

Exposure Draft

ICAI Code of Ethics, 2019 Volume – II **(Existing Part –B of Code of Ethics, 2009)**

Last Date of Comments : 21st December, 2019



Ethical Standards Board
The Institute Of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

ICAI Code of Ethics Volume II

Note:-

Changes shown here are as considered by the Council at its 386th (adjourned) Meeting held on 5th and 6th November, 2019.

The changes are shown in track mode in Part-B of the Code of Ethics, 2009, and consisting of following:-

- (i) Amendments/changes/modifications since 2008 in Chartered Accountants Act, 1949, Chartered Accountants Regulations, 1988, Council Guidelines, 2008, Accounting and Auditing Standards, Companies Act, 2013 etc.
- (ii) Council Decisions and Clarifications given by ESB and other Committees (having ethical repercussions) since 2008
- (iii) Changes due to ICAI Code of Ethics, 2019 (based on IESBA Code of Ethics, 2018)
- (iv) Decisions of Courts on issues relevant from the point of view of Code of Ethics
- (v) Miscellaneous changes
- (vi) Changes pursuant to decisions of Council taken.

PART-B

CHAPTER 1

ACCOUNTING AND AUDITING STANDARDS

Authority Attached to Documents Issued by the Institute¹

1.1 The Institute has, from time to time, issued 'Guidance Notes' and 'Statements' on a number of matters. With the formation of the Accounting Standards Board and the Auditing Practices Committee², 'Accounting Standards' and 'Statements on Standard Auditing Practices'³ are also being issued.

1.2 Members have sought guidance regarding the level of authority attached to the various documents issued by the Institute and the degree of compliance required in respect thereof. This is being published here to provide this guidance.

1.3 The 'Statements' have been issued with a view to securing compliance by members on matters which, in the opinion of the Council, are critical for the proper discharge of their functions. 'Statements' therefore are mandatory. Accordingly, while discharging their attest function, it will be the duty of the members of the Institute:

- (a) to examine whether 'Statements' relating to accounting matters are complied with in the presentation of financial statements covered by their audit. In the event of any deviation from the 'Statements', it will be their duty to make adequate disclosures in their audit reports so that the users of financial statements may be aware of such deviations; and
- (b) to ensure that the 'Statements' relating to auditing matters are followed in the audit of financial information covered by their audit reports. If, for any reason, a member has not been able to perform an audit in accordance with such 'Statements', his report should draw attention to the material departures therefrom.

1.4 A list of Statements issued by the Institute and in force as on 1.8. 2019 is given below.

- (i) Statement on Reporting under section 227(1A) of the Companies Act, 1956
- (ii) Statement on the Amendments to Schedule VI to the Companies Act, 1956.
- (iii) Statement on Peer Review.
- (iv) Statement on Continuing Professional Education.

1.5 'Guidance Notes' are primarily designed to provide guidance to members on matters which may arise in the course of their professional work and on which they may desire

¹ Published in the December, 1985 issue of the 'The Chartered Accountant'.

² Now known as the Auditing and Assurance Standards Board (AASB).

³ The Council approved the renaming of the Statements on Standard Auditing Practices (SAPs) as, "Auditing and Assurance Standards" (AASs) in July 2002. With effect from April 1, 2008, the nomenclature of 'Auditing and Assurance Standards' has been changed to 'Engagement and Quality Control Standards'.

assistance in resolving issues which may pose difficulty. Guidance Notes are recommendatory in nature. A member should ordinarily follow recommendations in a guidance note relating to an auditing matter except where he is satisfied that in the circumstances of the case, it may not be necessary to do so. Similarly, while discharging his attest function, a member should examine whether the recommendations in a guidance note relating to an accounting matter have been followed or not. If the same have not been followed, the member should consider whether keeping in view the circumstances of the case, a disclosure in his report is necessary.

1.6 The 'Accounting Standards' and 'Statements on Standard Auditing Practices'⁴ issued by the Accounting Standards Board and the Auditing Practices Committee⁵, respectively, establish standards which have to be complied with to ensure that financial statements are prepared in accordance with generally accepted accounting standards and that auditors carry out their audits in accordance with the generally accepted auditing practices. They become mandatory on the dates specified either in the respective document or by notification issued by the Council.

1.7 There can be situations in which certain matters are covered both by a 'Statement' and by an 'Accounting Standard'/'Statement on Standard Auditing Practices'⁶. In such a situation, the 'Statement' shall prevail till the time the relevant 'Accounting Standard'/'Statement on Standard Auditing Practices'⁷ becomes mandatory. It is clarified that once an 'Accounting Standard'/'Statement on Standard Auditing Practices'⁸ becomes mandatory, the concerned 'Statement' or the relevant part thereof shall automatically stand withdrawn.

ENGAGEMENT AND QUALITY CONTROL STANDARDS AND ACCOUNTING STANDARDS

1.8 The 'Accounting Standards' and 'Engagement and Quality Control Standards' establish standards which have to be complied with to ensure that financial statements are prepared in accordance with generally accepted accounting standards and that auditors carry out their audits in accordance with the generally accepted auditing practices. They become mandatory on the dates specified in the respective document or notified by the Council.

1.9 There can be situations in which certain matters are covered both by a Statement and by an Accounting Standard/Engagement and Quality Control Standard. In such a situation, the Statement shall prevail till the time the relevant 'Accounting Standard'/'Engagement and Quality Control Standard' becomes mandatory. Once an 'Accounting Standard'/'Engagement and Quality Control Standard' becomes mandatory, the concerned 'Statement' or the relevant part thereof automatically stands withdrawn.

1.10 In a situation where certain matters are covered by a recommendatory Accounting Standard and subsequently, an Accounting Standard is issued which also covers those matters, the recommendatory Accounting Standard or the relevant portion thereof will be considered as superseded from the date of the new Accounting Standard coming into

⁴ Refer footnote 3.

⁵ Refer footnote 2.

⁶ *ibid*

⁷ *ibid*

⁸ *ibid*

effect, unless otherwise specified in the new Accounting Standard.

4.14 1.11 In a situation where certain matters are covered by a mandatory Accounting Standard and subsequently, an Accounting Standard is issued which also covers those matters, the earlier Accounting Standard or the relevant portion thereof will be considered as superseded from the date of the new Accounting Standard becoming mandatory, unless otherwise specified in the new Accounting Standard.

A. Engagement and Quality Control Standards

1.12 The main function of the Auditing and Assurance Standards Board (AASB) is to review the existing and emerging auditing practices worldwide and identify areas in which Standards on Quality Control, Engagement Standards and Statements on Auditing need to be developed so that these may be issued under the authority of the Council of the Institute.

1.13 Till 2002, the Auditing standards issued by AASB under the authority of the Council of ICAI were known as 'Statements on Standard Auditing Practices' (SAPs). In 2002, the Council approved the renaming of SAPs as 'Auditing and Assurance Standards' (AASs). Till 2007, AASB issued 35 AAS under the authority of the Council of ICAI.

Revised Preface to the Standards on Quality Control, Auditing, Review, Other Assurance and Related Services

1.14 In July 2007, AASB issued the "Revised Preface to the Standards on Quality Control, Auditing, Review, Other Assurance and Related Services" which is effective from April 1, 2008. Pursuant to issuance of Revised Preface, the entire structure of formulation of auditing standards by AASB has undergone a complete change in line with the structure adopted by the International Auditing and Assurance Standards Board (IAASB) of IFAC. The major changes made by Revised Preface are as under:

- The nomenclature "Auditing and Assurance Standards" has been changed to 'Engagement and Quality Control Standards'
- Numbering pattern of standards has been changed.
- A new format of presenting the standards has been adopted.

1.14.1 Engagement and Quality Control Standards

These standards comprise Engagement Standards and Standards on Quality Control.

1.14.1A Engagement Standards

The 'Engagement Standards' comprise the following four types of Standards:

- *Standards on Auditing (SAs)* – These standards are to be applied in the audit of historical financial information.
- *Standards on Review Engagements (SREs)* – These standards are to be applied in the review of historical financial information.

- *Standards on Assurance Engagements (SAEs)* – These standards are to be applied in assurance engagements, other than audits and reviews of historical financial information.
- *Standards on Related Services (SRSs)* – These standards are to be applied to engagements involving application of agreed- upon procedures to information, compilation engagements, and other related services engagements, as may be specified by the ICAI.

1.14.1B Standards on Quality Control (SQC)

These standards are to be applied for all services covered by the Engagement Standards as described above.

The list of Engagement and Quality Control Standards issued by ICAI is enclosed at Appendix “A”.

1.14.2 Numbering pattern of Standards

Earlier, the auditing standards were being allotted sequential numbers as and when they were issued. In case of Engagement and Quality Control Standards, the numbering pattern has been changed in line with the numbering pattern adopted by IAASB. Under the new numbering pattern, a separate numerical series has been allotted to different categories of Standards as given below:

Category	Numerical Series
Standards on Quality Control (SQC)	01–99
Standards on Auditing (SAs)	100-999
Standards on Review Engagements (SREs)	2000–2699
Standards on Assurance Engagements (SAEs)	3000–3699
Standards on Related Services (SRSs)	4000-4699

1.14.3 New format of presenting the standards

In line with the format adopted by the IAASB under its Clarity Project, the Revised Preface provides that instead of a running text, the Standards would now contain two distinct sections, one, the *Requirements* section and, two, the *Application and Other Explanatory Material* section.

1.15 Requirements Section

The fundamental principles of the Standard are contained in the Requirements section and represented by use of “shall”. Hitherto, the word, “should” was used in the Standards, for this purpose. Further, this format also does away with the need to present the principles laid down by the Standard in bold text.

1.16 Application and Other Explanatory Material Section

1.16.1 The application and other explanatory material contained in a Standard are its integral part as they provide further explanation of, and guidance for carrying out, the requirements of a Standard, along with the background information on the matters addressed in the Standard. These may include examples of procedures, some of which the auditor may judge to be appropriate in the circumstances. Such guidance is, however, not intended to impose a requirement.

1.16.2 The Revised Preface makes it clear that it is the duty of the professional accountants to ensure that the Standards/Statements/General Clarifications are followed in the engagements undertaken by them. The need for the professional accountants to depart from a relevant requirement is expected to arise only where the requirement is for a specific procedure to be performed and, in the specific circumstances of the engagement, that procedure would be ineffective. If because of that reason, a professional accountant has not been able to perform an engagement procedure in accordance with any Standard/Statement/ General Clarification, he is required to document how alternative procedures performed achieve the purpose of the procedure, and, unless otherwise clear, the reasons for the departure. Further, his report should draw attention to such departures. However, a mere disclosure in his report does not absolve a professional accountant from complying with the applicable Standards/Statements/General Clarifications.

B. Accounting Standards

1.17 At present, there are three sets of Accounting Standards:

- (i) Indian Accounting Standards (Ind AS) for specified class of companies;
- (ii) Accounting Standards (AS) notified under Companies (Accounting Standards) Rules, 2006 for companies other than those following Ind AS;
- (iii) Accounting Standards (AS) prescribed by ICAI similar to notified AS with minor differences regarding presentation, etc. for entities other than companies.

1.18 As per the due process, ASB prepares Accounting Standards that are approved by the Council of the ICAI. Accounting Standards which are applicable to non-company entities are issued by the ICAI. Accounting Standards (AS and Ind AS) which are applicable to companies are notified by the Ministry of Corporate Affairs (MCA) in consultation with National Advisory Committee on Accounting Standards (NACAS) based on the recommendations of ICAI.

1.19 The Accounting Standards (Ind AS and AS), issued by ICAI/notified under Companies Act are meant for use in the presentation of general purpose financial statements which are issued to the public and are subject to the attest function of members of ICAI.

1.20 Accounting Standards are designed to apply to the general purpose financial statements in respect of any enterprise (whether organized in corporate, co-operative or other forms) engaged in commercial, industrial or business activities, irrespective of whether it is profit oriented or it is established for charitable or religious purposes. Accounting Standards will not, however, apply to enterprises only carrying on the activities which are not of commercial, industrial or business nature*, (e.g., an activity of collecting donations and giving them to flood affected people). Exclusion of an enterprise from the applicability of the Accounting Standards would be permissible only if no part of the activity of such enterprise is commercial, industrial or business in nature. Even if a very small proportion of the activities of an enterprise is considered to be commercial, industrial or business in nature, the Accounting Standards would apply to all its activities including those which are not commercial, industrial or business in nature. The term General Purpose Financial Statements includes balance sheet, statement of profit and loss, a cash flow statement (wherever applicable) and statements and explanatory notes which form part thereof, issued for the use of various stakeholders, Governments and their agencies and the public. The Accounting Standards become mandatory on the dates specified in the respective Accounting Standards or as may be notified by the Council or Ministry of Corporate Affairs (MCA)

1.21 The list of Accounting Standards issued by ICAI as on 1st July, 2019 is mentioned at Appendix “B”.

1.22 The Companies Act, 2013 as well as many other statutes require that the financial statements of an enterprise should give a true and fair view of its financial position and working results. This requirement is implicit even in the absence of a specific statutory provision to this effect. However, what constitutes ‘true and fair’ view has not been defined either in the Companies Act, 2013, or in any other statute. The Accounting Standards (as well as other pronouncements of the Institute on accounting matters) seek to describe the accounting principles and the methods of applying these principles in the preparation and presentation of financial statements so that they give a true and fair view.

1.23 Besides the requirement regarding ‘true and fair’ view under the Companies Act, 2013, Section 133 of the principal Act requires that the Central government may prescribe the standards of Accounting as recommended by the Institute of Chartered Accountants of India. Further, Companies, rules under the Act requires that the financial statements shall comply with Accounting standards or Indian Accounting standards as applicable.

1.24 The Government of India, Ministry of Company Affairs (now Ministry of Corporate Affairs), has issued Notification dated December 7, 2006, prescribing Accounting Standards 1 to 7 and 9 to 29 as recommended by the Institute of Chartered Accountants of India, which have come into effect in respect of the accounting periods commencing on or after the aforesaid date with the publication of these Accounting Standards in the Official Gazette under the Companies (Accounting Standards) Rules, 2006. It may be mentioned that the Accounting Standards notified by the Government are virtually

* It may be noted that as per Companies Act, Accounting standards shall be applicable to all the companies since rules notified thereunder do not mention the words ‘Commercial, industrial or business activities’, meaning thereby that the notified Accounting Standards(AS or Ind AS) are applicable to all the companies, whether engaged purely in commercial, industrial or business activities or not.

identical with the Accounting Standards, , issued by the Institute of Chartered Accountants of India.* For details of Accounting Standard, the members may refer “Compendium of Accounting Standards” issued by the Institute from time to time. The Central Government, MCA has also issued Notification dated February, 16, 2015 , vide Companies (Indian Accounting Standards) Rules, 2015 prescribing Indian Accounting Standards applicable to certain class of Companies as required by the road map , which has been amended from time to time.

* The Council issued an Announcement ‘Harmonisation of various differences between the Accounting Standards issued by ICAI and the Accounting Standards notified by the Central Government’, dealing with criteria for classification of entities, applicability of Accounting Standards to Companies as per Government Notification and applicability of Accounting Standards to non-corporate entities, etc. Announcement was published in ‘The Chartered Accountant’, February 2008 (Pages 1340-1351).

CHAPTER 2

THE CHARTERED ACCOUNTANTS ACT, 1949

(a) GENERAL PROVISIONS:-

2.1 The Preamble of the Chartered Accountants Act, 1949 ('the Act') sets the purpose of the Act as "An Act to make provision for the regulation of the profession of Chartered Accountants." The Institute of Chartered Accountants of India was constituted under the Act whose affairs are managed by the Council. The Council of the Institute has been empowered to discharge the functions assigned to it under the Act. The Chartered Accountants (Amendment) Act, 2006 has, *inter alia*, introduced provisions for a new Disciplinary Mechanism within its framework which would ensure well considered and expeditious disposal of complaints against members on professional or other misconduct. The provisions provided for appointment of a Director (Discipline), to investigate complaints, constitution of a Board of Discipline and *Disciplinary Committee(s)* to deal with cases and providing for an Appellate Authority, to deal with appeals arising out of decisions of the Board of Discipline and the Disciplinary Committee(s), as the case may be. The Chartered Accountants (Amendment) Act, 2011 has incorporated changes as necessitated by the Limited Liability Act, 2008.

