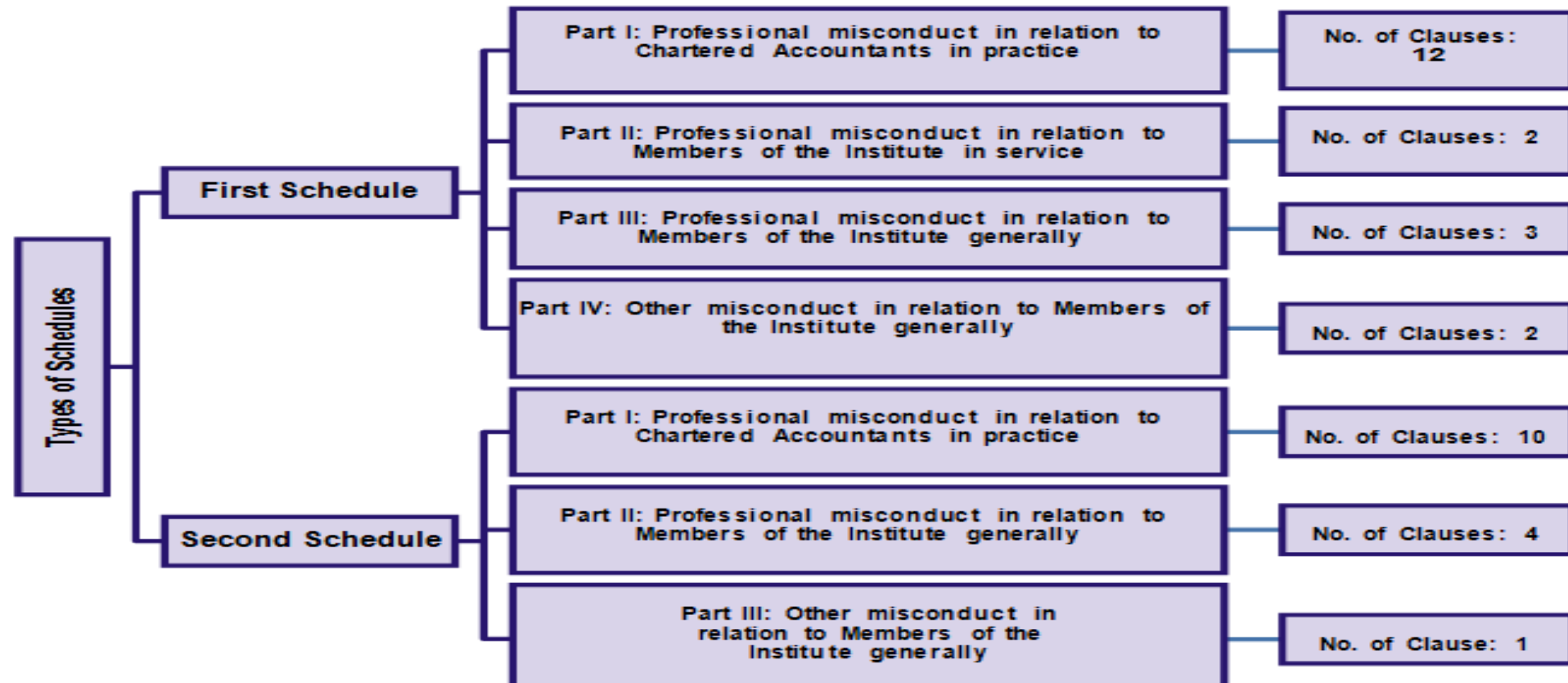
- (i) Where a chartered accountant retains the books of account and documents of the client and fails to return these to the client on request without a reasonable cause.
- (ii) Where a chartered accountant makes a material misrepresentation.
- (iii) Where a chartered accountant uses the services of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



