

# PROFESSIONAL ETHICS

## OVERVIEW OF THE CODE OF ETHICS

## AREA FOR NOTES

1. **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.
1. **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:
  - a. Commerce, industry or service.
  - b. The public sector.
  - c. Education.
  - d. The not-for-profit sector.
  - e. 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.

2. **Part 3** – Professional Accountants in Public Practice, which sets out additional material that applies to professional accountants in public practice when providing professional services.
3. **Part 4A** – Independence for Audit and Review Engagements, which applies when performing audit or review engagements.
4. **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.

Each section of the Code is structured, where appropriate, as Introduction, Requirements and Application material

## Fundamental Principles – IO-PCP – Section 100

**(IO-PCP: Objectivity, Integrity – Professional Competence & Due Care, and Confidentiality and Professional Behaviour)**

1. **Integrity** – Sub Section 111: 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.

A professional should not be knowingly associated with the below unless he has issued modified report

- False or Misleading Statement or information,
- Information or Statement issued negligently,
- Omits important information which is misleading.

If he identifies anything at later stage, then he should take steps to disassociate himself from that.

2. **Objectivity** - **Sub section 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.

• **Professional Competence and Due Care** – **Sub Section 113:**

- a. A professional accountant shall comply with the principle of professional competence and due care, which requires an accountant to:
  - i. 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
  - ii. act diligently in accordance with applicable technical and professional standards.
- b. Serving clients and employing organizations with professional competence requires the exercise of sound judgment in applying professional knowledge and skill when undertaking professional activities.
- c. Maintaining professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments.
- d. Continuing professional development enables a professional accountant to develop and maintain the capabilities to perform competently within the professional environment.
- e. Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.
- f. 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.

3. **Confidentiality**- **Sub Section 114:** 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.

- a. 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

- b. Maintain confidentiality of information within the firm or employing organization
- c. Maintain confidentiality of information disclosed by a prospective client or employing organization;
- d. 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
- e. 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
- f. 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
- g. 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
- h. Disclosure is permitted by law and is authorized by the client or the employing organisation;
- i. There is a professional duty or right to disclose, when not prohibited by law: (i) To comply with the requirements of Peer Review or Quality Review of the Institute; (ii) To respond to an inquiry or investigation by a professional or regulatory body; (iii) To protect the professional interests of a professional accountant in legal proceedings; or (iv) To comply with technical and professional standards, including ethics requirements.

4. **Professional Behaviour** - Sub Section 115:

- a. 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.
- b. 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.
- c. 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.

Professional Accountant shall continue to comply with the principle of confidentiality even after the end of relationship between the accountant and client or employing organization

## 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.

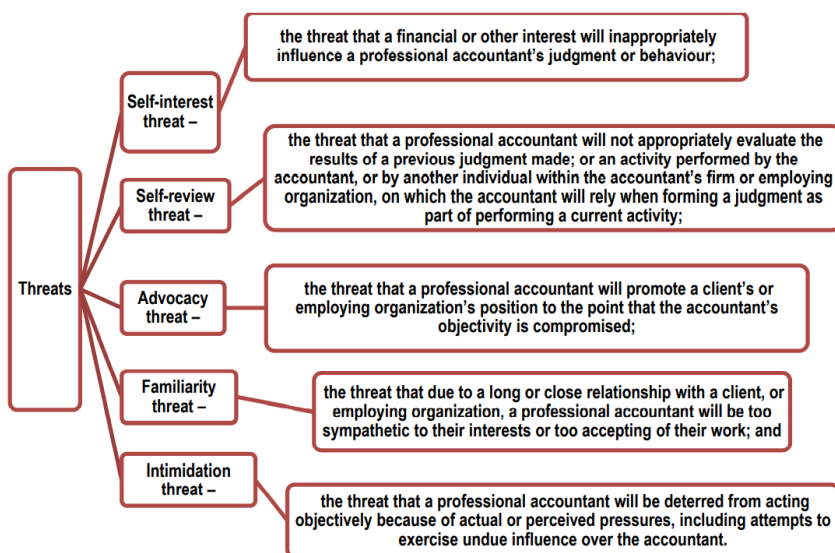


Figure 1: ICAI Module 18.11 Types of Threat

1. **Evaluating Threats** – Sub Section R120.7: When the professional accountant identifies a threat to compliance with the fundamental principles, the accountant shall evaluate whether such a threat is at an acceptable level.
  - a. 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. 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
  - b. The consideration of qualitative as well as quantitative factors is relevant in the professional accountant's evaluation of threats, as is the combined effect of multiple threats, if applicable
  - c. If the professional accountant becomes aware of new information or changes in facts and circumstances that

might impact whether a threat has been eliminated or reduced to an acceptable level, the accountant shall re-evaluate and address that threat accordingly