2.2 Members who are deemed to be in practice

2.2.1 Every member of the Institute is entitled to designate himself as a Chartered Accountant. There are two classes of members, those who are in practice and those who are otherwise occupied.

2.2.2 In Section 2(2) of the Act, the term "to be in practice" has been defined as follows:-

"A member of the Institute shall be deemed "to be in practice" or in partnership with members of such other recognised professions as may be prescribed when individually or in partnership with Chartered Accountants in practice, 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 services involving the auditing or verification of financial transactions, books, accounts or records, or the preparation, verification or certification of financial accounting and related statements or holds himself out to the public as an accountant; or
- (iii) renders professional services or assistance in or about matters of principle or detail relating to accounting procedure or the recording, presentation or certification of financial facts or data; or
- (iv) renders such other services as, in the opinion of the Council, are or may be rendered by a Chartered Accountant in practice,

and the words "to be in practice" with their grammatical variations and cognate expressions shall be construed accordingly

Explanation:- An associate or a fellow of the Institute who is a salaried employee of a Chartered Accountant in practice or a firm of such Chartered Accountants or 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 ".

2.2.3 Pursuant to Section 2(2) (iv) above, the Council has passed a resolution permitting a Chartered Accountant in practice to render entire range of "Management Consultancy and other Services" 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 (subject to this, members may act as Registered valuer under the Companies Act, 2013 read with The Companies (Registered Valuers and Valuation) Rules, 2017**); and advice regarding amalgamation, merger and acquisition.
- (xvi) Business Policy, corporate planning, organisation development, growth and diversification.
- (xvii) Organisation structure and behaviour, development of human resources including design and conduct of training programmes, work study, job-description, job evaluation and evaluation of work loads.
- (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

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

** As decided by the Council at its 386th (adjourned) Meeting of the Council held on 5th and 6th November, 2019

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.

- (xx) Investment counseling in respect of securities [as defined in the Securities Contracts (Regulation) Act, 1956 and other financial instruments.] (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).
- (xxi) Acting as registrar to an issue and for transfer of shares/other securities. (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).
- (xxii) Quality Audit.
- (xxiii) Environment Audit.
- (xxiv) Energy Audit.
- (xxv) Acting as Recovery Consultant in the Banking Sector.
- (xxvi) Insurance Financial Advisory Services under the Insurance Regulatory & Development Authority Act, 1999, including Insurance Brokerage.
- (xxvii) Acting as Insolvency Professional*
- (xxviii) Administrative services

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

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

* As per the Announcement dt. 7.6.2017 issued by the Institute pursuant to decision of the Council taken at its 362nd Meeting held on 6th, 7th and 8th February, 2017

2.2.6 A member of the Institute is deemed to be in practice during the period he renders 'service with armed forces'.

2.2.7 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:

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

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

- (a) furnish the details of outward and inward supplies;
- (b) furnish monthly, quarterly, annual or final return;
- (c) make deposit for credit into the electronic cash ledger;
- (d) file a claim for refund;
- (e) file an application for amendment or cancellation of registration;
- (f) furnish information for generation of e-way bill;
- (g) furnish details of challan in FORM GST ITC-04;
- (h) file an application for amendment or cancellation of enrolment under rule 58; and
- (i) file an intimation to pay tax under the composition scheme or withdraw from the said scheme.

2.3 Significance of the certificate of Practice

2.3.1A A member who is not in practice, is precluded from accepting engagement to render services of any of the types normally prescribed for a Chartered Accountant, even though for doing so, he does not require special qualifications. For example, a member of the Institute who was in practice till the 10th November, 1954, was by an order of the High Court dated 11th November, 1954 suspended from practice for a period of six months though not removed from membership. [Ref. A.C. Kaher in Re:- Page 64 of Vol. IV(1) of Disciplinary Cases]. Pursuant to the order of the High Court, he was asked to surrender the Certificate of Practice issued to him for the period of suspension which he did.

2.3.1B He, however, wrote to the Institute enquiring whether he could practice as an income-tax practitioner under Section 61 of the Indian Income-tax Act, 1922 being qualified otherwise than as a Chartered Accountant to do so. In reply he was informed that if a member acted as a representative in taxation matters, he would be deemed to be in practice as a Chartered Accountant, and his attention in this connection was drawn to Section 2(2) of the Chartered Accountants Act and Regulation 78 of the Chartered

Accountants Regulations 1949.

2.3.1C He wrote back to the Institute saying that he was not "going in for practice as Chartered Accountant but doing income-tax cases as per the provisions of Section 61 (iv) (a) (b) and (c) of the Indian Income-tax Act, 1922". He also stated that in his opinion Section 2(2) of the Chartered Accountants Act did not supersede Section 61 of the Indian Income-tax Act, and that he was entitled to practise as an Income-tax practitioner even before becoming a member of the Institute and he had only resumed this work since he could not practice as a Chartered Accountant.

2.3.1D He was again informed by the Institute that he continued to be a member of the Institute but was only suspended from practice under the Order of the High Court for a period of six months, and that he should comply with the provisions of the Act and the Regulations in so far as they were applicable to a member of the Institute. The Commissioner of Income-tax, Punjab, PEPSU, Himachal Pradesh, J & K also informed the Institute that the member concerned had made similar representation to the Income-tax Department, that although he was suspended from practice, he could still practice as an income-tax practitioner under Section 61 of the Indian Income-tax Act, 1922.

2.3.2 The above contention of the member was not accepted by the Council on the following grounds:

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

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

2.4 A Member in practice is prohibited from using a designation other than Chartered Accountant (Section 7)

2.4.1 *Every member of the Institute in practice shall, and any other member may, use the designation of a chartered accountant and no member using such designation shall use any other description, whether in addition thereto or in substitution therefor:*

Provided that nothing contained in this Section shall be deemed to prohibit any such person from adding any other description or letters to his name, if entitled thereto,

to indicate membership of such other Institute of accountancy, whether in India or elsewhere, as may be recognised in this behalf by the Council, or any other qualification that he may possess, 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

2.4.2 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. Chartered accountants or firms of Chartered Accountants acting as Advisor or Consultant to an Issue should ensure that the description 'Merchant Banker' is not associated with their names in the offer documents and/or advertisements regarding capital issue of their client Companies. The mention of the name of Chartered Accountant/firm under the caption 'Merchant Banker' could be misleading, as there were four categories of Merchant Bankers and the members of the profession were permitted to register only as category IV 'Merchant Bankers', i.e. to act only as Advisor or Consultant to an Issue. Further, such members and firms should not use the designation of either 'Merchant Banker' or 'Advisor/Consultant to Issue' in their own letter heads, visiting cards, professional documents, etc. As per Regulation 3(2A) of SEBI (Merchant Bankers) Regulations, 1992, with effect from 9th December, 1997 registration as category IV Merchant Banker has been dispensed with.

Directors of Companies, members of political parties, position in clubs, etc.

2.4.3 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 they would be violative of the provisions of Section 7 of the Act.

Members who are also Cost and Management Accountants

2.4.4 Though a member cannot designate himself as a Cost and Management 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..

Other qualifications of the member

2.4.5 The following observations of the Supreme Court in *Institute of Chartered Financial Analyst of India (ICFAI) vs Council of the Institute of Chartered Accountants of India (ICAI)*- date of judgment 16th May, 2007 are relevant in this context :-

"The expression 'any other qualification that he may possess', therefore, must be read as qualification other than conferred upon the member by other Institutes of Accountancy. Such qualification of accountancy may be conferred even by other

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

2.5 Disabilities for purpose of Membership

2.5.1 Section 8 of the Act 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 twenty one 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:

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

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

2.6 Removal from the Register

2.6.1 Section 20 of the Act provides that the Council may remove from the Register the name of any member of the Institute—

- (a) who is dead; or
- (b) from whom a request has been received to that effect; or
- (c) who has not paid any prescribed fee required to be paid by him; or
- (d) 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.

2.6.2 This section also provides that it is mandatory to the Council to remove from the Register the name of any member in respect of whom an order has been passed under this Act for removing him from membership of the Institute.

2.6.3 If the name of any member has been removed from the Register under Clause (c) of sub-section(1) on receipt of an application, his name may be entered again in the Register on payment of the arrears of Annual Fee and entrance Fee along with such additional fee as may be determined by Notification by the Council, which shall not exceed Rupees Two thousand.

2.7 Procedure in Inquiries for Disciplinary Matters relating to misconduct of the members of the Institute

2.7.1 The Chartered Accountants (Amendment) Act, 2006, has for the first time added the provisions for imposition of fine as a punishment for the misconduct.

2.7.2 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:-

- (a) 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.
- (b) 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.
- (c) The Board of Discipline (in respect of matters relating to First Schedule) has been empowered to pass the following orders:-
 - (i) reprimand the member
 - (ii) remove the name of the member from Register upto a period of three months
 - (iii) impose such fine which may extend to rupees one lakh.
- (d) 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:-
 - (i) reprimand the member
 - (ii) remove the name of the member from the Register permanently or for such period as it may think fit.
 - (iii) impose such fine which may extend to rupees five lakhs.
- (e) 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,

- (i) summoning and enforcing attendance of any person and examining him on oath;
 - (ii) discovery and production of any document; and
 - (iii) receiving evidence on affidavit.
- (f) 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.
- (g) The Appellate Authority while hearing an appeal against the order of the Board of Discipline or the Disciplinary Committee has the power to:
- i. confirm, modify or set aside the order;
 - ii. impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
 - iii. 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
 - iv. pass such other order as the Authority thinks fit
- (h) The Appellate Authority shall give an opportunity of being heard to the parties concerned before passing any order.

2.73 The Disciplinary mechanism is shown vide Flow charts at Appendix – C.

2.8 Conduct of the Members in any other Circumstances:

S.22. Professional or other Misconduct defined

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

2.8.1 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”. This provision empowers the Director (Discipline) to enquire into any conduct of a member under any other circumstance. This is considered necessary because a Chartered Accountant is expected to maintain the highest standards and integrity even in his/her personal affairs and any deviation from these standards, would expose him/ her to disciplinary action. For example, a member who is found to have forged the will of a

relative, may be liable to disciplinary action even though the forgery may not have been done in the course of his professional duty.

2.8.2 The question whether a particular act or omission constitutes “misconduct in any other circumstances” has to be decided on the facts and circumstances of each case. The judgement dated 10th September, 1957 of the Supreme Court in “Council of the **Institute of Chartered Accountants of India and another vs. B. Mukherjee**” (AIR 1958 SC 72) is also relevant. After examining the nature, scope and extent of the disciplinary jurisdiction, which can be exercised under the provisions of the Act, the Supreme Court observed as under:-

“We, therefore, take the view that, if a member of the Institute is found, prima facie, guilty of conduct, which, in the opinion of the Council renders him unfit to be a member of the Institute, even though such conduct may not attract any of the provisions of the Schedule, it would still be open to the Council to hold an enquiry against the member in respect of such conduct and a finding against him, in such an enquiry, would justify appropriate action being taken by the High Court.”

2.9 Penalty for falsely claiming to be a Member etc.

Section 24 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; or*
- (ii) *being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practices as a Chartered Accountant, shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months or with fine which may extend to five thousand rupees, or with both.”*

2.10 Companies not to engage in accountancy

Section 25 provides that:-

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

Explanation – For the removal of doubts, it is hereby declared that the “company” shall include any limited liability partnership which has company as its partner for the purposes of this section.

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

2.10.1 Guidelines for Corporate Form of Practice

To empower the members to face the emerging challenges in the service sector as

well as to equip them for the opportunities in the non-audit service area, the Council in 2006 decided to allow members in practice to render Management Consultancy and Other Services in Corporate form in accordance with the Guidelines issued in this regard (see **Appendix 'D'**).

2.11 Unqualified persons not to sign documents

Section 26 provides that:-

“(1) 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 such chartered accountants in his or its professional capacity.

(2) Any person contravenes this provision shall, without prejudice to any other proceedings, which may be taken against him, be punishable on first conviction with a fine not less than five thousand rupees but which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year or with fine not less than ten thousand rupees but which may extend to two lakh rupees or with both.”

2.12 Maintenance of Branch Offices

2.12.1 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 are more than one, would constitute professional misconduct.

However, the Council has given exemption to members practising in hill areas subject to certain conditions. The conditions are:-

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

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

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

2.12.4 However, a member can be in charge of two offices if they are located in one and the same accommodation. In this context, the Council's decisions are set out below:

- (1) *Definition of Office* – “A place where a name-board is fixed or where such place is mentioned in the letter-head or any other documents as a place of business.”
- (2) With regard to the use of the name-board, there will be no bar to putting up of a name-board in the place of residence of a member with the designation of Chartered Accountant, provided it is a name-plate or a name-board of an individual member and not of the Firm.
- (3) The requirement of Section 27 in regard to a member being in charge of an office of a Chartered Accountant in practice or a firm of such Chartered Accountants shall be satisfied only if the member is actively associated with such office. Such association shall be deemed to exist if the member resides in the place where the office is situated for a period of not less than 182 days in a year or if he attends the said office for a period of not less than 182 days in a year or in such other circumstances as, in the opinion of the Executive Committee, establish such active association.
- (4) In view of the Council’s decision, however, the exemption is granted under proviso to Section 27(1) of the Chartered Accountants Act, 1949 to a member or a firm of Chartered Accountants in practice to have a second office without such second office being under the separate charge of a member of the Institute, provided (a) the second office is located in the same premises, in which the first office is located or (b) the second office is located in the same city, in which the first office is located or (c) the second office is located within a distance of 50 km. from the municipal limits of a city, in which the first office is located. A member having two offices of the type referred to above, shall have to declare, which of the two offices is his main office, which would constitute his professional address.
- (5) The expression “member” in the above context shall mean, where more than one member is designated as in charge of an office, then any such member and in other cases more than one member where a change in the designated member in charge of an office takes place during the year.

2.13 Procedure with regard to noting by the Institute of retirement of Partner(s) of a firm

1. On receipt of a notice of retirement from partner(s) of a firm, a communication would be sent to the other partner(s) of the firm to confirm within a specified period about the retirement of the partner(s) who had sent the notice to the Institute.
2. In case the other partner(s) do not confirm the retirement within the specified date or do not send the confirmation before the said date, the retirement of the partner(s) having sent the notice of the retirement from the firm would be noted in the records of the Institute.
3. In case of intimation of existence of dispute between/among partners received from the firm/other partners a suitable note would be kept in the records of the Institute and retirement will not be noted and the fact shall be mentioned in the entry on record of firms and firm constitution certificate, etc.
4. The fact that there was dispute among the partners of a firm would also be intimated to the C&AG/RBI while furnishing the particulars of the firm for empanelment of bank Audit /C&AG audit.
5. In case of reconstitution of a firm, wherever form 18 duly signed by the remaining partners and the resignation letter of outgoing partner(s) is received, the office will take such reconstitution on record as per the current practice.
6. Wherever the firm is "at will" as per the deed of partnership and the retirement of a partner(s) is informed and form 18, accompanied by a certified copy of partnership deed, is submitted duly signed by the remaining / surviving partners of the firm. In such a case, the fact of such retirement will be informed to the outgoing partner(s) concerned giving a notice by recorded delivery mode of 14 days to inform the factual position. In case of no response is received, the reconstitution of the firm will be taken on record. If an objection is received, the reconstitution of the Firm will not be taken on record, and the Firm as well as the outgoing partner(s) will be informed about the option of availing the forum of Dispute Resolution Mechanism of the Institute.
7. Wherever the firm is "at will" as per the deed of partnership and the partnership deed has vested in the Managing Partner of the firm to perform certain specified acts which includes reconstitution of firm on his own and if he, in pursuance of such authority, informs the Institute and submits form 18, accompanied by a certified copy of partnership deed, duly signed by the remaining/ surviving partners of the firm, the fact of such form 18 specifying the act will be informed to the outgoing partner(s) concerned giving a notice by recorded delivery mode of 14 days to inform the factual position. In case of no response or confirmation is received, the reconstitution of the firm will be taken on record. If objection is received, the reconstitution of the firm will still be taken on record and the aggrieved members can move the Dispute Resolution Mechanism.