8. SCHEDULES TO THE ACT

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

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





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

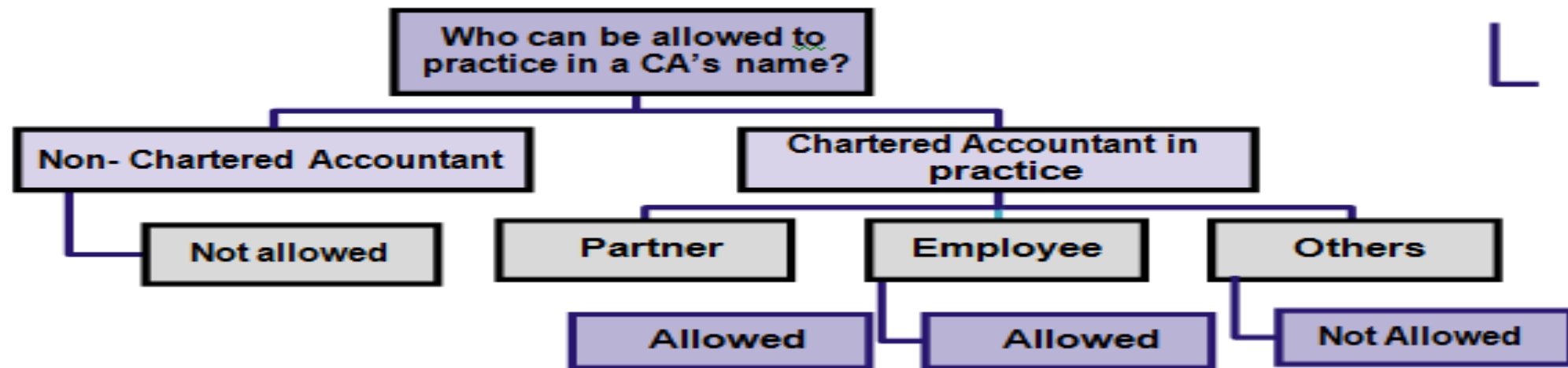
8.1 THE FIRST SCHEDULE

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

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

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

Clause (1): allows any person to practice in his name as a chartered accountant unless such person is also a chartered accountant in practice and is in partnership with or employed by him.





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

Clause (2): pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualification as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

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



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

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

- a. The Institute of Company Secretaries of India established under the Company Secretaries Act, 1980.
- b. The Institute of Cost & Works Accountants of India established under the Cost & Works Accountants Act, 1959.
- c. Bar Council of India established under the Advocates Act, 1961.



d. The Indian Institute of Architects established under the Architects Act, 1972.

e. The Institute of Actuaries of India established under the Actuaries Act, 2006.

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

- i. Company Secretary within the meaning of the Company Secretaries Act, 1980;
- ii. Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959;
- iii. Actuary within the meaning of the Actuaries Act, 2006;
- iv. Bachelor in Engineering from a University established by law or an Institution recognised by law;



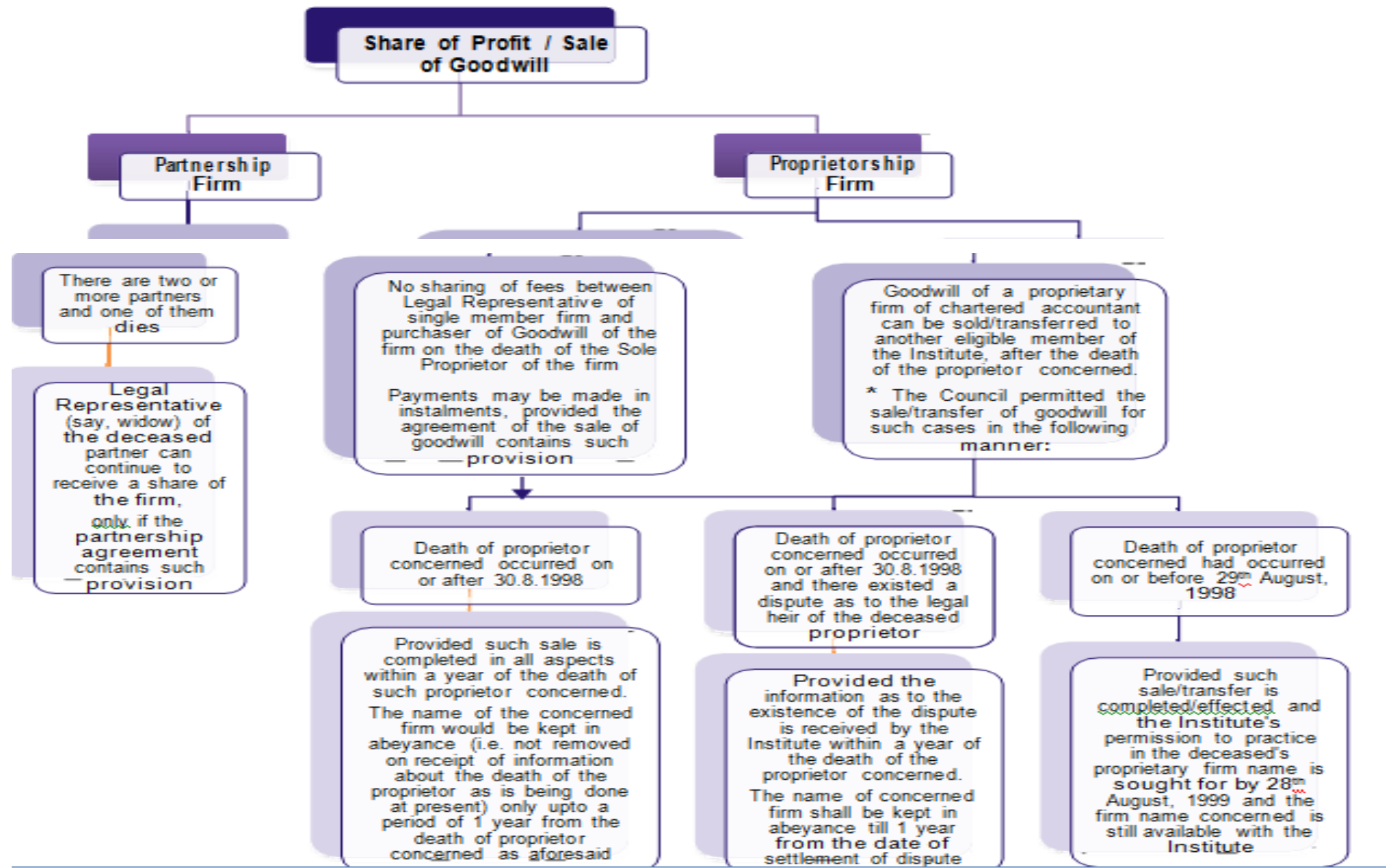
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- v. Bachelor in Technology from a University established by law or an institution recognised by law;
 - vi. Bachelor in Architecture from a University established by law or an institution recognised by law;
 - vii. Bachelor in Law from a University 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.