- d. If the professional accountant determines that the identified threats to compliance with the fundamental principles are not at an acceptable level, the accountant shall address the threats by eliminating them or reducing them to an acceptable level. The accountant shall do so by:
- i. Eliminating the circumstances, including interests or relationships, that are creating the threats;
  - ii. Applying safeguards, where available and capable of being applied, to reduce the threats to an acceptable level; or
  - iii. Declining or ending the specific professional activity.
- e. 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.
- f. Safeguards are actions, individually or in combination, that the professional accountant takes that effectively reduce threats to compliance with the fundamental principles to an acceptable level.

## **NOCLAR: Non-Compliance with Laws and Regulations**

**Definition and Scope:** Non-compliance with laws and regulations (“non-compliance”) comprises of acts of omission or commission, intentional or unintentional, which are contrary to the prevailing laws or regulations committed by: (MT-COI)

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

NOCLAR under Revised Code of Ethics does not address

- the personal misconduct unrelated to the business activities of the client/ employing organisation and
- non-compliance by parties other than listed out in the definition of NOCLAR.

**Applicability:** The IESBA Code of Ethics makes NOCLAR applicable to all assignments (in case of members in practice), and to all employers (in case of members in service).

However, in the ICAI Code, as of now, Institute has restricted applicability of NOCLAR to Audits assignment of listed entities (in case of members in practice) and for the members in service applicability has been restricted to employees of listed entities only.

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

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

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

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

#### SA 250 vs NOCLAR:

- SA 250 is applicable only on Audit, and not on other Assurance engagements. However, NOCLAR is applicable on professional accountants in service, and in practice.
- SA 250 discusses auditor's responsibilities for
  - laws having direct effect on the determination of material amounts and disclosures in the financial statements (such as tax and labour laws); and
  - other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the financial statements, but compliance with which may be fundamental to the operating aspects of the business
- NOCLAR considers non-compliance that causes substantial harm resulting in serious consequences in financial or non-financial terms.
- SA 250 does not define stakeholders. NOCLAR discusses effect of non-compliance on investors, creditors, employees as also the general public.
- As per NOCLAR, if the professional accountant become aware of an imminent breach of a law or regulation that would cause substantial

harm to investors, creditors, employees or the general public then having first considered whether it would be appropriate

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

### Documentation under NOCLAR

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

- Prepare documentation sufficient to enable an understanding of significant matters arising during the audit, the conclusions reached, and significant professional judgments made in reaching those conclusions.
- Document discussions of significant matters with management, those charged with governance, and others, including the nature of the significant matters discussed and when and with whom the discussions took place; and
- Document identified or suspected non-compliance, and the results of discussion with management and, where applicable, those charged with governance and other parties outside the entity.

### MEMBERSHIP OF THE INSTITUTE

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.

## TYPES OF MEMBERS OF THE INSTITUTE

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

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

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

- i. An associate member who has been in continuous practice in India for at least 5 years.
- ii. A member who has been an associate for a continuous period of not less than 5 years and who 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.

## REMOVAL OF NAME FROM THE REGISTER

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

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



## PENALTY FOR FALSELY CLAIMING TO BE A MEMBER

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

- i. not being a member of the Institute;
    - a. represents that he is a member of the Institute; or
    - b. uses the designation Chartered Accountant;
  - ii. being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practices as a Chartered Accountant,
- **For First Conviction:** up to ₹ 1000
  - **For Subsequent Conviction:** up to ₹ 5000 or imprisonment up to 6 month or both.