(b) SCHEDULES TO THE ACT:-

2.14 Professional/other misconduct by the Members as provided in Schedules

2.14.1 The expression “*professional or other misconduct*” within the meaning of Section 22 of the Chartered Accountants Act shall be deemed to include any *act(s) or omission(s) provided in any of the two Schedules viz the First Schedule and the Second Schedule to the Act but nothing in that 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 enquire into the conduct of any member of the Institute under any circumstances.*

2.14.2 The First Schedule is divided into four parts. Part I of the First Schedule deals with the professional misconduct of a member in practice which would have the effect generally of compromising his position as an independent person. Part II deals with professional misconduct of members of the Institute in service. Part III deals with the professional misconduct of members of the Institute generally and Part IV deals with other misconduct of Members *of the Institute* generally.

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

The First Schedule

2.15. A member *who is* engaged in the profession of accountancy whether in practice or in service should conduct/restrict his action in accordance with the provisions contained in the respective parts of this Schedule. If the member is found guilty of any of the acts or omissions stated in any of the respective parts of this Schedule, he/she shall be deemed to be guilty of professional *and/or other* misconduct.

2.15.1 PART I OF FIRST SCHEDULE

Professional Misconduct in relation to Chartered Accountants in Practice

2.15.1A *A Chartered Accountant in practice shall be 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;*

2.15.1A(i) The above clause is intended to safeguard the public against unqualified accountants practising under the cover of qualified accountants. It ensures that the work of the accountant will be carried out by a Chartered Accountant who may be his partner or his employee and who would work under his control and supervision.

2.15.1B *A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he :-*

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 qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.*

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

2.15.1B(i) It is in order for a member to share his fees or profits with another member of the Institute and/or a firm of Chartered Accountants. A practicing Member of the Institute can share fees or profits arising out of his professional business with such members of other professional bodies *or with such other persons having such qualifications* as may be prescribed from time to time by the Council.

2.15.1B(ii) The Council has prescribed (Regulation 53-A of the Chartered Accountants Regulations, 1988) the professional bodies which are as under:-

- (a) The Institute of Company Secretaries of India established under the Companies Secretaries Act, 1980 (No. 56 of 1980).
- (b) The Institute of Cost & Works Accountants of India established under the Cost & Works Accountants Act, 1959 (No. 23 of 1959)
- (c) Bar Council of India established under the Advocates Act, 1961 (No. 25 of 1961)
- (d) The Indian Institute of Architects established under the Architects Act, 1972 (No. 26 of 1972)
- (e) The Institute of Actuaries of India established under the Actuaries Act, 2006 (No. 35 of 2006)

2.15.1B(iii) The Institute came across certain Circulars/Orders issued by the Registrars of various State Co-operative Societies wherein it has been mentioned that certain amount of audit fee is payable to the concerned State Government and the auditor has to deposit a percentage of his audit fee in the state Treasury by a prescribed challan within a prescribed time of the receipt of Audit fee. In recent past, the Council considered the issue and while noting that the Government is asking auditors to deposit such percentage of their audit fee for recovering the administrative and other expenses incurred in the process, the Council decided that as such there is no bar in the Code of Ethics to accept such assignment wherein a percentage of professional fee is deducted by the Government to meet the administrative and other expenditure.

Goodwill

2.15.1B(iv) When there are two or more partners and one of them dies, the widow of the deceased partner can continue to receive a share of the profit of the firm. A legal representative, say widow of a deceased partner, would be entitled to share the profits only where the partnership agreement contains a provision that on the death of the partner his widow or legal representative would be entitled to such payment for goodwill by way of sharing of fees or otherwise for some specified period. There could not be any sharing of fees between the widow or the legal representative of the proprietor of a

single member firm and the purchaser of the goodwill of the firm on the death of the Sole proprietor of the firm. Payment of goodwill to the widow is permissible in such cases only for the goodwill of the firm and to enable such payments to be made in installments provided the agreement of the sale of goodwill contains such a provision. These payments even if they are spread over the specified period should not be linked up with participation in the earnings of the firm. The widow of a partner when the partnership agreement does not contain a provision entitling her to share in profits, would not be entitled to such profits.

2.15.1B(v) The Council has taken the view, in a case referred to it that it is not permissible for the widow of a deceased member, whose professional work consisted mainly of income-tax representation, to receive a monthly lump-sum payment for a period of five years or a specified percentage of income.

2.15.1B(vi) The Council of the Institute considered the issue whether the goodwill of a proprietary firm of Chartered Accountant can be sold/transferred to another eligible member of the Institute, after the death of the proprietor concerned and came to the view that the same is permissible. Accordingly, the Council passed the following resolution with a view to mitigating the hardship generally faced by the families after the death of such proprietors:

"RESOLVED THAT the sale/transfer of goodwill in the case of a proprietary firm of Chartered Accountant to another eligible member of the Institute shall be permitted

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

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

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

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

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

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

2.15.1B(vii) In case of a partnership firm when all the partners die at the same time, the above Council decision would also be applicable.

2.15.1B(viii) Procedure to be fulfilled to transfer the goodwill of Firm

of Chartered Accountants

Transfer of goodwill of the firms of Chartered Accountants is permitted by the Institute subject to fulfillment of the following procedures:-

1. An application in writing should be forwarded by a member, holding Certificate of Practice, intimating his intention to purchase goodwill.
2. The application should be made within 1 year from the date of death of the member.
3. The application should be sent along with the following details:-
 - a. "Death Certificate" of the deceased member; and
 - b. (i) A draft sale deed for sale/transfer of goodwill entered into between the legal heir/s of the deceased and the member intending to purchase goodwill.
 - (ii) The sale of goodwill deed must be very clear as to the amount of consideration and payment thereof in one or more installment(s) to be paid within a specified period. The consideration should not be contingent upon future profits.
4. Documents, such as, Succession certificate or Will, Legal Heir Certificate or an affidavit sworn by all legal heir/s stating that there is/are no other legal heir to the deceased member.
5. Legal heir, in this context, means Spouse, Shild/Children and Parents.
6. If the agreement is entered into by one of the legal heirs, 'No Objection' from the other legal heirs, except those minor, are also required to be submitted. In case of minor, 'No Objection' is to be obtained from the guardian.
7. The member intending to purchase the goodwill should give an advertisement about his intention to purchase such goodwill, and the advertisement should spell out that anyone having objection thereto should send the objection directly to the respective Regional Office/Decentralised office (address of which shall be indicated in the advertisement). A copy of the advertisement so published should be sent by the intending purchaser to the concerned Regional Office/Decentralised office.
8. Within 30 days of the receipt of the approval, for transfer of goodwill, Form '18' is required to be filed by the member purchasing the goodwill.

2.15.1C A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he:-

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;*

2.15.1C(i) Just as a member cannot share his fees with a non-member, he is also not permitted to receive and share the fees of others except for sharing with Member of such professional body or other person having *such* qualification as may be prescribed (Regulation 53A of The Chartered Accountants Regulations, 1988) by the Council *for the purpose of Clause (2), (3) and (5) of Part I of First Schedule*. Such a restriction is necessary so that a Chartered Accountant who is often required to engage or to recommend for engagement by his clients, the services of the members of other professions, can not share the fees received by other persons who are otherwise not permitted by the Council in terms of provision of this clause.

2.15.1C(ii) Referral fees

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.

2.15.1D A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he:-

Clause (4): *enters into partnership, in or outside India, with any person other than a 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 recognised by the Central Government or the Council for the purpose of permitting such partnerships.*

2.15.1D(i) Multi- Disciplinary partnerships

The Council has prescribed (Regulation 53 A(3) and 53B of The Chartered Accountants Regulations, 1988) for the persons qualified and the professional bodies. 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. The existing directions of the Council in relation to allowing a member in practice to be Director Simplicitor in a company (simultaneously with Directors who are non CAs or non-practicing CA), cannot be compared with the partner/ designated partner in a non-professional LLP. Therefore, as of now, a member in practice cannot become a partner/ designated partner (non-working and non-remuneration drawing) in an LLP not carrying out professional work. However, partnership between members of the Institute and members of foreign professional bodies are permissible provided members of such bodies are eligible for the membership of the Institute.

2.15.1D(ii) Effective from December 8, 1997, no fresh enrolment of persons with the qualifications of institutions, organisations, etc. earlier permitted by the Council (Appendix –E) is permissible. Accordingly, partnership between members of the Institute and members of these foreign professional bodies is not permissible from the above dates.

2.15.1D(iii) The Council while considering the judgement dated 10th July, 1990 of **Allahabad High Court in the case of Iqbal Hamid vs. ICAI (W.P. No. 1823 of 1988)** and another judgement dated 9th February, 1989 of **Bombay High Court in the case of Nalin S. Sualy vs. ICAI (W.P. No. 4906 of 1985)** clarified that under this clause the prohibition on entering into partnership with non-Chartered Accountants was confined to the practice of the profession of Chartered Accountants.

2.15.1E *A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he:-*

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 arrangement permitted in terms of items (2), (3) and (4) of this Part;*

“A man must stand erect, and not be kept erect by others”- Marcus Aurelius.

2.15.1E(i) This dictum though applicable for a man in every walk of life is more so in the case of a professional. He must not seek work through a person who is not his employee or partner or by means which are not open to a chartered accountant. The work will follow him due to the respect that he commands for his professional talent, and skill and by the confidence he is able to inspire by his reputation. All forms of canvassing on that account are regarded unethical and are prohibited.

2.15.1F *Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he:-*

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;*
- (ii) *a member from responding to tenders or enquiries issued by various users of professional services or organisations from time to time and securing professional work as a consequence;*

2.15.1F(i) It is an elaboration of the principle propounded in the preceding clause enjoining that for securing professional work the help of others should not be sought. This clause further enjoins on a member not to solicit professional work by means of advertisement, circular, personal communication or interview or by any other means. The members should not adopt any indirect methods to advertise their professional practice with a view to gain publicity and thereby solicit clients or professional work. Such a restraint must be practised so that members may maintain their independence of judgement and may be able to command the respect of their prospective clients.

2.15.1F(ii) In the early years of their professional career, members may find this restraint inconvenient and irksome. A question may arise in their minds as to how they would be able to find professional work if they are not permitted to advertise or solicit

work.

2.15.1F(iii) A little reflection would show that professional work cannot be secured either by advertisement or by circulars or by solicitation. It can only be obtained by a member gradually building confidence in his ability and integrity. The service rendered by an accountant is of a personal and intimate nature and its value can be appraised only by personal contact and experience. A public advertisement is likely to lead to an impression that the professional person is over-anxious to win confidence which however will have the opposite effect. The satisfaction of clients would be the best advertisement which would lead to other clients. Unabashed advertisement would affect the public esteem in which the profession is held and would act to the disadvantage of its members. An advertisement is not a key to success in the profession. It is the quality of service which attracts and retains the clients.

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

2.15.1F(iv) Advertisement and Notes in the press

Members should not advertise for soliciting work or advertise in a manner which could be interpreted as soliciting or offering to undertake professional work. They are also not permitted to use the less open method of circulating letters to a small field of possible clients. Personal canvassing or canvassing for clients of a previous employer through the help of the employees are also not permitted.

The exceptions to the above rule are-

- (i) A member may request another Chartered Accountant in practice for professional work.
- (ii) A member may advertise changes in partnerships or dissolution of a firm, or of any change in the address of practice and telephone numbers. Such announcements should be limited to a bare statement of facts and consideration given to the appropriateness of the area of distribution of the newspaper or magazine and number of insertions.
- (iii) A member is permitted to issue a classified advertisement in the Journal/Newsletter of the Institute intended to give information for sharing professional work on assignment basis or for seeking professional work on partnership basis or salaried employment in the field of accounting profession provided it only contains the accountant's name, address, telephone, fax number, E-mail address and address(es) of social Networking sites of members. However, mere factual position of experience and area of specialization, relevant to seek response to the advertisement, are permissible.

2.15.1F(v) Application for empanelment for allotment of audit and other professional work

The government departments, government Companies/ corporations, courts, co-operative societies and banks and other similar institutions prepare panels of Chartered Accountants for allotment of audit and other professional work. Where the existence of such a panel is within the knowledge of a member, he is free to write to the concerned organization with a request to place his name on the panel. However, it would not be proper for the Chartered Accountant to make roving enquiries by applying to any such

organization for having his name included in any such panel.

It is permissible to quote fees on enquiries being received or respond to tenders from the organizations requiring professional services, which maintain such panel.

2.15.1F(vi) Publication of Name or Firm Name by Chartered Accountants in the Telephone or other Directories published by Telephone Authorities or Private Bodies The Council has held that it would not be proper for a Chartered Accountant to have entries made in a Telephone Directory either by making a special request or by means of an additional payment. The Council has also considered the question of permitting entries in respect of Chartered Accountants and their firms under specified groups in telephone/trade directories in printed and electronic form brought out by government and non-government agencies. It has decided to permit such entries in directories subject to the following restrictions:-

1. The entry should not appear in any other section/category except that of 'Chartered Accountants'.
2. It is not permissible for members to list themselves with online Application based service provider Aggregators, wherein other businessmen, technicians, maintenance workers, event organizers etc. are also listed.
3. The order of the entries should not be any other than alphabetical
4. The entry should not appear in a different manner , which may highlight the entry or show it in a more prominent manner as compared to other entries.
5. The entries should not be restricted and should be open to all the Chartered Accountants/firms of Chartered Accountants.

2.15.1F(vii) Responding to Tenders, Advertisements and Circulars

It is not prohibited to the members to respond to tenders and requests made by users of professional work. This is however subject to conditions that may be issued by the Council. The Council has vide its Guidelines (no 1-CA(7)/03/2016) dated 7th April 2016 stipulate that members shall not respond to any tender in areas of services which are exclusively reserved for chartered accountants, such as audit and attestation services where minimum fee of the assignment is prescribed in the tender document itself or where the areas are open to other professionals along with the Chartered Accountants. The "minimum fee" for this purpose should be such that it commensurates with size, value, volume, manpower requirement and nature of work.

2.15.1F(viii) The clarifications on the various issues pertaining to practical situations on the applicability of above Notification are mentioned hereunder:-

1) All tenders issued on or after 7th April 2016 will be covered under this notification/guideline.

2. The notification is effective for all tenders issued/hosted on or after 7th April, 2016. Therefore, a member of the Institute in practice can accept such assignment where advertisement of tender was issued prior to 7th April, 2016.

3. A member of the Institute in practice shall not respond to any tender in areas of services which are exclusively reserved for Chartered Accountants by statute viz. audit and attestation services such as audit under Companies Act 2013, Income Tax Act 1961, etc. In any State under the local statute if audit and attestation services are exclusively meant for Chartered Accountants only, the member will not be allowed to

respond to such tender. However, a member may respond to tenders as mentioned above wherever the minimum fee of the assignment is prescribed in the tender document itself.

4. A member can respond to tenders which are open to other professionals apart from CAs; however, in the tender document, only CAs may have been invited to respond.

5. A member can respond to such tenders which are open to CAs and other professionals and in the tender document other professionals along with CAs have been invited to respond.

6. A member can respond to assignments where quotations have been called for from practicing members/firms through individual letters.

7. A member can respond to tenders where only technical bid has been asked for, followed by financial quotations request from the shortlisted members through individual letters.

8. Non-adherence to these guidelines could lead to disciplinary action as this is a Council decision.

9. The Institute can call for any papers/documents related to bid submitted by members in response to respective tender.

2.15.1F(ix) The Council is of the view that while interference with the practices prevailing for requirement of EMD/Deposit is not required. However, on having received complaint/ instance of exorbitant EMD/ Deposit, the Ethical Standards Board may look into the matter on case to case basis.

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

2.15.1F(x) Publication of Books, Articles or presentation

It is permissible for a member indicate in a book, or an article, published by him or a presentation made by him, association with any firm of Chartered Accountants ,provided any professional attainment(s) are not mentioned therein.