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

Illustration

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

Solution

Sale of Goodwill: With reference to Clause (2) of Part I to the First Schedule to Chartered Accountants' Act, 1949, the Council of the Institute of Chartered Accountants of India 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- 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:



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- 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 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.

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.
- 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 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.***
- 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.



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- 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 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.*

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

Solicitation –

- ❖ A chartered accountant sent a printed circular to a person unknown to him offering his services in profit planning and profit improvement programmes. The circular conveyed the idea that it was meant for strangers only. Held, the chartered accountant was guilty of professional misconduct under the clause as he used the circulars to solicit clients and professional work. *[B.S.N. Bhushan (1965)]*
- ❖ A chartered accountant wrote several letters to Assistant Registrars/ Registrars of Co-operative Societies, Government of West Bengal requesting for allotment of audit work and to enroll his



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

Illustration

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.

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 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”.

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 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 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 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.*



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

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



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

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

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



Where a Chartered Accountant allegedly propagating his services subsequent to demonetization, an objective of Government of eradicating black money, through mass SMS alongwith his mobile number offering his services towards conversion of cash with minimum tax liability.

Held guilty of Professional Misconduct falling within the meaning of Clause (6) & (7) of Part I and “Other Misconduct” falling within the meaning of Clause (2) of Part IV of First Schedule read with section 22 of the Chartered Accountants Act, 1949. (Kailash Shankarlal Mantry)

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

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



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

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



The existence of a dispute as regards the fees 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 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.

Eg 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:

“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:-

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.

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



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- ❖ A Chartered Accountant sent a registered letter to the previous auditor after the commencement of the audit by him. Held he was guilty of professional misconduct under the clause. [*Radhey Shyam vs. K.S. Dubey (1974)*]
 - ❖ The provision of Clause (8) requiring a communication with the previous auditor is absolute and applicable even in respect of an appointment by the Government agencies and even in case where the member is aware that the previous auditor had been made aware of the appointment. [*Rajeev Kumar vs. R.K. Agrawal (1988)*]

In this case the Respondent did not communicate with the Complainant being the previous auditor while accepting the appointment of the aforesaid companies. The fact that the matter was impliedly in the knowledge of the Complainant as contemplated by the Respondent in terms of the minutes of the meeting held between the Complainant and the Respondent on 3rd October, 2001 does not absolve the Respondent from ensuring the compliance with the



requirements of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949. The onus lies on the incoming auditor to communicate with the outgoing auditor which the Respondent has failed to do so. [CA. Manindra Chandra Poddar vs. CA. Manas Ghosh (2013)]

Illustration

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



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

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



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 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.