**Case law:** Where, the Court of Additional Chief Judicial Magistrate had by its judgement found the accused guilty under Section 24(i)(a) & (b) (above provisions) 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)

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.

## MEMBERS - DEEMED TO BE IN PRACTICE

In Section 2(2) of the Act defines the term deemed "to be in practice" 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;

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 a firm consisting of one or more 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 (iv) above, the Council has passed a resolution permitting a Chartered Accountant in practice to render entire range of "Management Consultancy and other Services" given below:

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

- i. Financial management planning and financial policy determination.
- ii. Capital structure planning and advice regarding raising finance
- iii. Working capital management.
- iv. Preparing project reports and feasibility studies.
- v. Preparing cash budget, cash flow statements, profitability statements, statements of sources and application of funds etc.
- vi. Budgeting including capital budgets and revenue budgets.
- vii. Inventory management, material handling and storage.
- viii. Market research and demand studies.
- ix. Price-fixation and other management decision making.
- x. Management accounting systems, cost control and value analysis.
- xi. Control methods and management information and reporting.
- xii. Personnel recruitment and selection.
- xiii. Setting up executive incentive plans, wage incentive plans etc.
- xiv. Management and operational audits.
- xv. Valuation of shares and business and advice regarding amalgamation, merger and acquisition. Acting as Registered

Valuer under the Companies Act, 2013 read with The Companies (Registered Valuers and Valuation) Rules, 2017.

- 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: -
  - 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 despatch 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.
  - e. 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).
- xx. 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).

- xxi. Quality Audit.
- xxii. Environment Audit.
- xxiii. Energy Audit.
- xxiv. Acting as Recovery Consultant in the Banking Sector.
- xxv. Insurance Financial Advisory Services under the Insurance Regulatory & Development Authority Act, 1999 including Insurance brokerage (not including Insurance Agency).
- xxvi. Acting as Insolvency Professional in terms of Insolvency and Bankruptcy Code, 2016.
- xxvii. Administrative Services. Administrative services are provided in Sub-section 602 of Volume-I of Code of Ethics. 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:
  - a. Word processing services.
  - b. Preparing administrative or statutory forms for client approval.
  - c. Submitting such forms as instructed by the client.
  - d. Monitoring statutory filing dates and advising an audit client of those dates.

Pursuant to (iv) above 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 be tantamount to being in practice even though no client has been served.

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.

## COMPANIES NOT TO ENGAGE IN ACCOUNTANCY

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

- i. 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.
- ii. 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

**on first conviction: ₹ 1,000 and**

**on any subsequent conviction: ₹ 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 cannot be engaged into practice, if it has company as its partner, as per the Chartered Accountants Act, 1949.

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

## MEMBER IN PRACTICE PROHIBITED FROM USING A DESIGNATION OTHER THAN CHARTERED ACCOUNTANT

1. 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.
2. 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.

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

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

## 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:

- i. 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
- ii. The regular office need not be closed during this period and all correspondence can continue to be made at the regular office.

- iii. 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
- iv. 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.
- v. 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.
- vi. Above conditions apply to any additional office situated at a place beyond 50 kms from the municipal limits in which any office is situated
- vii. 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.
- viii. 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.
- ix. However, a member can be in-charge of two offices if they are located in one and the same Accommodation

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:

- i. the second office is located in the same premises, in which the first office is located or
- ii. the second office is located in the same city, in which the first office is located or
- iii. 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.

## KYC NORMS FOR CA IN PRACTICE

The Council of ICAI approved the following KYC Norms which are mandatory in nature and shall apply in all assignments pertaining to attestation functions.

### 1. Where Client is an Individual/ Proprietor

- a. General Information
    - i. Name of the Individual
    - ii. PAN No. or Aadhar Card No. of the Individual
    - iii. Business Description
    - iv. Copy of last Audited Financial Statement
  - b. Engagement Information
    - i. Type of Engagement
2. **Where Client is a Corporate Entity**
- a. General Information
    - i. Name and Address of the Entity
    - ii. Business Description
    - iii. Name of the Parent Company in case of Subsidiary
    - iv. Copy of last Audited Financial Statement
  - b. Engagement Information
    - i. Type of Engagement
  - c. Regulatory Information
    - i. Company PAN No.
    - ii. Company Identification No.
    - iii. Directors' Names & Addresses
    - iv. Directors' Identification No.
3. **Where Client is a Non-Corporate Entity**
- a. General Information
    - i. Name of the Individual
    - ii. PAN No. of the entity
    - iii. Business Description
    - iv. Partner's Names & Addresses (with their PAN/Aadhar Card/DIN No.)
    - v. Copy of last Audited Financial Statement
  - b. Engagement Information
    - i. Type of Engagement