2.15.1F(xi) Issue of greeting cards or invitations

The Council does not approve of the issue of greeting cards or personal invitations by members indicating their professional designation, status and qualifications etc. However, the Council is of the view that the designation "Chartered Accountant" as well as the name of the firm may be used in greeting cards, invitations for marriages and religious ceremonies and any invitations for opening or inauguration of office of the members, change in office premises and change in telephone numbers, provided that such greeting cards or invitations etc. are sent only to clients, relatives and friends of the members concerned.

2.15.1F (xii) Advertisement for Silver, platinum, Centenary celebrations

Considering the need of interpersonal socialization/relationship of the members through such get together occasions, the advertisement for Silver, Diamond, Platinum and Centenary celebrations of the chartered accountants firms is permissible to be published in any newspaper or in the newsletters.

2.15.1F(xiii) Sponsoring Activities

It is not permissible for a Firm of Chartered Accountants to sponsor a Conference. However, an individual member can be a knowledge partner to such conference. 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 allowed.

2.15.1F(xiv) Advertisement of Teaching/coaching activities by members

The members engaged in teaching /coaching activities, while advertising such teaching /coaching activities, shall comply with the requirements of following Announcement dt. 18th May, 2017:-

Re: Advertising by members in practice engaged in Coaching/Teaching activities

Regulation 190A of the Chartered Accountants Regulations, 1988 provides that a chartered accountant in practice shall not engage in any business or occupation other than the profession of accountancy, except with the permission granted in accordance with a resolution of the Council.

The Council has passed a Resolution under Regulation 190A granting general permission (for private tutorship, and part-time tutorship under Coaching organization of the Institute) and specific permission (for part-time or full time tutorship under any educational institution other than Coaching organization of the Institute). Such general and specific permission granted is subject to the condition that the direct teaching hours devoted to such activities taken together should not exceed 25 hours a week in order to be able to undertake attest functions .

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

In view of the above, such members are advised to abstain from advertising their association with Coaching /teaching activities through hoardings, posters, banners and by any other means, failing which they may be liable for disciplinary action, as per the provisions of Chartered Accountants Act, 1949 and Rules /Regulations framed thereunder .

Subject to the above prohibition, such members may put, outside their Coaching /teaching premises, sign board mentioning the name of Coaching/teaching Institute, contact details and subjects taught therein only. As regards the size and type of sign board, the Council Guidelines as applicable to Firms of Chartered Accountants would apply.

2.15.1F(xv) Sharing Firm Profile with prospective Client

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

2.15.1F(xvi) Television or Movie Credits

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

2.15.1F(xvii) Soliciting professional work by making roving enquiries

It is not permissible for a member to address letters, emails or circulars specifically to persons who are likely to require services of a Chartered Accountant since it would tantamount to advertisement.

2.15.1F(xviii) Seeking work from professional colleagues

The issue of an advertisement or a circular by a Chartered Accountant, seeking work from professional colleagues on any basis whatsoever except as provided above regarding publication of classified in the Journal/Newsletter of the Institute.

2.15.1F(xix) Scope of representation which an auditor is entitled to make under Section 225(3) of the Companies Act, 1956 (Section 140(4) of the Companies Act, 2013)

The right to make representation does not mean that an auditor has any prescriptive right or a lien to an audit. The wording of his representation should be such that, apart from the opportunity not being abused to secure needless publicity, it does not tantamount directly or indirectly to canvassing or soliciting for his continuance as an auditor. The letter should merely set out in a dignified manner how he has been acting independently and conscientiously through the term of office and may, in addition, indicate if he so chooses, his willingness to continue as auditor if reappointed by the shareholders.

2.15.1F(xx) Acceptance of original professional work by a member emanating from the client introduced to him by another member

The Council has decided that a member should not accept the original professional work emanating from a client introduced to him by another member. If any professional work of such client comes to him directly, it should be his duty to ask the client that he should come through the other member dealing generally with his original work.

2.15.1F(xxi) Giving public interviews

While giving any interview or otherwise furnishing details about themselves or their firms in public interviews or to the press or at any forum, the members should ensure that, it should not result in publicity. Due care should be taken to ensure that such interviews or details about the members or their firms are not given in a manner

highlighting their professional attainments. Any detail which is given, must, in addition to meeting the above requirements, be given only on a specific question being posed, and of factual nature only.

2.15.1F(xxii) Members and/or firms who publish advertisements under Box numbers

Members/Firms are prohibited from inserting advertisements for soliciting clients or professional work under box numbers in the newspapers. This practice is in violation of this clause.

2.15.1F(xxiii) Educational videos

Educational videos may be uploaded by members; however, no reference should be made to the Chartered Accountants Firm wherein he may be a partner/proprietor.

2.15.1F (xxiv) Online Consultancy on Third party platforms

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

A number of non-Chartered Accountants' firms, corporates including banks, finance Companies and newspapers have set up their own Websites providing advisory services on taxation and other areas where Chartered Accountants are rendering professional service. Some of such Websites may request Chartered Accountants or Chartered Accountants' firms to provide consultation and advice through their Websites. This would be permitted subject to the condition that on the Website, contact address of the Chartered Accountant concerned is not provided nor such Website will contain any material which advertises professional achievements or status of such Chartered Accountant except making a statement that they are Chartered Accountants. The name of Chartered Accountants' firm with suffix "Chartered Accountants" would not be permitted.

2.15.1G *A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he :-*

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

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

2.15.1G(i) This clause prohibits advertising of professional attainments or services of a member. However, the services can be advertised in a restricted way through a write up subject to the guidelines of the council issued from time to time. Refer chapter 3 of the book. It also restrains a member from using any designation or expression other than that of a Chartered Accountant in documents through which the professional attainments of the member would come to the notice of the public.

2.15.1G(ii) Other designations

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

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

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

A member empanelled as Insolvency Professional can mention "Insolvency Professional" on his visiting cards and letter head.

2.15.1G(iii) "CPA"

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

2.15.1G(iv) Date of setting-up practice

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

2.15.1G(v) Practice as Advocate

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

2.15.1G(vi) Practice as Company Secretary/Cost Management Accountant

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

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

2.15.1G(vii) Mention of Firm name except on professional documents

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

2.15.1G(viii) Specialised Directories for limited circulation

For a specialised directory or a publication such as a "Who's Who" (including those compiled on purely local basis), a member should use his discretion in supplying information, bearing in mind the nature and purpose of the publications. In addition to his name, description and address and those of his firm, a member may give where appropriate, directorships held and reasonable personal details and may state his outside interests. He should not, however, give the names of any of his clients. The details of the services offered by his firm can be given through a write-up subject to guidelines of the Council issued from time to time. 2.15.1G(ix) Publication of photographs and brief particulars in magazines

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

2.15.1G(x) Advertisement through press release in certain circumstances

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

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

2.15.1G(xi) Precautions while advertising for staff

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

2.15.1G(xii) Notice in the press relating to the success in an examination

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

It is usual for local papers to publish details of the examination success of local candidates. Some biographical information is often included. The rule aforementioned is not intended to discourage the printing of news of local interest but is intended to indicate the need for restraint. The candidate's name and address, school and local

background, examination passed with details of any prize or place gained, the name of the principal, firm and town in which the principal practices may be published.

2.15.1G(xiii) Reports and Certificates

The reports and certificates issued by a Chartered Accountant bring him to the notice of the public in a greater or lesser degree. It is therefore incumbent upon him to ensure that the extent and manner of publication of certificates are limited to what is necessary to enable the report or certificate to serve its proper purpose. The members may however note that they should use letterhead of their Firm for issuing reports and certificates.

2.15.1G(xiv) Appearance of Chartered Accountants on Electronic Media

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

2.15.1G (xv) Important appointments or views of public Importance

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

2.15.1G (xvi) Organising training courses, seminars etc. for his staff

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

2.15.1G (xvii) Organising training courses, seminars etc. for staff

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

2.15.1G (xviii) Size of Sign Board

With regard to the size of sign board for his office that a member can put up, it is a matter in which the members should exercise their own discretion and good taste while keeping in mind the appropriate visibility and illumination of the sign Board. However, use of glow signs or lights on large-sized boards as is used by traders or shop-keepers is not permissible. A member can have a name board at the place of his residence with the designation of a Chartered Accountant, provided it is a name plate or name board of an

individual member and not of the firm.

2.15.1G (xix) Public Announcements with details of Directors

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

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

It is advisable for a member that as soon as he is appointed as a director on the Board of a Company, he should specifically invite the attention of the management of the Company to the aforesaid provisions and should request that before any such prospectus or public announcements or public communication mentioning the name of the member concerned, is issued, the material pertaining to the member concerned should, as far as practicable be got approved by him. The use of the expression 'Chartered Accountant' is permissible. However, the member must ensure that descriptions about his expertise, specialisation and knowledge in any particular field or other appellations or adjectives are not published with his name. Particulars about directorships held by the member in other Companies can, however, be given, but the name of the firm of Chartered Accountants in which the member is a partner, should not be given.

2.15.1G (xx) Networks

The Council has permitted Network amongst the firms registered with the Institute. The Network may advertise the Network to the extent permitted by the Advertisement Guidelines issued by Institute. The firms constituting a Network are permitted to use the words "Network Firms" on their professional stationery. Once the relationship of network arises, whether registered or not with the Institute, it will be necessary for such a network to comply with all applicable ethical requirements prescribed by the Institute from time to time. It is not permissible for the Firms to join Networks not registered with the Institute (by whichever name called).

2.15.1G (xxi) Use of Logo

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

contained in the Regulation 190 of the Chartered Accountants Regulations, 1988. The members/firms by themselves or through engineered name had been seeking to obtain firm name approval based on the name of the partner/s selected in the manner that logo of the firm would be identical to the firm name which would have not otherwise been permissible as firm name under Regulation 190.

In order to ensure compliance with the Regulations, the Council at its meeting held in December 1997, therefore, decided that the use of logo/monogram of any kind/form/style/design/colour etc. whatsoever on any display material or media e.g. paper stationery, documents, visiting cards, magnetic devices, internet, sign board, by the members in practice and/or the firm of Chartered Accountants, be prohibited. Use/printing of member/firm name in any other manner tantamounting to logo/monogram was also prohibited.

2.15.1G (xxii) Common CA Logo

However, to promote the brand of CA profession and responding to the long felt need to have a symbol of CA Profession in India, ICAI came up with a unique logo which could be used by all members, whether in practice or not. Encapsulating the current beliefs, attitudes and values of the profession, the CA Logo seeks to enhance the identity of the members. The logo consists of the letters 'CA' with a tick mark (upside down) inside a rounded rectangle with white background. The letters 'CA' have been put in blue, the corporate colour which not only stands out on any background but also denotes creativity, innovativeness, knowledge, integrity, trust, truth, stability and depth. The upside down tick mark, typically used by the chartered accountants, has been included to symbolize the wisdom and value of the professional. The green colour in the tick mark signifies growth, prosperity, harmony and freshness. Members are encouraged to use this logo.

The Council at its 299th Meeting held in 2010 has decided that use of CA logo in the stamp is permissible, subject to CA logo guidelines.

2.15.1G (xxiii) Guidelines of the Council in the context of use of designation etc. and manner of Printing of Letter-heads and visiting cards

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

2.15.1H *A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he :-*

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;*

2.15.1H(i) It must be pointed out that professional courtesy alone is not the major

reason for requiring a member to communicate with the existing accountant who is a member of the Institute or a certified auditor. The underlying objective is that the member may have an opportunity to know the reasons for the change in order to be able to safeguard his own interest, the legitimate interest of the public and the independence of the existing accountant. It is not intended, in any way, to prevent or obstruct the change. When making the enquiry 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.

2.15.1H(ii) It is important to remember that every client has an inherent right to choose his accountant; also that he may, subject to compliance with the statutory requirements in the case of limited Companies, make a change whenever he chooses, whether or not the reasons which had impelled him to do so are good and valid. The change normally occurs where there has been a change of venue of business and a local accountant is preferred or where the partner who has been dealing with the clients affairs retires or dies; or where temperaments clash or the client has some good reasons to feel dissatisfied. In such cases, the retiring auditor should always accept the situation with good grace.

2.15.1H(iii) Grounds for non-acceptance of audit The existence of a dispute as regards the fees may be root cause of an auditor being changed. This would not constitute valid professional reasons on account of which an audit should not be accepted by the member to whom it is offered. However, in the case of an undisputed audit fees for carrying out the statutory audit under the Companies Act, 2013 or various other statutes having not been paid, the incoming auditor should not accept the appointment unless such fees are paid. In respect of other dues, the incoming auditor should in appropriate circumstances use his influence in favour of his predecessor to have the dispute as regards the fees settled. The professional reasons for not accepting an audit would be:

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

In the first two cases, an auditor who accepts the audit would be guilty of professional misconduct. In this connection, attention of members is invited to the Council Guidelines No. 1-CA/(7)/02/2008 dated 08.08.08 appearing in Chapter-3 of the book and also published at page 686 of October, 2008 issue of the Journal. *In the said guidelines, Council has explained that the provision for audit fee in accounts signed by both the auditee and the auditor shall be considered as "undisputed" audit fee and "sick unit" shall mean where the net worth is negative.*

2.15.1H(iv) Recourse in case of qualified Audit Report

In the last case, however, he may accept the audit if he is satisfied that the attitude of the retiring auditor was not proper and justified. If, on the other hand, he feels that the retiring auditor had qualified the report for good and valid reasons, he should refuse to accept the audit. There is no rule, written or unwritten, which would prevent an auditor from accepting the appointment offered to him in these circumstances. However, before accepting the audit, he should ascertain the full facts of the case. For nothing will bring

the profession to disrepute so much as the knowledge amongst the public that if an auditor is found to be “inconvenient” by the client, he could readily be replaced by another who would not displease the client and this point cannot be too over-emphasised.

2.15.1H(v) Fees pending due to non-availability of previous Auditor

Where the Previous Auditor is not available for accepting payment of undisputed audit fees, and it is not otherwise possible to transfer the payment to him electronically, the Incoming Auditor may advise the client to purchase Demand Draft of the amount equivalent to undisputed Audit Fees of retiring auditor, and may accept the Assignment after verifying the same. It will be the duty of the Incoming auditor to ensure the payment of retiring auditor as soon as he is available.

2.15.1H(vi) Course of action in case of change of auditorship

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

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

2.15.1H(vii) Duty of retiring auditor

On the request of the incoming Auditor to the retiring auditor for providing known information regarding any facts or other information of which, in the retiring auditors opinion, the incoming auditor needs to be aware before deciding whether to accept the engagement, the retiring auditor shall provide the information diligently. Further, the retiring auditor shall, on such request by the Incoming auditor , provide all relevant facts and other information concerning non-compliance to the Incoming Auditor.

2.15.1H(viii) Certificate of posting not a conclusive proof of communication

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

posting therefore does so at his own risk.

The view taken by the Council has been confirmed in a decision by the Rajasthan High Court in J.S. Bhati vs. The Council of the Institute of the Chartered Accountants of India and another. (Pages 72-79 of Vol. V of Disciplinary Cases published by the Institute - Judgement delivered on 29th August, 1975). The following observations of the Court are relevant in this context:-

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

2.15.1H(ix) Positive evidence of delivery is required

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, (a) communication by a letter sent “Registered Acknowledgement due”, (b) by hand against a written acknowledgement, (c) acknowledgement of the communication from retiring auditor’s via email address registered with the Institute or the last known official email address the and communication; and (d) through Unique Identification Number (UDIN) generated on UDIN portal (subject to separate guidelines to be issued by the Council in this regard) would in the normal course provide such evidence.

2.15.1H(x) Premises found locked

The communication received back by the Incoming auditor with “Office found Locked” written on the Acknowledgement Due shall be deemed as having been delivered to the retiring auditor.

2.15.1H(xi) Firm not found at the given address

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

2.15.1H(xii) As a matter of professional courtesy and professional obligation it is necessary for the new auditor appointed to act jointly with the earlier auditor and to communicate with such earlier auditor.

2.15.1H(xiii) Special Audit under Income Tax Act, 1961

It would be a healthy practice if a tax auditor appointed for conducting special audit under the Income-tax Act, 1961 communicates with the member who has conducted the statutory audit.