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- 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 Chapter 5 on Company Audit 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 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.*



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- ❖ *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*



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.

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 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.

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.

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

Illustration

CA Raja was appointed as the Auditor of Castle Ltd. for the year 2019 -20. Since he declined to accept the appointment, the Board of Directors appointed CA Rani as the auditor in the place of CA Raja, which was also accepted by CA Rani.

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



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

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

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



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;



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



g. in the case of services related to cost optimisation, the fees may be based on a percentage of the benefit derived; and

h. any other service or audit as may be decided by the Council. [***Following activities have been decided by the Council under “h” above :- (i) Acting as Insolvency Professional; (ii) Non-Assurance Services to Non-Audit Clients***]

A Chartered Accountant had arranged accounting bills raised by 16 parties amounting to Rs.14.09 Crores and made entries which were not genuine. He had charged commission @ 0.25% to 1% of the transactions for arranging accounting entries. He had been involved in arranging bogus bills, accommodation entries and circular transactions for trading in coal through bank LC limits for various other parties.

Held guilty of Professional and Other Misconduct falling within the meaning of Clause (10) of Part I and Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949.



(S S S B Ray, Commissioner of Income Tax (Central), Nagpur vs. Durga Prasad Sarda, Nagpur [PR-142/2013-DD/260/2013/ BOD /197/2016] Judgement delivered on 18th August, 2017).

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

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

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



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

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

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

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

“Notwithstanding anything contained in Regulation 190A but subject to the control of the Council, a Chartered Accountant in practice may act as a liquidator, trustee, executor, administrator arbitrator, receiver, adviser or representative for costing, financial or taxation



matter, or may take up an appointment that may be made by the Central Government or a State Government or a court of law or any other legal authority or may act as a Secretary in his professional capacity, provided his employment is not on a salary-cum-full-time basis”.

Appendix 9 C.A. Regulations, 1988

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

General Resolution

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



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- ❖ Employment under Chartered Accountants in practice or firms of such chartered accountants.
 - ❖ Private tutorship.
 - ❖ Authorship of books and articles.
 - ❖ Holding of Life Insurance Agency License for the limited purpose of getting renewal commission.
 - ❖ Attending classes and appearing for any examination.
 - ❖ Holding of public elective offices such as M.P., M.L.A. and M.L.C.
 - ❖ Honorary office leadership of charitable-educational or other non-commercial organisations.
 - ❖ Acting as Notary Public, Justice of the Peace, Special Executive Magistrate and the like.



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- ❖ Part-time tutorship under the coaching organisation of the Institute.
 - ❖ Valuation of papers, acting as paper-setter, head-examiner or a moderator, for any examination.
 - ❖ Editorship of professional journals.
 - ❖ Acting as Surveyor and Loss Assessor under the Insurance Act, 1938 provided they are otherwise eligible.
 - ❖ Acting as recovery consultant in the banking sector
 - ❖ 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:

- ❖ 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.
- ❖ Full-time or part-time employment in non-business concern.
- ❖ 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.***



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- ❖ 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.
 - ❖ Interest in an educational institution.
 - ❖ 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.
 - ❖ Part-time or full-time tutorship under any educational institution other than the coaching organization of the Institute.



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- ❖ Editorship of journals other than professional journals.
 - ❖ 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:

- the expression “relative”, in relation to a member, means the husband, wife, brother or sister or any lineal ascendant or descendant of that member;
- 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 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 can not 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 than the profession of Chartered Accountant but he can be a director of a Company (not being a managing director or whole-time director) wherein he or any of his partners is not



interested in such company as an auditor. The Board further noted that Public conscience is expected to be ahead of the law. Members, therefore, are expected to interpret the requirement as regards independence much more strictly than what the law requires and should not place themselves in positions which would either compromise or jeopardise their independence. In view of the above, the Board, via a clarification, decided that the auditor of a Subsidiary Company can't be a Director of its Holding Company, as it will affect the independence of an auditor.

b. Promoter/Promoter Director - There is no bar for a member to be a promoter / signatory to the Memorandum and Articles of Association of any company. There is also no bar for such a promoter / signatory to be a Director Simplicitor of that company irrespective of whether the object of the company include areas which fall within the scope of the profession of Chartered 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 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.