## DISCIPLINARY PROCEDURE

Sections 21, 21A, 21B, 21C, 22-A and 22-G of the 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:-

1. On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) will process the same for its registration and shall form a prima facie opinion on the alleged misconduct.
2. After the prima facie opinion is formed, the Director (Discipline) shall place the matter before the Board of Discipline or Disciplinary Committee in respect of the cases relating to the First Schedule or the Second Schedule to the Act as the case may be. Where the matter relates to both the Schedules, it shall be placed before the Disciplinary Committee only. Where the Director (Discipline) is of the opinion that there is no prima facie case the Board of Discipline may, if agrees with the opinion of the Director (Discipline) close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter. Where the Director (Discipline) is of the opinion that there is a prima facie case, further



action will be taken by the Board of Discipline or Disciplinary Committee, as the case may be.

3. The Board of Discipline (in respect of matters relating to First Schedule) has been empowered to pass the following orders: -
  - a. reprimand the member
  - b. remove the name of the member from Register up to a period of three months
  - c. impose such fine which may extend to rupees one lakh
  
4. The Discipline Committee (in respect of matters relating to Second Schedule or Both Schedules when the misconducts are related to both the Schedules) has been empowered to pass the following orders:-
  - a. reprimand the member
  - b. remove the name of the member from the Register permanently or for such period as it may think fit.
  - c. impose such fine which may extend to rupees five lakhs.
  
5. The Director (Discipline), Board of Discipline and the Disciplinary Committee have powers of Civil Court under the Code of Civil Procedure, 1908 in respect of the following matters, namely,
  - a. summoning and enforcing attendance of any person and examining him on oath;
  - b. discovery and production of any document; and
  - c. receiving evidence on affidavit.
  
6. Any member of the Institute aggrieved of any order of the Board of Discipline or the Disciplinary Committee may prefer an appeal under Section 22G to the Appellate authority constituted under the provisions of Section 22A – 22D of the Act. Such appeal has to be filed within 90 days from the date of communication of the order of Board of Discipline or the Disciplinary Committee, as the case maybe.

It is also open to the Director (Discipline) to file appeal with the Appellate Authority against the order of the Board of Discipline or the Disciplinary Committee within 90 days after obtaining authorization of the Council.

7. The Appellate Authority while hearing an appeal against the order of the Board of Discipline or the Disciplinary Committee has the power to:
  - a. confirm, modify or set aside the order;
  - b. impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
  - c. remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or
  - d. pass such other order as the Authority thinks fit

The Appellate Authority shall give an opportunity of being heard to the parties concerned before passing any order.

## 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 subsection (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.

- 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.
- 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.

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].

## 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

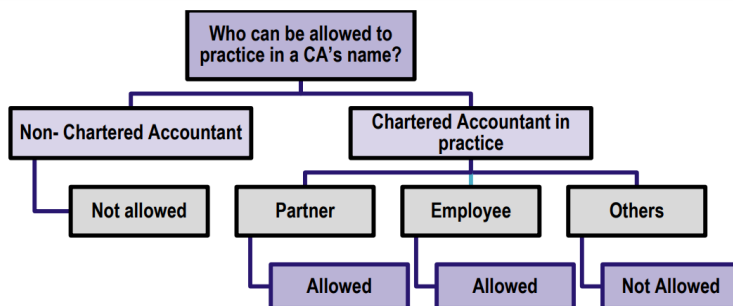
Second Schedule is divided into three parts. Part I deals with misconduct in relation to a member in practice, Part II deals with misconduct of members generally and Part III deals with other misconduct in relation to members of the Institute generally.