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

2.15.1H(xv) Communication required for all kinds of audit

The requirement for communicating with the previous auditor being a Chartered Accountant in practice would apply to all types of audit viz., statutory audit, tax audit, GST Audit, internal audit, concurrent audit or any other kind of audit.

2.15.1H(xv) Meaning of Terms

Various doubts have been raised by the members about the terms “audit”, “previous auditor”, “Certificate” and “report”, normally while interpreting the aforesaid Clause (8). These terms need to be clarified.

- *The definition of “Audit” is given in the Framework for Assurance Engagements (the Framework) issued by the Institute which is as under:*

“For assurance engagements relating to historical financial information in particular, such engagements which provide reasonable assurance are called audits”.

The Framework also describes the objective of reasonable assurance engagements which is as under:

The objective of a reasonable assurance engagement is a reduction in assurance engagement risk to an acceptably low level in the circumstances of the engagement as the basis for a positive form of expression of the practitioner’s conclusion.

- The term “previous auditor” means the immediately preceding auditor who held same or similar assignment comprising same/similar scope of work. For example, a Chartered Accountant in practice appointed for an assignment of physical verification of inventory of raw materials, spares, stores and finished goods, before acceptance of appointment, must communicate with the previous auditor being a Chartered Accountant in practice who was holding the appointment of physical verification of inventory of raw materials, stores, finished goods and fixed assets. The mandatory communication with the previous auditor being a Chartered Accountant is required even in a case where the previous auditor happens to be an auditor for a year other than the immediately preceding year.

“Auditor’s Report” mentioned in SA 700 states the objective of the Report as forming an opinion on the financial statements based on an evaluation of the conclusions drawn from the audit evidence obtained.

2.15.1H (xvi) 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.

2.15.1H(xvii) Lack of time in acceptance of Government audits

Although the mandatory requirement of communication with previous auditor being Chartered Accountant applies, in uniform manner, to audits of both government and non-government entities, yet in the case of audit of government Companies/banks or their branches, if the appointment is made well in time to

enable the obligation cast under this clause to be fulfilled, such obligation must be complied with before accepting the audit. However, in case the time schedule given for the assignment is such that there is no time to wait for the reply from the outgoing auditor, the incoming auditor may give a conditional acceptance of the appointment and commence the work which needs to be attended to immediately after he has sent the communication to the previous auditor in accordance with this clause. In his acceptance letter, he should make clear to the client that his acceptance of appointment is subject to professional objections, if any, from the previous auditors and that he will decide about his final acceptance after taking into account the information received from the previous auditor.

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

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;*

2.15.11(i) The Companies Act, 2013 provides for the requirements which an auditor appointed in respect of a Company should satisfy himself about, before he accepts the appointment. The relevant provisions are contained in Section 139 and 140 of Companies Act, 2013 Act, 1956 and the Council has notified that the provisions to be complied with under Clause (9) are those contained in Sections 139 and 140 of the Act. Section 139 contains several provisions in the matter of appointment of auditors in different circumstances and situations whereas Section 140 lays down the procedure which must be followed whenever a Company desires to change its auditors. In order that the validity of the appointment of an auditor is not challenged or objected to by shareholders or the retiring auditors at a later date, it has been made obligatory on the incoming auditor to ascertain from the Company that the appropriate procedure in the matter of appointment has been faithfully followed.

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

2.15.11(ii) . 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.

2.15.11(iii) A question arises as to what is the duty of the incoming auditor under this clause and what steps he should take in order to ascertain whether the Company has complied with the provisions of Sections 139 and 140 of the Companies Act. These guidelines are issued by the Council in order to assist the members in practice to ensure that the provisions of clause (9) are duly complied with.

2.15.11(iv) . The steps to be taken by an auditor of a Company who is appointed in the following circumstances are indicated below:

- a. When the auditor appointed is the first auditor of the Company.
- b. When the auditor is appointed in place of an existing auditor who has resigned or has been removed or has ceased to hold office for any other reason.
- c. When the auditor or auditors appointed by the Company were holding this office jointly with others and one or more of such joint auditors are not reappointed.
- d. When one or more of the auditors appointed by the Company was/were not holding this office earlier.

2.15.11(v) The procedure to be followed by a Company for appointment of an auditor is laid down in Section 139 of the Companies Act, 2013. The relevant provisions of the Section are summarised in the ensuing sub-paras.

2.15.11(vi) The first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days of the date of registration of the Company. The auditor so appointed will hold office up to the conclusion of the first Annual General Meeting.

2.15.11(vii) In the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor.

2.15.11(viii) The first auditor appointed by the Board of Directors can be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

2.15.11(ix) Subsequent appointment of the auditor is to be made at the Annual General Meeting of the Company who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting, or such shorter term in case auditor rotation provisions under the Companies Act, 2013 apply.

2.15.11(x) Before making appointment or reappointment of an auditor, the Company has to obtain a written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained from the auditor. The certificate shall also indicate whether the auditor satisfies the criteria provided in section 141).

2.15.11(xi) The company shall inform the auditor concerned of his or firms appointment, and also file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed.

2.15.11(xii) If the retiring auditor has given a notice in writing of his unwillingness to be reappointed, the Company can appoint any other auditor.

2.15.11(xiii) The members of the Company can pass a special resolution at the Annual General Meeting to the effect that the retiring auditor shall not be reappointed. They can also pass a resolution at that meeting to appoint some-one else in place of the retiring auditor. 2.15.11(xiv) Except in the circumstances mentioned in 5.8 and 5.9 above, a retiring auditor shall be reappointed if he is otherwise qualified for such reappointment.

2.15.11(xv) If the Company fails to appoint an auditor at the Annual General Meeting, such appointment will be made by the Central Government. The Company has to give

intimation to the Central Government within seven days about the fact that no such appointment has been made. Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company as contained in Section 139(10).

2.15.11(xvi) The Board of Directors, except for the situation covered by 5.13 below, can fill any casual vacancy in the office of the auditor within thirty days under Section 139(8)(i). Until this appointment is made the remaining auditor, in case there are joint auditors, can function as auditor of the Company.

2.15.11(xvii) If the casual vacancy is caused by the resignation of an auditor, such vacancy can only be filled by the Company at a General Meeting convened within three months of the recommendation of the Board.. The auditor appointed to fill any casual vacancy shall hold office until the conclusion of the next Annual General Meeting.

2.15.11(xviii) The Company can remove the auditor appointed under Section 139 before the expiry of his term of office only by a resolution passed at any General Meeting and after obtaining previous approval of the Central Government.

2.15.11(xix) Section 140 of the Companies Act lays down the procedure for appointment of auditor other than the retiring auditor and for removal of existing auditor. The procedure to be followed by the Company, is as under:

2.15.11(xx) If a member of the Company wants that the retiring auditor should not be reappointed or that an auditor other than the retiring auditor should be appointed, he has to give a special notice to the Company for a resolution at the Annual General Meeting for this purpose.

2.15.11(xxi) Such special notice is also required to be given if a member of the Company wants to remove the auditor before the expiry of his term of office.

2.15.11(xxii) The special notice should be given at least 14 days before the date of the General Meeting when the question of appointment or reappointment of the auditor is to be considered.

2.15.11(xxiii) On receipt of the special notice of such a resolution, the Company has to send a copy of the same to the retiring auditor forthwith.

2.15.11(xxiv) The Company is also required to send the special notice to the members of the Company at least seven days before the Meeting as per the provisions of Section 115 read with Section 20 of the Companies Act. According to these provisions, a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed.

2.15.11(xxv) After receipt of the above notice, the retiring auditor can submit his representation to the members of the Company. Such representation, on receipt by the Company, is required to be sent to its members as required under Section 140(4) of the Companies Act.

2.15.11(xxvi) The representation received from the retiring auditor will have to be considered at the General Meeting of the Company before the resolution proposed by the concerned member is passed. The resolution proposed by the concerned member can be passed only in accordance with the provisions of Section 114 of the Companies Act.

2.15.11(xxvii) Under Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949, the incoming auditor has to ascertain whether the Company has complied with the provisions of the above sections. The word "ascertain" means "to find out for certain". This would mean that the incoming auditor should find out for certain as to whether the Company has complied with the provisions of Sections 139 and, 140 of the Companies Act. In this respect, it would not be sufficient for the incoming auditor to accept a certificate from the management of the Company that the provisions of the above sections have been complied with. It is necessary for the incoming auditor to verify the relevant records of the Company and ascertain as to whether the Company has, in fact, complied with the provisions of the above sections. If the Company is not willing to allow the incoming auditor to verify the relevant records in order to enable him to ascertain as to whether the provisions of the above sections have been complied with, the incoming auditor should not accept the audit assignment.

2.15.11(xxviii) It is suggested that the incoming auditor should verify the following records of the Company:-

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

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

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

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

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

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

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

- a. Whether a member of the Company has given special notice of the resolution as required under Section 140 (4) at least 14 days before the date of the general meeting. A true copy of this notice should be obtained by the incoming

auditor.

- b. Whether this special notice has been sent to all the members, of the Company as required under Section 115 at least 7 days before the date of the General Meeting.
- c. Whether this special notice has been sent to the retiring auditor forthwith as required under Section 140 (4) (ii) .
- d. Whether the representation received from the retiring auditor has been sent to the members of the Company as required under Section 140 (4) (iii) .
- e. Whether the representation received from the retiring auditor has been considered at the general meeting and the resolution proposed by the special notice has been properly passed at the general meeting.

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

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

(B) As regards the mode of sending the notice of the resolution to the retiring auditor as provided in Sections 139 140, attention is invited to the Department of Company Affairs circular dated 17.10.1981 issued to all Chambers of Commerce, which is reproduced below:-

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

(C) Accordingly, it is necessary for the incoming auditor to satisfy himself that the notice provided for in Sections 139 & 140 has been effectively served on the outgoing auditor (e.g. by seeing that the notice has been duly served through hand delivery or by Regd. Post with A.D.). Production of a certificate of posting by the Company would not be adequate for the purpose of the incoming auditor satisfying himself about compliance with Sections 139/140. Acknowledgement received from the outgoing auditor would be one of the forms in which such satisfaction can be obtained.

2.15.11(xxxvii) A copy of the relevant minutes of the general meeting where the above resolution is passed duly verified by the Chairman of the meeting should also be obtained by the incoming auditor for his records.

2.15.11(xxxviii) Sometimes the annual general meeting is adjourned without conducting any business or after conducting business in respect of some of the items on the agenda. The items in respect of which the business is conducted may or may not include the item relating to appointment of auditors. Under Section 139(1) the retiring auditor

holds office till the conclusion of every sixth annual general meeting. Therefore, when the annual general meeting is adjourned in the circumstances stated above, the retiring auditor will continue to hold the office of auditor till the adjourned meeting is held and the business listed in the agenda of the meeting is concluded. In case a new auditor is appointed at the original meeting (which is adjourned) such auditor can assume office only after the conclusion of such adjourned meeting.

2.15.11(xxxix) If any annual general meeting is adjourned without appointing an auditor, no special notice for removal or replacement of the retiring auditor received after the adjournment can be taken note of and acted upon by the Company, since in terms of Section 115 of the Companies Act, special notice should be given to the Company at least fourteen clear days before the meeting in which the subject matter of the notice is to be considered. The meeting contemplated in Section 115 undoubtedly is the original meeting. Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company mentioned in Section 139(10).

2.15.11(xi) If the incoming auditor is satisfied that the Company has complied with the provisions of Sections 139 and 140 of the Companies Act, he should first communicate with the outgoing auditor in writing as provided in Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 before accepting the audit assignment.

2.15.11(xli) Unjustified removal of auditors

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

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

B. Where an auditor, though willing for re-appointment has not been reappointed, he shall file with the Institute a copy of the statement which he may have sent to the management of the Company for circulation among the shareholders. It shall be obligatory on the incoming auditor before accepting the appointment, to obtain a copy of such a communication from the Company and consider it, before accepting the appointment.

C. The Ethical Standards Board, on a review of the communications referred to in paras (A) and (B), may call for such further information as it may require from the incoming auditor, the outgoing auditor and the Company and make a report to the Council in cases where it considers necessary.

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

As the Members are aware, the Institute has a Ethical Standards Board (ESB) to *examine various issues of and to address the grievances of unjustified removal of auditors.*

For the Mission Statement, Terms of Reference and Procedure to be followed by the Board for dealing with the cases of Unjustified Removal of Auditors, see the '**Appendix - I**'

2.15.1J A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he :-

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 regulation made under this Act;*

2.15.1J(i) What distinguishes a profession from a business is that professional service is not rendered with the sole purpose of a profit motive. Personal gain is one but not the main or the only objective. Professional opinion, therefore, frowns upon methods where payment is made to depend on the basis of results. It is obvious that a person who is to receive payment in direct proportion to the benefit received by his client, may be tempted to exaggerate the advantage of his service or may adopt means which are not ethical. It will have the effect of undermining his integrity and impairing his independence. Therefore, the members are prohibited from charging or accepting any remuneration based on a percentage of the profits or on the happening of a particular contingency such as, the successful outcome of an appeal in revenue proceedings.

2.15.1J(ii) Professional services should not be offered or rendered under an arrangement whereby no fee will be charged unless a specified finding or result is obtained or where the fee is otherwise contingent upon the findings or results of such services. However, fee should not be regarded as being contingent if fixed by a Court or other public authority.

2.15.1J(iii) The Council of the Institute has however framed Regulation 192 which exempts members from the operation of this Clause in certain professional services. The said Regulation 192 is reproduced below:-

192. Restriction on fees

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

Provided that:

- (a) in the case of a receiver or a liquidator, the fees may be based on a percentage of the realisation or disbursement of the assets;*
- (b) in the case of an auditor of a co-operative society, the fees may be based on a percentage of the paid up capital or the working capital or the gross or net income or profits; and*
- (c) in the case of a valuer for the purposes of direct taxes and duties, the fees may be based on a percentage of the value of the property valued.*
- (d) in the case of certain management consultancy services as may be decided*

by the resolution of the Council from time to time, the fees may be based on percentage basis which may be contingent upon the findings, or results of such work;

- (e) in the case of certain fund raising services, the fees may be based on a percentage of the fund raised;*
- (f) in the case of debt recovery services, the fees may be based on a percentage of the debt recovered;*
- (g) in the case of services related to cost optimisation, the fees may be based on a percentage of the benefit derived; and*
- (h) any other service or audit as may be decided by the Council-*

2.15.1J(iv) *Note :- Following activities have been decided by the Council under “h” above :-*

- (i) Acting as Insolvency professional*
- (ii) Non-Assurance Services to Non-Audit Clients*

2.15.1K *A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he :-*

Clause (11): *engages in any business or occupation other than the profession of chartered accountants 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 a managing director or a whole time director), unless he or any of his partners is interested in such company as an auditor;*

2.15.1K(i) This is a provision introduced to restrain a member in practice from engaging himself in any business or occupation other than that of Chartered Accountant except when permitted by the Council to be so engaged. The objective is to restrain members from carrying on any other business in conjunction with the profession of accountancy and combining such work with any business which is not in keeping with the dignity of the profession. Another reason for the introduction of such prohibition is that a Chartered Accountant, if permitted to enter into all kinds of business, would be able to advertise for his other business and thereby secure an unfair advantage in his professional practice.

2.15.1K(ii) The Council, on a very careful consideration of the matter, has formulated Regulations 190A & 191 which are reproduced below, specifying the activities with which a member in practice can associate himself with or without the permission of the Council.

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

A Chartered Accountant in practice shall not engage in any business or occupation other than the profession of accountancy, except with the permission granted in accordance with a resolution of the Council.

Please refer to Appendix (9) of the Chartered Accountants Regulations, 1988, (see Appendix-‘J’).

191. Part-time employments a Chartered Accountant in practice

may accept

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

2.15.1K(iii) The Council has considered the question of permitting members in practice to become a Director, Managing Director, full time/Executive Director etc. and related issues and the following decisions have been taken:-

2.15.1K(iv) As regards the question of permitting a member in practice to be a , Promoter/Promoter- Director, Subscriber to the Memorandum and Articles of Association of any Company, it was decided that:

(a) Director of a Company

(i) The expression "Director Simplificitor" means an ordinary/simple Director who is not a Managing Director or Whole time Director and is required only in the Board Meetings of the company and not paid any remuneration except for attending such meetings.