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

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

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



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

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



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- ❖ Issue of audit queries during the course of audit.
 - ❖ Asking for information or issue of questionnaire.
 - ❖ Letter forwarding draft observations/financial statements.
 - ❖ Initiating and stamping of vouchers and of schedules prepared for the purpose of audit.
 - ❖ Acknowledging and carrying on routine correspondence with clients.
 - ❖ Issue of memorandum of cash verification and other physical verification or recording the results thereof in the books of the clients.
 - ❖ Issuing acknowledgements for records produced.



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- ❖ Raising of bills and issuing acknowledgements for money receipts.
 - ❖ Attending to routine matters in tax practice, subject to provisions of Section 288 of Income Tax Act.
 - ❖ Any other matter incidental to the office administration and routine work involved in practice of accountancy.

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



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

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



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

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

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



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

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

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

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

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



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

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

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



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

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

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

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



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

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



Illustration

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

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

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

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



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

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.

This is a case which is covered under the expression in other misconduct of the Chartered Accountants Act, 1949. As per Clause (2) of Part IV of First Schedule to the Chartered



Accountants Act, 1949, a member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he, in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work. Here the Chartered Accountant is expected to maintain the highest standards of integrity even in his personal affairs and any deviation from these standards calls for disciplinary action.

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

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



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

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

Where a Chartered Accountant had floated various Companies/Firms and availed huge limits from various



Banks in the name of the said Companies/Firms. The limits were availed fraudulently by him against factory, land & building, machineries and other fixed assets in his name and others were already mortgaged with a Bank. Furthermore, besides holding full time COP he was also the Proprietor/Director of Firms/Private Limited Company for which he did not inform the Institute. Held, guilty of 'Other Misconduct' falling under Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949 with respect to the charge of being Proprietors of other Firms he was guilty of 'Professional Misconduct' falling under Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949. (*Deputy General Manager, Canara Bank vs. Prasanta Kumar Roy Burman - Page 47 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rd February, 2011*).



Where a Chartered Accountant did not reveal the important information that his name has been removed from the Register of Members w.e.f. 01.10.2005 due to non payment of fees and he was not authorised to practice as a Chartered Accountant but he continued to sign the audit report and conducted audit of the firm. Held, guilty of professional and other misconduct falling within the meaning of Clause (2) of Part IV of First Schedule, and Clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949. (*Naresh Mohan Mittal vs. Gulshan Kumar -- Page 20 of Vol I Part I of Disciplinary Cases, Judgement delivered on 12th September, 2011*).

Where a Chartered Accountant had falsely verified Form No.32 filed with ROC in respect of appointment of Directors of a company. He also had affixed fraudulently obtained digital signature in his name. Held, guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of First Schedule to the Chartered Accountants Act, 1949. (*Ashish Pradeep Deora, Mumbai vs. Jawahar Lal Beriwal, Delhi [PR-171/13-DD/165/2013/BOD/198/2016] Judgement delivered on 13th December, 2018*).



The accounts of the Complainant were maintained and audited by a Chartered Accountant. Even after the full payment of fees he refused to complete the work and to file the Income Tax Returns. The Respondent Firm was in the possession of all the original accounts and refused to hand over the same. Further on seeking for the payments against the work done for the interior of the new office of the Firm, the Complainant was abused and threatened. The Password of Income Tax account was also changed by him without knowledge of the Complainant. The Respondent refused to accept the payment made by cheque. Held, guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Acts, 1949 read with section 22 of the said Act. (*Kanchan Bhagchandani vs. Vaibhav Kumar Mehta*. [PR- 263/2014-DD/319/2014/BOD/251/2017] Judgement delivered on 12th January, 2019).



The Respondent had been appointed to carry out the audit, Income Tax and ROC related work viz preparation and filing of various Forms like Form No. 32, Form 18, 23 AC and 23 ACA, DIN 3 and 20B. The Respondent did not verify any other document, contract, etc. to filing e-forms with the ROC which had certain incorrectness on account of the same being filed on the basis of tampered and forged documents which resulted in bringing disrepute to the Chartered Accountancy Profession. The Respondent was held guilty of 'Other Misconduct' falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said act. *(Gopal Bhatte in Re:PPR/7/W/13/DD/10/W/INF/13/BOD/225/2016).*



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.

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 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.



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.

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.

Illustration

Mr. A, a Chartered Accountant was the auditor of 'A Limited'. During the financial year 2019-20, the investment appeared in the Balance Sheet of the company of ` 10 lakhs and was the same amount as in the last year. Later on, it was found that the company's investments were only ` 25,000, but the value of investments was inflated for the purpose of obtaining higher amount of Bank loan.