## THE FIRST SCHEDULE

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

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

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



**Clause (2):** pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than

- a member of the Institute or
- a partner or
- a retired partner or
- the legal representative of a deceased partner, or
- a member of any other professional body or
- with such other persons having such qualification as may be prescribed,

for the purpose of rendering such professional services from time to time in or outside India.

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

- I. The Institute of Company Secretaries of India established under the Company Secretaries Act, 1980.
- II. The Institute of Cost & Works Accountants of India established under the Cost & Works Accountants Act, 1959.
- III. Bar Council of India established under the Advocates Act, 1961.
- IV. The Indian Institute of Architects established under the Architects Act, 1972.
- V. 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's in engineering from a university established by law or an Institution recognised by law.
- v. Bachelor's in technology from a university established by law or an institution recognised by law.
- vi. Bachelor's in architecture from a university established by law or an institution recognised by law.
- vii. Bachelor's in law from a university established by law or an institution recognised by law.
- viii. Master's in business administration from universities established by law or technical institutions recognised by All India Council for Technical Education.

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.

**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.

**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:

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

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

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

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

However, as per the guideline issued by the Council of the Institute of Chartered Accountants of India, a member of the Institute in practice shall not respond to any tender issued by an organization or user of professional services in areas of services which are exclusively reserved for chartered accountants, such as audit and attestation services.

However, such restriction shall not be applicable where minimum fee of the assignment is prescribed in the tender document itself or where the areas are open to other professionals along with the Chartered Accountants.

Further, keeping in view the broad purview of Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, an advertisement of Coaching /teaching activities by a member in practice may amount to indirect solicitation, as well as solicitation by any other means, and may therefore be violative of the provisions of Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

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

- Advertisement and note in the press except,
  - a request to other CA in practice
  - changes in P'ship firm and their details but should be limited to bare statement
  - A classified advertisement in the journal/ newsletter of the Institute for sharing of professional work.
- Application for empanelment for allotment of audit and other professional work. 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.
- Responding to Tenders, Advertisements and Circulars of professional services in areas of services which are exclusively reserved for Chartered Accountants
- 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 except for mentioning the designation "Chartered Accountant" and the name of the firm.
- Issue of Greeting Cards or Invitations: 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.

- Advertisement for events other than Silver, Golden, Platinum or Centenary celebrations
- CA in Practice is not permitted to sponsor an event except events conducted by PoU of ICAI or event prior approved by CPE Directorate of ICAI.
- 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
- Sharing Firm Profile with prospective Client unless it is in response to a proposed client's specific query
- For Television or Movie Credits the exhibition of name is not made differently as compared to other entries in the credits.
- Soliciting professional work by making roving enquiries.
- 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) should not abused to secure needless publicity.
- Acceptance of original professional work by a member emanating from the client introduced to him by another member.
- Giving Public Interviews should not result in publicity. Details highlighting their professional attainments should be avoided.
- Members and/or firms who publish advertisements under Box numbers like PO Box No.
- Educational Videos should not refer to the Chartered Accountants Firm or should not contain any contact details or website address.

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)]

Where a Chartered Accountant had sent a letter to another firm of Chartered Accountants, in which he had introduced his firm as pioneer in liasoning with Central Government Ministries and its allied Departments for getting various Government clearances for which he had claimed to have expertise and had given a list of his existing clients and details of his staff etc . Held that he was guilty under the clause. [Bijoy Kumar, (1991)]



A Chartered Accountant had addressed a letter to the Managing Director of a Company seeking appointment as its internal auditor. He had stated that he was of the bona fide belief that the Company might be maintaining a panel of Chartered Accountants for assigning the internal audit work. He was held guilty for violation of Clause (6). (P.G. Biswas in Re:- Page 790 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 8th to 10th December, 1997).

A Chartered Accountant had issued the following advertisements in "Hindustan Times" – "Experienced C.A. having Posh Office with telephones, Computer, Telex, Car, Qualified Staff available for taxation, Company Law, Accounts, Internal control, Financing from banks and institutions, contact phone ....." By issuing the above advertisement, the Respondent has tried to (i) Solicit clients of professional work either directly or indirectly, (ii) Advertised his professional attainments of services in violation of Clause (6) & (7) Part I of First Schedule to the Chartered Accountants Act, 1949. Held that he was guilty of professional misconduct under the said Clauses. (Rajeev Sharma in Re:- Pages 454 of Volume VIII (2) of Disciplinary Cases – Council's decision dated 26th to 28th August, 2001)

**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.

**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. 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.

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**.