(ii) A member in practice is permitted generally to be a Director Simplificitor in any Company including a board-managed Company and as such he is not required to obtain any specific permission of the Council in this behalf unless he or any of his partners is interested in such Company as an auditor, irrespective of whether he and/or his relatives hold substantial interest in that Company.

(b) Promoter/Promoter-Director

There is no bar for a member to be a promoter/signatory to the Memorandum and Articles of Association of any Company. There is also no bar for such a promoter/signatory to be a Director Simplificitor of that Company irrespective of whether the objects of the Company include areas which fall within the scope of the profession of Chartered Accountants. Therefore members are not required to obtain specific permission of the Council in such cases. It must be clarified that under Section 25 of the Chartered Accountants Act, no Company can practise as a Chartered Accountant.

2.15.1K(v) Item Nos. 4 of the Specific Resolution would be equally applicable to member carrying out the activities referred to therein in his capacity as Karta/representative of HUF provided he is not actively engaged in carrying on such activities. The guidelines framed by the Council for the purpose of granting permission under item 4 is as under:

"A member of the Institute can acquire interest in family business in any of the following manner:

(i) as a proprietary firm

(ii) as a partnership firm

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

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

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

2.15.1K(vi) A member in practice engaged as Karta of a HUF doing family business, will be within the limit prescribed by Council if he makes investments from the funds pertaining to HUF only, provided, he is not actively engaged in the management of the said business.

2.15.1L A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he :-

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.*

2.15.1L(i) The above clause prohibits a member from allowing another member who is not in practice or his partner to sign any balance sheet, Profit and loss account, or financial statement on his behalf or on behalf of his firm.

2.15.1L(ii) 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 such chartered Accountants in his or its professional capacity.’

2.15.1L(iii) The term ‘financial statement’ for the purposes of this clause would cover an examination of the accounts or of financial statements given under a statutory enactment or otherwise.

2.15.1L(iv) A report, however, may cover a wider range of documents but in the context in which it is used in this clause, it would mean only a report arising out of a professional assignment undertaken by him or his firm and submitted by him or his firm to the client(s) or where so required, to an outsider on behalf of himself or on behalf of the firm. The subject matter of report should be the expression of a professional opinion whether financial or non-financial. The financial statements and the reports referred to in this clause obviously mean the financial statements and reports as ultimately finalised and submitted to the outside authorities.

2.15.1L(v) 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 the provisions of this clause:-

- a. Issue of audit queries during the course of audit/confirmation of third parties for Audit.
- b. Asking for information or issue of questionnaire.

- c. Letter forwarding draft observations/financial statements.
- d. Initialing and stamping of vouchers and of schedules prepared for the purpose of audit.
- e. Acknowledging and carrying on routine correspondence with clients.
- f. Issue of memorandum of cash verification and other physical verification or recording the results thereof in the books of the clients.
- g. Issuing acknowledgements for records produced.
- h. Raising of bills and issuing acknowledgements for money receipts.
- i. Attending to routine matters in tax practice, subject to provisions of Section 288 of Income-tax Act, 1961.
- j Any other matter incidental to the office administration and routine work involved in practice of accountancy.

2.15.1L(vi) It is also clarified that where the authority to sign documents given above is delegated by a Chartered Accountant or by a firm of Chartered Accountants the fact that the documents have not been signed by a Chartered Accountant is not a defence to him or to the firm in an enquiry relating to professional misconduct.

2.15.1L(vii) However, the Council has decided that where a Chartered Accountant while signing a report or, a financial statement or any other document is statutorily required to disclose his name, the member should disclose his name while appending his signature on the report or document. Where there is no such statutory requirement, the member may sign in the name of the firm.

2.15.2 PART II OF THE FIRST SCHEDULE

Professional Misconduct in Relation to Members of the Institute in Service.

The two clauses reproduced below included in this part of the First Schedule defines different types of conduct of a member in Service

2.15.2A *A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he being an employee of any company, firm or person —*

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

2.15.2B *A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he being an employee of any company, firm or person —*

Clause (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;*

2.15.2B(i) A member in the foregoing circumstances would be guilty of misconduct regardless of the fact that he was in whole-time or part-time employment or that he was holding Certificate of Practice along with his employment.

2.15.2B(ii) These are simple rules of ethics; both the circumstances have already been considered in relation to a member in practice under clauses (2) & (3) of part I of the First Schedule.

2.15.3 PART III OF THE FIRST SCHEDULE

Professional Misconduct in Relation to Members of the Institute Generally

2.15.3A *A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he:-*

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

2.15.3B *A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he:-*

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;*

2.15.3C *A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he:-*

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.*

2.15.3C(i) The foregoing clauses are intended to empower the Council to enforce discipline over the members, and for obtaining information from members or requiring compliance with any directions/Guidelines issued by the Council.

2.15.4 PART IV OF THE FIRST SCHEDULE

Other misconduct in relation to members of the Institute generally

2.15.4A *A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he—*

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

2.15.4A(i) The members who are held guilty by a Court of law for an offence punishable upto six months in person are also liable for misconduct.

2.15.4B *A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he —*

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.*

2.15.4B(i) The Council has been empowered to opine on any action of a member which brings the Institute or profession in disrepute as misconduct.

2.15.4B(ii) This Clause, read with Section 22 of the Act, now defines 'Other misconduct', which has been covered under this Part does not limit or abridge in anyway the power conferred or duty cast on the Director (Discipline) under Section 21(1) of the Act to inquire into the conduct of any member of the Institute under any other circumstances.

2.16 The Second Schedule

The profession of accountancy commands respect and confidence of the general public. The ethics of an accountant signify his behaviour towards members of the profession as well as general public. Thus, as a practitioner or an employee, a Chartered Accountant should conduct/restrict his actions in accordance with the provisions contained in the respective parts of this Schedule. If they are found guilty of any of the acts or omissions stated in any of the parts of this Schedule, they shall be deemed to be guilty of professional misconduct.

2.16.1 PART I OF SECOND SCHEDULE

Professional misconduct in relation to chartered accountants in practice:

2.16.1A *A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –*

Clause (1): *discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client or otherwise than as required by any law for the time being in force;*

2.16.1A(i) An accountant, in public practice, has access to a great deal of information of his client which is of a highly confidential character. It is important for the work of an accountant and for maintaining the dignity and status of the profession that he should treat such information as having been provided to him, only to facilitate the performance of his professional duties for which his services have been engaged. To divulge such information would be a breach of professional confidence which may give rise to the most serious consequences, even to an action by the client for the loss suffered by him through such a breach. But for this confidence that the public has developed in the integrity of accountants, it would not be possible for persons in a similar trade or industry to appoint the same accountant. The accountant's duty not to disclose continues even after the completion of his assignment. In the context of disclosure of information, attention of members is invited to the provisions of Securities and Exchange Board of India (Insider Trading) Regulations, 1992. However, nothing in this Clause would bar the previous accountant to inform such client affairs to the new accountant, as he may deem fit. 2.16.1A(ii) If disclosure is required as a part of performance of professional duty by a practising member in relation to a client, the fact that such performance is required by the client would itself amount to the client consenting to such disclosure. Thus, a member in practice submitting information to, say, Exchange Control authorities, while performing his professional duties cannot be considered to have made disclosure without the aforesaid consent. But, in all cases, the request or the initiative that the member does prefer the service which would entail such disclosure must come from the client in relation to whose affairs the disclosure would be entailed

2.16.1A(iii) A member is not permitted to submit client information before the Court at his own behest, for example as an evidence; however, he will have to submit the information in case it is specifically required vide the directions of the court.

2.16.1A(iv) Person competent to accord consent

If disclosure is required in other cases, it would be necessary to ensure that the

consent of the client is given by a person who is competent to accord such consent. Thus, in the case of a sole-proprietory concern, the consent may be given by the proprietor or his constituted attorney who is legally empowered to give such consent. In the case of a partnership firm, since in turn, every partner has the authority to bind the firm by his acts, the consent may be given by any partner. In the case of a Company, by virtue of Section 179 of the Companies Act, 2013 the Board of Directors is empowered to do all that the Company in a general meeting may do unless a resolution by the Company in a general meeting is required by the Act or by the Memorandum or Articles of the Company. Hence, the consent may be given by the Managing Director if the powers of the Board of Directors are delegated to him comprehensively enough to include the power to give such consent, but if the powers of the Board of Directors are not so delegated, the consent should be obtained by means of resolution of the Board of Directors of the Company.

2.16.1A(v) Working papers of the Auditor

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

However, the auditor may, at his discretion, in cases considered appropriate by him, make portions of or extracts from his working papers available to the client.

2.16.1A(vi) Sharing of Information

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.

2.16.1A(vii) Circumstances of disclosure being required by law

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

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

2.16.1A(viii) Role of Chartered Accountants in relation to unlawful acts by their Clients.

(Attention is also drawn to the members to CARO and Audit Standards)

1. The question of the member's liability when he is not directly involved in tax frauds

committed by his client but he discovers such fraud in the course of his professional work, the action recommended to be taken by him is indicated below.

2. The recommendations below are based on the following premises:-

- (a) No duty is cast on a member, whether by Section 39 of the Code of Criminal Procedure 1973, or by any other enactment, to inform the Income-tax Authorities about taxation frauds by his client of which he comes to know during the course of his professional work.
- (b) Under Section 126 of the Evidence Act, 1872, a barrister, attorney, pleader or Vakil is barred from disclosing, except with the express consent of his client, any communication made to him in the course of and for the purpose of his employment or to state the contents or conditions of any document with which he has become acquainted with in such course. The proceedings before the Income-tax authorities are judicial proceedings and the assessee is authorised to be represented by a Chartered Accountant. The privilege given and the restrictions imposed by Section 126 apply as between the client and the member, as the member is the client's attorney. Nothing in Section 126 shall protect from non-disclosure any fact observed by a barrister, pleader, attorney or Vakil in the course of his employment at such showing that any crime or fraud has been committed since the commencement of his employment.
- (c) Subject to the above, it is not the duty of a member to shield a client from the consequences of his tax frauds, on the contrary it is guiding principle of professional conduct to discourage tax evasion.

3. The paragraphs that follow apply to intentional suppressions or misstatement by the client in his tax returns. If there is a genuine mistake or inadvertent omission, it is presumed that the client would not have any objection to make a complete disclosure to the tax authorities.

4. If the fraud discovered by the member relates to the accounts or tax matters of the client for past year(s) for which the client was not represented by the member, the client should be advised to make a disclosure. The member may, however, continue to act for the client in respect of current matters, but is under no obligation so to continue. It is assumed that the past fraud does not affect in any way the current tax matters, and the member should be extra careful to ensure that past behaviour is not reflected in current matters.

5. If the fraud relates to accounts etc., examined by the member and reported upon, on the basis of which the tax assessment in the past has been made, or is currently to be made, the client should be advised to make a complete disclosure. If the client should refuse, he should be informed that the member would be entitled to dissociate himself from the case, and that, further, he would inform the authorities that the accounts prepared by him and/or reported upon by him are unreliable, on account of certain information since obtained. He should then make such a report to the authorities. But the information subsequently obtained should not as such be communicated to the authorities, unless the client consents in writing.

6. Normally, if disclosure is consented to by the client it should be made immediately. But if the suppression is trivial, the disclosure may be made when the current return is submitted. But if there is any possibility that the collection of tax would be prejudiced, on account of the client disposing of his property or removing his person from the jurisdiction of the Income-tax authorities, the postponement of disclosure would be improper.

7. If the suppression etc. relates to accounts or returns currently being prepared, the member should advise the client to make full disclosure in the accounts and/or return, and should the client refuse, he should make full reservation in his report, and should not associate himself with the return.

8. If the employment of the member is dispensed with before the accounts are completed or are reported on, or the return is submitted, no further duty regarding disclosure etc. rests on the member.

9. The suppression may relate to accounts which are not prepared and/or reported upon by the member, e.g., personal income, income from investments other than business investments etc. The client may refuse full disclosure in the tax return, but still wish that the member should continue to prepare and/or report on his business accounts, though this is quite unlikely in practice. If so requested, the member may continue to do so, but is under no obligation so to do.

10. It should be impressed on the client that:

- (a) while disclosure may entail only monetary penalties, non-disclosure and subsequent discovery thereof may entail imprisonment and fine, in addition to penalties.
- (b) any intimation by the member to the Income-tax authorities that the member dissociates himself from the case is certain to start investigation by them in the whole matter.

11. The Income-tax authorities may summon the member for the purpose of examining him on oath, under Section 131(1)(b) of the Income-tax Act, 1961. The immunity from disclosure afforded by Section 126 of the Evidence Act, 1872 and the extent of such immunity are questions which involve niceties of law and expert legal advice should be sought in the matter. The refusal of the member to disclose may be taken down, and he may be required to certify it on oath.

12. Production of books of account and other documents may be called for under Section 131(1)(c) of the Income Tax Act, 1961. Here also the protection offered by Section 126 of the Evidence Act, 1872 is a matter for expert legal advice.

2.16.1B A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –

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;*

2.16.1B(i) The above clause restrains a member from subscribing to the report on a financial statement so long as it has not been examined by him or by a partner or an employee of his firm or by another chartered accountant in practice. It has been introduced to ensure that the work entrusted to him has been carried out by the member either directly or under his supervision before he renders his report.

2.16.1B(ii) Position in case of Joint Auditors

An exception however has been made in respect of an examination carried out by another Chartered Accountant in practice. This enables two or more members to accept

a joint assignment or enables a member also to carry out the examination of financial statements by or with the assistance of another Chartered Accountant in practice.

- Where the joint auditors are appointed, they should by mutual discussion divide the audit work among themselves. The division of work is usually in terms of audit of identifiable units or specified areas, or with reference to the items of assets or liabilities, or income or expenditure. Certain areas of work, owing to their importance or owing to the nature of the work involved, would often not be divided and would be covered by all the joint auditors. Such division of audit work should be adequately documented and communicated to the auditee.
- In the course of the audit, where a joint auditor comes across matters which are relevant to the areas of responsibility of other joint auditors and which deserve their attention, or which require disclosure or require discussion with, or application of judgement by, other joint auditors, he should communicate the same to all the other joint auditors in writing prior to the completion of the audit.
- In respect of audit work divided among the joint auditors, each joint auditor is responsible only for the work allocated to him including proper execution of the audit procedures. On the other hand, all the joint auditors are jointly and severally responsible for-
 - (a) the audit work which is not divided among the joint auditors and is carried out by all joint auditors;
 - (b) decisions taken by all the joint auditors under audit planning in respect of common audit areas concerning the nature, timing and extent of the audit procedures to be performed by each of the joint auditors.
 - (c) matters which are brought to the notice of the joint auditors by any one of them and on which there is an agreement among the joint auditors;
 - (d) examining that the financial statements of the entity comply with the requirements of the relevant statute;
 - e. presentation and disclosure of the financial statements as required by the applicable financial reporting framework;
 - (f) ensuring that the audit report complies with the requirements of the relevant statutes, the applicable Standards on Auditing and the other relevant pronouncements issued by ICAI.
- Each joint auditor is responsible to determine the nature, timing and extent of audit procedures to be applied in relation to the areas of work allotted to him.
- Obtaining and evaluating the information and explanations from the management is the joint responsibility of the joint auditors unless they agree upon a specific pattern of distribution of this responsibility. In case of distribution of this responsibility, the liability of the joint auditors is limited to the area allocated to that joint auditor.