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

The primary duty of physical verification and valuation of investments is of the management. However, the auditor's duty is also to verify the physical existence and valuation of investments



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

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

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



Where a Chartered Accountant issued false certificates to several parties for past exports for monetary consideration without verifying any supporting records or documents. On the strength of these false certificates, certain unscrupulous importers were able to obtain import license, effect imports and clear these free of duty, perpetuating a fraud on Government revenue and depriving the Government of its legitimate revenue to the tune of several Crores of Rupees.

On his statements to the Department he confessed the above fact and disclosed that he had issued these certificates for monetary consideration and without verification of supporting documents on record.

Held that the respondent was guilty of professional misconduct within the meaning of clauses (2), (7) & (8) of Part I of the second schedule of the Chartered Accountants Act, 1949 in terms of section 21 & 22 of the said Act



(P.N. Vittal Dass, Addl. Collector of Customs, Mumbai vs. P.U. Patil -Page 827 of Vol. VIII – 1 – 21(6) of Disciplinary Cases - Judgement dated 13th August, 2004).

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 22 nd through 24th July 1982, a chartered accountant can participate in the preparation of profit or financial forecasts and can review them, provided he indicates clearly in his report the sources of information, the basis of forecasts and also the major assumptions made in arriving at the forecasts and so long as he does not vouch for the accuracy of the forecasts. The Council has further opined that the same opinion would also apply to projections made on the basis of hypothetical assumptions about future events and management actions which are not necessarily expected to take place so long as the auditor does not vouch for the accuracy of the projection.



Further, the attention of the members is drawn to **“Guidance Note on Reports in Company Prospectuses (Revised 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. 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. *(The DGM (Inspection), Tamilnad Mercantile Bank Ltd. vs. R. B. K. Samuel - Page 126 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rd October, 2011).*



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**).



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- 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 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.



Eg 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:-



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- 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.



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 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 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.

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

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.



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.

Illustration

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



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

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

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

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



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

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

The 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.



Eg 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”.

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



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

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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.



Eg 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.

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:



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- ❖ 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.
 - ❖ 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.
 - ❖ 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.
 - ❖ Moneys received by a Chartered Accountant, in his capacity as trustee, executor liquidator, etc. must be put in a separate bank account immediately.



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

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

A Member while working as a financial advisor misappropriated the funds of his client by way of converting a Savings Bank account in his individual name to that of joint account with the client without his consent and fraudulently discharged 3 FDRs in the client's name. The Council held him guilty under Clause (10) of Part I of the Second Schedule and "Other Misconduct" under Section 22 read with Section 21, which was accepted by the High court. (*Tara Pada Banerjee, Dy. General Manager, Bank of Baroda vs. B.K. Sarker, 2006*)



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

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]*]

A Chartered Accountant had been in full-time employment in a Company besides holding Certificate of Practice without obtaining Institute's permission and in the bank empanelment form, he had given declaration to the effect that he was not devoting any time to any



occupation/vocation/business etc. other than the profession of Chartered Accountants. He was held guilty for violation of Clause (11) of Part I and Clause (1) of Part III of the First Schedule. The Council ordered that his name be removed from the Register of Members for a period of six months. *(N.K. Gupta, (1998))*

A Chartered Accountant, in spite of his being in employment as Manager (F&A) with a Company from 9 A.M. to 2 P.M. and devoting 30 hours per week in the said employment, had shown his main occupation to be in full-time practice, in the Employment Form for bank branch audits. He was held guilty for violation of Clause (1) of Part III of the First Schedule for not giving the full particulars truthfully in his application. *(H.K. Gupta, (1999))*

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

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



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

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

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



9. COUNCIL GUIDELINES

The relevant extracts of the **Council General Guidelines, 2008** (*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.

- 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’.
- 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



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

Chapter VI

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

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



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

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

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

Provided also that the audits conducted under Section 44AD, 44ADA1 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.

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

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

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



A Chartered Accountant in practice shall maintain a record of the tax audit assignments accepted by him in each **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.

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.*

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.***



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. In computing the “specified number of audit assignments”-

- ☐ 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.
- ☐ 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.
- ☐ 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.



☐ 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 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:-

- audit under any other statute;
- certification work required to be done by the statutory auditors; and
- 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.

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

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 31.3.2020. The audit report was, however, signed on 25.5.2020.

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.

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 31.3.2020 which is on progressive basis. Therefore, Mr. D will not be held guilty for misconduct.



THANK YOU