**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.

**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. **However, any exaggerated claim or any kind of comparison is not permissible.**



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

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 also public announcements or public communications do not directly or indirectly amount to solicitation of clients for professional work by the member.

#### Advertisement Guidelines:

- 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.
- Members are encouraged to use common CA Logo

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.

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.

The professional reasons for not accepting an audit by new auditor can 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.

“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 first two cases, an auditor who accepts the audit would be guilty of professional misconduct.

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)

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.

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.

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

It was observed that mere posting of a letter under ‘Certificate of Posting’ was not sufficient to prove communication with the previous auditor unless the following requirements have been complied with: (i) if there is evidence that a communication to the previous auditor had been by R.P.A.D. (ii) if there was positive evidence about delivery of the communication to the previous auditor.

*Where the Respondent had accepted the assignment as a Statutory Auditor of the Trust and sent a letter under Post Certificate to the previous auditors, about his appointment as Statutory Auditor of the Trust.*

*The Respondent waited for a reasonable period before proceeding to commence the Statutory Audit but no response was received from the previous auditors.*

*The Respondent accepted the assignment of the Internal Audit work and continuing the Internal Audit work without communicating to Complainant firm.*

*As per the ICAI Regulations – Code of Ethics, Clause (8) of Part I of the First Schedule, the incoming auditors before accepting to carry out any professional work done by a previous Auditor, should necessarily communicate with the previous Auditors in writing and that too by way “Registered Post with Acknowledgement Due” (R.P.A.D). The*

Respondent was failed to comply with the above and held guilty of professional misconduct. (N. Raja, Chennai vs. Subrata Roy Re: [PR/27/2012-DD/80/2012- BOD/165/2014])

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.

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 following guidelines have been issued for the Board for looking into the cases of Removal of Auditors**

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.

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.

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

The above procedure is also followed in the case of removal of auditors by the government and other statutory authorities.

**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.

**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:

- (i) 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;
- (ii) 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;
- (iii) 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;
- (iv) 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;
- (v) in the case of certain fund raising services, the fees may be based on a percentage of the fund raised;
- (vi) in the case of debt recovery services, the fees may be based on a percentage of the debt recovered;
- (vii) in the case of services related to cost optimisation, the fees may be based on a percentage of the benefit derived; and
- (viii) 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 ]

**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.

**Regulation 190A.** “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”.

**Regulation 191.** “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**”

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.

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.

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.

Where a Chartered Accountant was one of the Promoters and a Whole Time Director of Private Limited Company, drawing remuneration besides practicing on a full time basis and besides holding full time COP. Held guilty of professional misconduct falling under Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949. **(Rohit B. Jain vs. Kishore Kumar Poddar - Page 22 of Vol I Part I of Disciplinary Cases, Judgement delivered on 3rd February, 2011).**

**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.

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

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

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

**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.

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 retainerhip.

**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.

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

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

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

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

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

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.

## THE SECOND SCHEDULE

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

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

**Clause (1):** 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.

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.

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.

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. On the other hand, all the joint auditors are jointly and severally responsible in accordance with SA 299 "Joint Audit of Financial Statements".

The Respondent had issued a clean report in respect of his client Company which involved in shipping services who had been enjoying working capital facilities from the Complainant Bank and subsequent to the submission of the original report, the Respondent submitted a revised Audit Report and provided a copy of the same to the Institute and stated that he had directed the Company also to revise the Financial Statement.