- For detailed consideration of the subject, the members must refer to Standard on Auditing (SA) 299(Revised), “Joint Audit of Financial Statements”

2.16.1C A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –

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 a manner which may lead to the belief that he vouches for the accuracy of the forecast;*

2.16.1C(i) The Council has issued Standard on Assurance Engagements (SAE) 3400, “The Examination of Prospective Financial Information”, which is effective in relation to reports on projections/forecasts, issued on or after April 1, 2007. Pursuant to the issuance of this Standard, the Guidance Note on Accountant’s Report on Profit Forecasts and/or Financial Forecasts, issued in September, 1982 stands withdrawn. The guidance provided in this Standard is in line with the provisions of clause (3) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. As per the opinion of the Council while finalising the Guidance Note on Accountant’s Report on Profit Forecasts and/or Financial Forecasts at its 100th meeting held on 22nd through 24th July 1982, a chartered accountant can participate in the preparation of profit or financial forecasts and can review them, provided he indicates clearly in his report the sources of information, the basis of forecasts and also the major assumptions made in arriving at the forecasts and so long as he does not vouch for the accuracy of the forecasts. The Council has further opined that the same opinion would also apply to projections made on the basis of hypothetical assumptions about future events and management actions which are not necessarily expected to take place so long as the auditor does not vouch for the accuracy of the projection.

2.16.1C(ii) Further, the attention of the members is drawn to “Guidance Note on Reports in Company Prospectuses (Revised 2019)” issued by the Council in January 2019. This Guidance Note provides guidance on compliance with the provisions of the Companies Act, 2013 and the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018 relating to the reports required to be issued by chartered accountants in prospectus issued by the companies for the offerings made in India.

2.16.1D A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –

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;*

2.16.1D(i) If the opinions of auditors are to command respect and the confidence of the public, it is essential that it must be free of any interest which is likely to affect their independence. Since financial interest in the business can be a substantial interest and one of the important factors which may disturb independence, the existence of such an interest direct or indirect affects the opinion of the auditors. As per this clause, an auditor should not express his opinion on financial statements of any business or enterprise wherein he has a substantial interest. This is intended to assure the public as regards the faith and confidences that could be reposed on the independent opinion expressed by the auditors.

2.16.1D(ii) For the purpose of said guideline and aforesaid clause, the expression

“substantial interest” shall have meaning as is assigned thereto, under Appendix (9) of the Chartered Accountants Regulations, 1988. (see **Appendix-‘J’**).

2.16.1D(iii) The words “financial statements” used in this clause would cover both reports and certificates usually given after an examination of the accounts or the financial statement or any attest function under any statutory enactment or for purposes of income-tax assessments. This would not, however, apply to cases where such statements are prepared by members in employment purely for the information of their respective employers in the normal course of their duties and not meant to be submitted to any outside authority.

2.16.1D(iv) Public conscience is expected to be ahead of the law. Members, therefore, are expected to interpret the requirement as regards independence much more strictly than what the law requires and should not place themselves in positions which would either compromise or jeopardise their independence.

2.16.1D(v) Member must take care to see that they do not land themselves in situations where there could be conflict of interest and duty. For example, where a Chartered Accountant is appointed the Liquidator of a Company, he should not qua a Chartered Accountant himself, audit the Statement of Accounts to be filed under Section 348(1) of the Companies Act, 2013. The audit in such circumstances should be done by a chartered Accountant other than the one who is the Liquidator of the Company.

2.16.1D(vi) In this connection, the Council has decided not to permit a Chartered Accountant in employment to certify the financial statements of the concern in which he is employed, or of a concern under the same management as the concern in which he is employed, even though he holds certificate of practice and that such certification can be done by any Chartered Accountant in practice. This restriction would not however apply where the certification is permitted by any law. The Council has also decided that a Chartered Accountant should not by himself or in his firm name:-

- a. accept the auditorship of a college, if he is working as a part-time lecturer in the college.
- b. accept the auditorship of a trust where his partner is either an employee or a trustee of the trust.

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

2.16.1D(vii) Requirements of Clause applicable to all attest functions

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

2.16.1D(viii) Some of the situations which may arise in the applicability of Clause (4) read with the definition of “substantial Interest” mentioned in the Appendix (9) to the Chartered Accountants Regulations, 1988 (See Appendix-“J”), and other statutory prohibitions are discussed below for the guidance of members:-

1. **Where the member, his firm or his partner or his relative has substantial interest in the business or enterprise** (not being a company).

The independence of mind is a fundamental concept of audit and/or expression of opinion on the financial statements in any form and, therefore, must always be maintained. Nothing can substitute for the essential and fundamental

requirements of independence. Therefore, the Council's views are clarified in the following circumstances.

a. *An enterprise/concern of which a member is either an owner or a partner*

The holding of interest in the business or enterprise (not being a company) by a member himself whether as sole-proprietor or partner in a firm, in the opinion of the Council, would affect his independence of mind in the performance of professional duties in conducting the audit and/or expressing an opinion on financial statements of such enterprise. Therefore, a member shall not audit financial statements of such business or enterprise.

b. *Where the partner or relative of a member has substantial interest*

The holding of substantial interest by the partner or relative of the member in the business or enterprise (not being a company) of which the audit is to be carried out and opinion is to be expressed on the financial statement, may also affect the independence of mind of the member, in the opinion of Council, in the performance of professional duties. Therefore, the member may, for the same reasons as not to compromise his independence, desist from undertaking the audit of financial statements of such business or enterprise.

2. Where the member or his partner or relative is a director or in the employment of an officer or an employee of the Company.

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

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

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

In case the member seeks specific permission of the Council to be Whole Time or Managing Director in a Company, he would, on grant of such permission, not be entitled either to engage in attest functions (which includes audit), or to hold substantial interest in the Company. Although the provisions of the aforesaid section are not specifically applicable in the context of audits performed under other statutes, e.g. tax audit, yet the underlying principle of independence of mind is equally applicable in those situations also.

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

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

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

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

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

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

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

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

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

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

(g) Further, as per Appendix (9) to The Chartered Accountants Regulations, 1988, it is not permissible for a member to accept audit of a Company in case 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 any one or more relatives of the member.

2.16.1D(ix) It is not permissible for a member to undertake the assignment of certification, wherein the client is relative of the member. The "relative" for this purpose would refer to the definition mentioned in Accounting Standard (AS) -18.

2.16.1D(x) An accountant is expected to be no less independent in the discharge of his duties as a tax consultant or as a financial adviser than as auditor. In fact, it is necessary that he should bear the same degree of integrity and independence of mind in all spheres of his work. Unless this is done, the accounts of Companies audited by Chartered Accountants or statements made by them during the course of assessment proceedings would not be relied upon as correct by the authorities.

2.16.1D(xi) Members not to write books of account for auditee clients

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

2.16.1D(xii) Statutory auditor not to be the internal auditor simultaneously

A auditor appointed by an entity under the Companies Act or any other statute shall not be the internal auditor of the same entity,

2.16.1D(xiii) Internal auditor not to be the Tax auditor simultaneously

An internal auditor of an assessee, whether working with the organization or an independently practicing Chartered Accountant irrespective of being an individual Chartered Accountant or a firm of Chartered Accountants cannot be appointed as its tax auditor.

2.16.1D(xiv) Internal auditor not to be the GST auditor simultaneously

The Internal Auditor of an entity cannot undertake GST Audit of the same entity.

2.16.1D(xv) A member should satisfy himself before accepting an appointment as an auditor of an entity that his appointment is in accordance with the statute governing the entity. In case the entity is constituted under a trust deed/instrument, the member should satisfy whether his appointment is valid according to the instrument constituting the entity and rules and regulations made thereunder. In case the appointment is to be authorised by the regulatory authorities such as in the case of co-operative societies, trusts etc. then the member must satisfy whether such regulatory authorities have authorised the managing committee of the society/trust for appointment of the auditors. In a case where any entity is being managed by a Managing Committee or Board of Trustees or Board of Governors by whatever name called he should ensure that his appointment is duly made by a resolution passed of such Managing Committee or Board of Trustees or Board of Governors. Even in case of partnership or sole proprietary concerns, the member must ensure that a letter of appointment/engagement is given by the firm/sole proprietor before he accepts the appointment/ engagement.

2.16.1E *A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –*

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;*

2.16.1E(i) It may be observed that this Clause refers to failure to disclose a material fact, which is known to him, in a financial statement reported on by the auditor. It is obvious, that before a member could be held guilty of misconduct, materiality has to be established. The materiality in context of Audit is mentioned Standard on Auditing (SA) 320, as follows:

2.16.1E(ii) “Financial reporting frameworks often discuss the concept of materiality in the context of the preparation and presentation of financial statements. Although financial reporting frameworks may discuss materiality in different terms, they generally explain that:

- Misstatements, including omissions, are considered to be material if they, individually or in the aggregate, could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements;
- Judgments about materiality are made in the light of surrounding circumstances, and are affected by the size or nature of a misstatement, or a combination of both; and
- Judgments about matters that are material to users of the financial statements are based on a consideration of the common financial information needs of users as a group. The possible effect of misstatements on specific individual users, whose needs may vary widely, is not

considered.”

2.16.1E(iii) It should be borne in mind that there may be cases where an item may not be material from the point of view of the balance sheet, but may have material significance in relation to the profit and loss account for that year and vice-versa. It is therefore essential that care should be taken to ensure that the aspect of materiality should be judged in relation to both the balance sheet and the profit and loss account.

2.16.1E(iv) The words financial statements used in this clause would cover both reports and certificates usually given after an examination of the accounts or of financial statement 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.

2.16.1F A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –

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;*

2.16.1F(i) This clause refers to failure on the part of a member to point out in his report a material mis-statement appearing in a financial statement and he has knowledge of the same. Here also, it is obvious, that before a member could be held guilty of misconduct, materiality has to be established and the observations made under the preceding Clause (5), in this connection, will equally apply to this Clause.

2.16.1G A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –

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

2.16.1G(i) Though very simply worded, it is a vital clause which unusually gets attracted whenever it is necessary to judge whether the accountant has honestly and reasonably discharged his duties. Diligence means care; caution; attention and care required from a person in a given situation and the expression ‘due diligence’ means a measure of prudence, activity, or alertness, as is proper to be expected from, and ordinarily exercised by, a reasonable and prudent member in practice under the particular circumstance. In discharging his professional responsibilities it is expected that a Chartered Accountant would exercise a reasonable degree of diligence in his professional assignment. This would imply that a member in practice keeps himself updated of the changes and developments in the professional space that could have an impact on his professional assignments. The member should also act diligently in accordance with applicable technical and professional standards.

Diligence encompasses the responsibility to act in accordance with the requirements of an assignment carefully and thoroughly. Further, he should evaluate whether the information, explanations and evidence obtained by him during his professional engagement are prima facie consistent with other conditions that may surround his client. It is also expected that a professional would enquire and satisfy himself about any transactions, which come to his attention in the course of his professional engagement, and are otherwise not in the ordinary course of business of his client.

2.16.1G(ii) What constitutes professional misconduct

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

2.16.1H A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –

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;*

2.16.1H(i) It is expected of a Chartered Accountant to express his opinion on the financial statements after examining their authenticity with reference to information which is necessary and explanations given to him. A Chartered Accountant must determine the extent of information which should be obtained by him before he expresses an opinion on the financial statements submitted to him for his report thereon. In this regard, attention is drawn to Standard on Auditing (SA) 500, "Audit Evidence" which requires the auditor to design and perform audit procedures to obtain **sufficient appropriate audit evidence** to be able to draw reasonable conclusions on which to base the auditor's opinion.

2.16.1H(ii) The chartered accountant should not express an opinion before obtaining the required data and information. The latter part of the clause enjoins that where due to inadequacy of information or data the report has to be circumscribed to an extent that it would cease to be of any expression of a categorical opinion, the auditor should clearly express his disclaimer in no uncertain terms. For example, if the auditor has not seen any evidence of the existence and/or valuation of the investment which constitute the only asset of a Company, he should not say that:-

"Subject to the verification of the existence and value of the investments the Balance Sheet shows a true and fair view.....etc."

2.16.1H(iii) For manner of auditor's reporting in such situations, reference may be made to SA 705(Revised), "Modifications to the Opinion in the Independent Auditor's Report".

SA 700(Revised), "Forming an Opinion and Reporting on Financial Statements" establishes standards on the form and content of the auditor's report issued as a result of an audit of financial statements. It requires the auditor to form an opinion on the financial statements based on an evaluation of the conclusions drawn from the audit evidence obtained; and to express clearly that opinion through a written report. **As per SA 700(Revised);**

2.16.1H(iv) The auditor shall express an unmodified opinion when the auditor

concludes that the financial statements are prepared, in all material respects, in accordance with the applicable financial reporting framework.

2.16.1H(v) The auditor shall express a modified opinion (qualified opinion, adverse opinion or disclaimer of opinion) in accordance with SA 705(Revised) in the following situations:

- If the auditor concludes that, based on the audit evidence obtained, the financial statements as a whole are not free from material misstatement; or
- If the auditor is unable to obtain sufficient appropriate audit evidence to conclude that the financial statements as a whole are free from material misstatement,

2.16.1H(vi) SA 705(Revised) deals with the auditor's responsibility to issue an appropriate audit report in circumstances when, in forming an opinion in accordance with SA 700(Revised), the auditor concludes that a modification to the auditor's opinion on the financial statements is necessary. This SA also deals with how the form and content of the auditor's report is affected when the auditor expresses a modified opinion. As per SA 705(Revised):

The auditor shall express a qualified opinion when:

- The auditor, having obtained sufficient appropriate audit evidence, concludes that misstatements, individually or in the aggregate, are material, but not pervasive, to the financial statements; or
- The auditor is unable to obtain sufficient appropriate audit evidence on which to base the opinion, but the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be material but not pervasive.

2.16.1H (vii) The auditor shall express an adverse opinion when the auditor, having obtained sufficient appropriate audit evidence, concludes that misstatements, individually or in the aggregate, are both material and pervasive to the financial statements.

2.16.1H (viii) The auditor shall disclaim an opinion when the auditor is unable to obtain sufficient appropriate audit evidence on which to base the opinion, and the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be both material and pervasive.

2.16.1H (ix) SA 706(Revised), "Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report" deals with additional communication in the auditor's report when the auditor considers it necessary to:

- (a) Draw users' attention to a matter or matters presented or disclosed in the financial statements that are of such importance that they are fundamental to users' understanding of the financial statements; or
- (b) Draw users' attention to any matter or matters other than those presented or disclosed in the financial statements that are relevant to users' understanding of the audit, the auditor's responsibilities or the auditor's report.

2.16.1H (x) In case of point (a), SA 706(revised) requires the auditor to include an Emphasis of Matter paragraph in the auditor's report. In case of point (b), SA 706(revised) requires the auditor to include an Other Matter paragraph in the auditor's report.

2.16.1H (xi) For detailed consideration of the subject, including illustrative formats of auditor's report in different circumstances, the members may refer to SA 700(Revised), SA 705(Revised), SA 706(Revised).

2.16.1I *A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –*

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

2.16.1I(i) Generally Accepted Audit Procedure

This clause implies that the audit should be performed in accordance with “generally accepted procedure of audit applicable to the circumstances” and if for any reason the auditor has not been able to perform the audit in accordance with such procedure, his report should draw attention to the material departures from such procedures. What constitutes “generally accepted audit procedure” would depend upon the facts and circumstances of each case, but guidance is available from the various pronouncements of the Institute issued from time to time by way of Engagement and Quality Control Standards, Statements, General Clarifications, Guidance Notes and Technical Guides, Practice Manuals, Studies and Other Papers.

2.16.1I(ii) Audit of listed Companies

Pursuant to Notification No. LAD-NRO/GN/2009-10/23/186926 dt. 11th December, 2009, Statutory Audit of Listed Companies under the Companies Act, 2013 shall be done by only those auditors who have subjected themselves to the peer review process of the Institute, and hold a valid certificate issued by the Peer Review Board of the ICAI.

2.16.1I(iii) FRN and Membership No.

The members are required to mention the Membership number and Firm registration number to all reports issued pursuant to any attestation engagements, including certificates, issued by them as proprietor of/ partner in the said firm.

2.16.1I(iv) Unique Document Identification Number

The members may note that UDIN (unique document identification number) is mandatory from 1st July, 2019 on all Corporate/ Non- Corporate Audit, Attest and Assurance Functions.

The UDIN Guidelines issued vide Notification dt. 2 August, 2019 are enclosed at Appendix G.