The account of the Company turned to NPA in due course of time and the Complainant Bank decided to carry out a Due Diligence Audit of the accounts of the Company pertaining to that period in which the irregularities were happened. The major differences observed from Due Diligence Review Report as against the Clean Audit Report issued by the



Respondent which had a material effect on the decisions taken by the Bank as under:

- a. The Company had granted and taken loan which was against his earlier view as revealed from the register-maintained u/s 301 of the Companies Act, 1956.
- b. The Company did not have an internal audit system, which was a negation of his earlier view.
- c. The Company had accumulated losses of Rs. 67.38 crores whereas the original Financial Statement showed a reasonably good profit and it was observed that the loss arose due to exclusion of proceeds of bill discounted
- d. The Company had defaulted regarding payment to the banks/financial Institutions.
- e. The Company had given guarantee to another Company which was earlier not brought out in the original Audit Report.
- f. The short-term funds had been used for meeting long term investment and the opinion was contrary to his original opinion.
- g. The Company had discounted a lots of accommodation bills for meeting its financial needs which was not stated earlier.

Other than above, it was also observed in the original report that a wrong age-wise classification & disclosure was made in the Financial Statement as far as Sundry Debtors were concerned and the Insurance Premium on the life of the Directors was debited to the Company. Thus, it was enough to prove that the Respondent did not exercise due diligence while carrying out the initial audit and issued a revised audit report to cover up the transactions carried out by the entity.

The Respondent was held guilty of Professional Misconduct falling within the meaning of Clause (2),(5),(6),(7),(8) and (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949. (K. George Varghese vs. K.J. Thomas, Kochi Re: [PR/81/10/DD/89/10 /DC/260/2013] Judgement delivered on 9th September, 2014).

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.

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.

ICAI has issued "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.

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).

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.

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.

Moreover, in case the member who is Director Simplicator (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.

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.

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.

**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.

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.

**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.

The Respondent had failed to give disclosure of Contingent Liabilities in the Financial Statements for the period ending in 2012 against the Corporate Guarantee given in favour of a Group Company. In this context, the Respondent should have verified the charges created on the basis of material available with the Company and Registrar of Companies.

Further, the charge of Rs.4.35 crores against the Balance Sheet size of Rs.26.12 crores was significant. Hence, omission of such information from the Financial Statements makes them misleading and thereby reflects gross negligence on the part of the Respondent in conducting audit and failing to report material misstatement in the financial statements of the said period.

Held guilty of professional misconduct falling within the meaning Clauses (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. [Registrar of Companies, Ministry of Corporate Affairs vs. Jitendra Nath Dhar, (2017)]

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

Negligence per se would not amount to gross negligence in the case of minor errors and lapses

Where a Chartered Accountant wrongly certified the increase in Paid-up Share Capital of a Private Limited Company in the Balance Sheet without proper evidence. Held guilty of professional misconduct falling within the meaning of Clauses (7), (8) & (9) of Part I of Second Schedule to the Chartered Accountants Act, 1949. [\[Ajit Singh Ahuja vs. Dinesh Kumar Goyal, \(2012\)\]](#)

A Chartered Accountant failed to disclose the fact that a significant amount had been spent by the client (on the digging of a new tube-well) and which had not been capitalized in their books of accounts. Also, the Respondent, audited the accounts of the Society for four financial years altogether but Financial Statements were prepared separately for each year and he signed undated audit reports for the four consecutive financial years.

Moreover, the Respondent failed to prepare audit memorandum for each year audited by him. Respondent not only had worked negligently but also failed to disclose the said material fact known to him which was not disclosed in the financial statement. Held that the Respondent was guilty of professional misconduct falling within the meaning of Clauses (5) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. [\[A.N. Iyer & R.N. Iyer vs. Satish Chandra K. Parikh Page 299 of Vol. II of the Disciplinary Cases of April, 2015 Judgement delivered on 5th October, 2013\]](#)

Where a Chartered Accountant, in a Bank Audit reported to the shareholders that he had not verified the cash on hand and that he had also signed the balance sheet in anticipation of the receipt of confirmation letters from the banks in respect of the cash said to be lying with them and failed to report on the weakness of the banks financial position. Held, that he was guilty of the first and third charges falling under Clause (7).

Verification of cash was an essential duty of an auditor which he failed to discharge and in signing the report in anticipation of receiving the confirmation letters from banks, he had failed to perform his duties with the requisite skill and diligence. [\[S.N.Das Gupta in Re:- Page 57 of Vol.II of the Disciplinary Cases and pages 80-92 of September, 1955 issue of the Institute's Journal -Judgement delivered on 1st August, 1955\].](#)

The Opening and Closing stock of Tea as well as Turnover of Tea were not correctly reflected in the Profit and Loss Account and/or Notes on Accounts of a tea Company for the years 1982, 1983 and 1984. It was alleged that the Respondent had failed to bring out these material discrepancies in his reports in the relevant years accounts. The Council found him guilty under Clauses (7) & (8) and decided to recommend to the High Court that he be reprimanded.

After analysing facts of the case and various judicial pronouncements in detail, the High Court was of the opinion that it was not a fit case where the alleged misconduct on the Respondent demanded imposition of any punishment. [\[The Regional Director, Ministry of Industry, Department of Consumer Affairs, Calcutta vs. Inderjit Roy – Page 218 of Vol. VII\(1\) of the Disciplinary Cases - Judgement dated 19th March, 1999\].](#)

**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.

) Where a Chartered Accountant relying on the work of the internal auditor of a Company qualified his report that the books of account and the supporting vouchers had been examined by the internal auditor of the Company, the Council taking the view that the qualification amounted to an exception sufficiently material to negate the expression of an opinion, found him guilty of misconduct under the latter part of Clause (8).

As a general rule, a statutory auditor would be guilty under this Clause, if he performed his work so recklessly as to give his report without looking into the books of account of a Company, on the basis of the work of the internal auditor whose opinion turned out to be false. (J.C. Chandio in Re:- Page 367 of Vol. IV of the Disciplinary Cases and pages 681-683 of June, 1964 issue of the Institute's Journal - Judgement delivered on 31st January, 1964).

In spite of having huge cash-in-hand balance of a Company in different locations for two consecutive financial years, the Respondent physically verified the only at one location and for other locations he accepted only the management certification. It was reported in the Auditors Report on the Balance Sheet that the Balance Sheet and Profit & Loss Account was drawn up in accordance with Accounting Standards but was not reported that the company did not follow Accounting Standard-18.

The Respondent was held guilty of Professional Misconduct falling within the meaning of Clause (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. (Deputy Registrar of Companies, Ministry of Corporate Affairs, Kolkata vs. Gopal Agarwal Re: [PR-189/14-DD/212/2014/ DC/522/2017] Judgement delivered on 30th November, 2018)

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

Where a Chartered Accountant did not conduct sample checking of the bank accounts in relation to the accounts of the Company and did not carry out vouching with respect to the transactions reflected in the accounts of the Company and depended upon his assistant who was a Chartered Accountant and experienced clerk who were entrusted with the auditing work.

Held, he was guilty under Clauses (7) (8) and (9). (M.S. Ramanathan vs. A. Umanath Rao- Page 750 of Vol. IV of the Disciplinary cases and page 165 of September, 1968 issue of Institute's Journal - Judgement delivered on 24th June, 1968).

**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.

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.

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

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

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

Where a Chartered Accountant took into Articles a person who was employed in Government service and failed to inform the Council of the same and granted him a certificate of completion of service under Articles, while he did not receive adequate training. Held that the Chartered Accountant was aware of the employment of the articled clerk and held him guilty of the charge, viz., failure to inform the Council, but on the other charge of inadequacy of training and issue of the certificate of completion, the High Court was not satisfied that he did not receive the required training. (M. Rajamany in Re:- Page 51 of Vol. I

of the Disciplinary Cases and pages 40-43 of June, 1952 issue of Bulletin - Judgement delivered on 4th April, 1952).

A Chartered Accountant did not pay stipend to his artiled clerk, in accordance with Regulation 48 of the Chartered Accountants Regulations, 1988 while to another artiled clerk he was paying stipend every month. The stipend was paid only after the artiled clerk left him after working for a few months and a complaint was lodged with the Institute. The plea of the Chartered Accountant that he had an agreement with the artiled clerk to pay stipend on annual basis was found to be misconceived as the same should be against the provisions of Regulation, 48. (Radhey Mohan in Re:- Published at page 47 of Vol.VI(1) of Disciplinary Cases and in the March, 1980 issue of the Institute's Journal at pages 849-852 - Judgement delivered on 9th November, 1979).

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

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

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

### **PART III - Other misconduct in relation to members of the Institute generally**

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