2.16.1I(v) As per announcements of the Council regarding status of various documents issued by the Institute, the ‘Standards on Auditing’ have been issued with a view to securing compliance by members on matters which, in the opinion of the Council, are critical for the proper discharge of their functions. ‘Standards on Auditing’ therefore are mandatory. Accordingly, while discharging their attest function, it will be the duty of the members of the Institute to ensure that the ‘Standards’ relating to auditing

matters are followed in the audit of financial information covered by their audit reports. If, for any reason, a member has not been able to perform an audit in accordance with such 'Standards', his report should draw attention to the material departures therefrom.

2.16.11(vi) The Council of the Institute of Chartered Accountants of India has issued the "Preface to the Standards on Quality Control, Auditing, Review, Other Assurance and Related Services" in July, 2007 to facilitate understanding of the scope and authority of the pronouncements of the Auditing and Assurance Standard Board (AASB) issued under the authority of the Council of the Institute. The Preface is effective from April 1, 2008. As per the Preface, the scope and authority of the various pronouncements of the AASB issued under the authority of the Council of the Institute is as under:

2.16.11(vii) Engagement Standards

The following Standards issued by AASB under the authority of the Council are collectively known as the Engagement Standards:

- (a) Standards on Auditing (SAs), to be applied in the audit of historical financial information.
- (b) Standards on Review Engagements (SREs), to be applied in the review of historical financial information.
- (c) Standards on Assurance Engagements (SAEs), to be applied in assurance engagements, other than audits and reviews of historical financial information.
- (d) Standards on Related Services (SRSs), to be applied to engagements involving application of agreed-upon procedures to information, compilation engagements, and other related services engagements, as may be specified by the ICAI.

Standards on Quality Control (SQC), issued by the AASB under the authority of the Council, are to be applied for all services covered by the Engagement Standards.

2.16.11(viii) Standards on Auditing

The Standards on Auditing (SAs) are formulated in the context of an audit of financial statements by an independent auditor. They are to be adapted as necessary in the circumstances when applied to audits of other historical financial information. In conducting an audit of financial statements, the overall objectives of the auditor are:

- (a) To obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, thereby enabling the auditor to express an opinion on whether the financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework; and
- (b) To report on the financial statements, and communicate as required by the SAs, in accordance with the auditor's findings.

However, because of the inherent limitations of an audit, there is an unavoidable risk that some material misstatements of the financial statements may not be detected, even though the audit is properly planned and performed in accordance with the SAs. In all cases, when reasonable assurance cannot be obtained and a qualified opinion in the auditor's report is insufficient in the circumstances for purposes of reporting to the intended users of the financial statements, the SAs require that the auditor disclaim an

opinion or withdraw from the engagement, where withdrawal is legally permitted. The auditor is required to comply with each Standard on Auditing (SA) relevant to the audit. An SA is relevant to the audit when the SA is in effect and the circumstances addressed by the SA exist.

2.16.1I(ix) Statements on Auditing

Statements on Auditing are issued with a view to securing compliance by professional accountants on matters which, in the opinion of the Council, are critical for the proper discharge of their functions. Statements are, therefore, mandatory.

2.16.1I(x) General Clarifications

General Clarifications are issued with a view to clarify any issues arising from the Standards. General Clarifications are mandatory in nature.

2.16.1I(xi) It is the duty of the professional accountants to ensure that the Standards/Statements/General Clarifications are followed in the engagements undertaken by them. The need for the professional accountants to depart from a relevant requirement is expected to arise only where the requirement is for a specific procedure to be performed and, in the specific circumstances of the engagement, that procedure would be ineffective. If because of that reason, a professional accountant has not been able to perform an engagement procedure in accordance with any Standard/Statement/General Clarification, he is required to document how alternative procedures performed achieve the purpose of the procedure, and, unless otherwise clear, the reasons for the departure. Further, his report should draw attention to such departures. However, a mere disclosure in his report does not absolve a professional accountant from complying with the applicable Standards/Statements/General Clarifications.

2.16.1I(xii) Guidance Notes

Guidance Notes are issued to assist professional accountants in implementing the Engagement Standards and the Standards on Quality Control issued by the AASB under the authority of the Council. Guidance Notes are also issued to provide guidance on other generic or industry specific audit issues, not necessarily arising out of a Standard. Professional accountants should be aware of and consider Guidance Notes applicable to the engagement. A professional accountant who does not consider and apply the guidance included in a relevant Guidance Note should be prepared to justify the appropriateness and completeness of the alternate procedures adopted by him to deal with the objectives and basic principles set out in the Guidance Note.

2.16.1I(xiii) Technical Guides, Practice Manuals, Studies and Other Papers Published by AASB

Technical Guides are ordinarily aimed at imparting broad knowledge about a particular aspect or of an industry to the professional accountants. Practice Manuals are aimed at providing additional guidance to professional accountants in performing audit and other related assignments. Studies and other papers are aimed at promoting discussion or debate or creating awareness on issues relating to quality control, auditing, assurance and related service, affecting the profession. Such publications do not establish any basic principles or essential procedures to be followed in audit, review, other assurance or related services engagements, and accordingly, have no authority of the Council attached to them.

2.16.1I(xiv) An auditor of a Company is appointed by the shareholders to perform certain statutory functions and duties and it is expected of him that he will in fact, perform these functions and duties. The failure to perform a statutory duty in the manner required is not excused merely by giving a qualification or reservation in auditor's report. For example, if an auditor fails to verify the cash balance in circumstances where such verification was necessary, feasible and material, it is not sufficient for him merely to state in his report that he did not verify the cash balance. Consequently when giving any reservations or qualifications in the auditors report as required under this clause, a member would be well advised to indicate clearly the reasons why he was unable to perform the audit in accordance with generally accepted procedures and standards.

2.16.1I(v) It is not possible to exhaustively deal with instances or accepted procedure of audit applicable to special cases. Two instances of an audit requiring a special procedure are given below:-

2.16.1I(xvi) Very often members are required to certify the figures of circulation of newspapers, magazines etc. by their clients on behalf of the Audit Bureau of Circulations Ltd. Members are normally supplied by the ABC with the Rules and Regulations under which the certification of circulation is to be carried out. Members are also asked to give their acceptance in writing that they will observe the rules of procedure envisaged to report upon any lapse of such special requirements, even of an insignificant nature.

2.16.1I(xvii) Similarly, in the case of verification on behalf of banks, the rules or procedure for conducting such audit are different from the normal rules applicable to audits under the Companies Act. Members are required to be very familiar with the special procedure required in these matters and act accordingly.

2.16.1J *A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –*

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.*

2.16.1J(i) In the course of his engagement as a professional accountant, a member may be entrusted with moneys belonging to his client (other than fees or remuneration or money meant to be expended). If he should receive such funds, it would be his duty to deposit them in a separate banking account, and to utilise such funds only in accordance with the instructions of the client or for the purposes intended by the client within a reasonable time. In this connection the Council has considered some practical difficulties of the members and the following suggestions have been made to remove these difficulties:-

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

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

2.16.2 PART-II OF SECOND SCHEDULE

Professional Misconduct in relation to Members of the Institute generally.

2.16.2A *A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he:-*

Clause (1): *contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council:*

2.16.2A(i) This clause requires every member of the Institute to act within the framework of the Chartered Accountants Act and the Regulations and guidelines made by the Council thereunder. The Council so far has issued guidelines under this clause, as appearing in Chapter 3. Any violation either of these guidelines or the Act or the Regulations by a member would be covered as a professional misconduct under this part.

2.16.2A(ii) The Council is empowered to issue guidelines in exercise of the power conferred by clause (1) of this Part. The Council has issued guidelines in lieu of earlier issued several notifications published in the Gazette of India regarding acts or omissions which may amount to misconduct in exercise of the power conferred by the earlier Clause (2) of this Part (repealed vide CA Amendment Act, 2006).

2.16.2A(iii) It is an authority for the Council to issue guidelines for extending the scope of misconduct to cover acts or omissions not already dealt with in the various clauses of the two schedules.

2.16.2B *A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he:-*

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;*

2.16.2B(i) This is an adaptation of the well-accepted principle of the law of agency. A member in the forthcoming circumstance would be guilty of misconduct regardless of the fact that he was in wholtime or part-time employment or that he was carrying on practice of accountancy alongwith his employment. Since as employee, a member may have access to a confidential information, hence for maintaining the status and dignity of the profession in general, he should treat such information as having been provided to him only to facilitate the performance of his duties as an employee. In order to keep the confidence of the people, Chartered Accountants, should take special care not to divulge such information.

2.16.2C *A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he:-*

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;*

2.16.2D *A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he:-*

Clause (4): *defalcates or embezzles moneys received in his professional capacity.*

2.16.3 PART III OF SECOND SCHEDULE

Other Misconduct in relation to members of the Institute generally

2.16.3A *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.*

2.16.3A(i) If a member of the Institute, whether in practice or not, is held guilty by any Court for any offence which is punishable with imprisonment for more than six months, he shall be held guilty of 'misconduct' under this Clause.

CHAPTER 3

GUIDELINES FOR ADVERTISEMENT

**ICAI Guidelines No.1-CA(7)/Council Guidelines/01/2008,
dated 14th May, 2008**

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

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

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

3.1.2 Definitions

For the purpose of these Guidelines:

- (i) The "Act" means The Chartered Accountants Act, 1949.
- (ii) "Institute" means the Institute of Chartered Accountants of India.
- (iii) "write up" means the writing of particulars according to the information given in the Guidelines setting out services rendered by the Members or firms and any writing or display of the particulars of the Member(s) in Practice or of firm(s) issued, circulated or published by way of print or electronic mode or otherwise including in newspapers, journals, magazines and websites including social Networking Sites (in Push as well in Pull mode) in accordance with the Guidelines.

(The terms not defined herein have the same meaning as assigned to them in the Chartered Accountants Act, 1949 and the Rules, Regulations and Guidelines made there under.)

3.1.3 While advertising the services, the write-up may include only the following information:

(A) For Members

- (i) Name Chartered Accountant
- (ii) Membership No. with Institute
- (iii) Age
- (iv) Date of becoming ACA
- (v) Date of becoming FCA
- (vi) Date from which COP held
- (vii) Recognized qualifications
- (viii) Languages known
- (ix) Telephone/Mobile/Fax No.
- (x) Professional Address

- (xi) Web
- (xii) E-mail
- (xiii) C A Logo
- (xiv) Passport style photograph
- (xv) Details of Employees (Nos. -)
 - (a) Chartered Accountants -
 - (b) Other Professionals –
 - (c) Articles/Audit Assistants
 - (d) Other Employees
- (xvi) Names of the employees and their particulars on the lines allowed for a member as stated above.
- (xvii) Services provided
 - (a)
 - (b)
 - (c)

(B) For Firms

- (i) Name of the Firm Chartered Accountants
- (ii) Firm Registration No. with Institute
- (iii) Year of establishment.
- (iv) Professional Address(s) (both Head Office and Branches)
- (v) Working Hours
- (vi) Tel. No(s)/Mobile No./Fax No(s)
- (vii) Web address
- (viii) E-mail
- (ix) No. of partners
- (x) Name of the proprietor/partners and their particulars on the lines allowed for a member as stated above including passport style photograph.
- (xi) CA Logo
- (xii) Details of Employees (Nos. -)
 - (a) Chartered Accountants -
 - (b) Other professionals –
 - (c) Articles/Audit Assistants
 - (d) Other employees
- (xiii) Names of the employees of the firm and their particulars on the lines allowed for a member as stated above.
- (xiv) Services provided:
 - (a)
 - (b)
 - (c)

The write-up may have the Signature, Name of the Member/ Name of the Partner signing on

behalf of the firm, Place and Date.

- (xv) Affiliation with a local or international entity vide a Network registered with ICAI

3.1.4. Other Conditions

- (i) The write-up should not be false or misleading and bring the profession into disrepute.
- (ii) The write-up should not claim superiority over any other Member(s)/Firm(s).
- (iii) The write-up should not be indecent, sensational or otherwise of such nature which may likely to bring the profession into disrepute.
- (iv) The write-up should not contain testimonials or endorsements concerning Member(s).
- (v) The write-up should not contain any other representation(s) that may like to cause a person to misunderstand and/or to be deceived.
- (vi) The write-up should not violate the provisions of the 'Act', Rules made there under and 'The Chartered Accountants Regulations, 1988'.
- (vii) The write-up should not include the names of the clients (both past and present) or fees charged
- (viii) The write-up should not be of font size exceeding 14.
- (ix) The write-up should not contain any information other than stated in Para 3 hereinabove.
- (x) The write-up should not contain any information about achievements/award or any other position held.
- (xi) The particulars of information required at para (i) and (ii) of 3(A) and para (i) and (ii) of 3(B) above is mandatory.
- (xii) While affiliation with a Network registered with ICAI may be mentioned, such Network cannot advertise.

3.2 Website of the CA Firms

The Chartered Accountants and/or Chartered Accountants' Firms would be free to create their own Website subject to the overall guidelines laid down by the Council hereunder. The actual format of the Website is not being prescribed nor any standard format of the Website is being given to provide independence to the Members. There is no restriction on the colours which may be used in the Website. Individual Members would also be permitted to have their Webpages in their trade name or individual name. In addition to the above, such website /webpage will be subject to following :-

3.2.1 The Chartered Accountants and/or Chartered Accountants' Firms should ensure that none of the information contained in the Website be circulated on their own or through E-mail or by any other mode or technique except on a specific "pull" request.

3.2.2 The Chartered Accountants would also not issue any circular or any other advertisement or any other material of any kind whatsoever by virtue of which they solicit people to visit their Website. The Chartered Accountants would, however, be permitted to mention their Website address on their professional stationery.

3.2.3 With respect to S.No. 4(vii) above, members may take note of the following:-

Note:

Disclosure of names of clients and/or fees charged, on the website is permissible only where it is required by a regulator, whether or not constituted under a statute, in India or outside India, provided that such disclosure is only to the extent of requirement of the regulator. Where such disclosure of names of clients and/or fees charged is made on the website, the member/ firm shall ensure that it is mentioned on the website [in italics], below such disclosure itself, that “This disclosure is in terms of the requirement of [name of the regulator] having jurisdiction in [name of the country/ area where such regulator has jurisdiction] vide [Rule/ Directive etc. under which the disclosure is required by the Regulator].

3.2.4 The members may include articles, professional information, professional updation and other matters of larger importance or of professional interest.

3.2.5 The bulletin boards can be provided.

3.2.6 The chat rooms can be provided which permit chatting amongst members of the ICAI and between Firms and its clients. The confidentiality protocol would have to be observed. The Firms can provide document management facility with distinct log in and password facility to the clients to access copies of their documents on the Firm website.

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

3.2.8 ICAI at its sole discretion may vet any of the Websites created by its members or individual Chartered Accountant or firms of Chartered Accountants and would have powers to direct deletion of certain portions and/or issue specific directions. In addition, necessary action can be taken in accordance with the Chartered Accountants Act, 1949 and the Regulations framed thereunder, in case there is any violation of the above guidelines.

3.2.9 No Advertisement, whatsoever, of any nature, will be permitted on the Website.

3.2.10 The Website should be befitting the profession of Chartered Accountants and should not contain any information or material which is unbecoming of a Chartered Accountant.

3.2.11 The Website may provide a link to the Website of ICAI, its Regional Councils and Branches and also the Website of Govt./Govt. Departments/Regulatory authorities/other Professional Bodies 3.2.12 The address of the Website can be different from the name of the firm. But it should not amount to soliciting clients or professional work or advertisement of professional attainments or services. The Website address should be as near as possible to the individual name/trade name, firm name of the Chartered

Accountant in practice or firm of Chartered Accountants in practice. The Ethical Standards Board (ESB) of ICAI will decide in case there is any difficulty.

CHAPTER - 4

COUNCIL GENERAL GUIDELINES, 2008

**Council Guidelines No.1- CA(7)/02/2008,
dated 8th August,2008**

4.1 Preliminary

4.1.1 Short title, commencement, etc.

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

4.1.2 Definitions

4.1.3 For the purpose of these Guidelines:

- (a) 'Act' means the Chartered Accountants Act, 1949.
- (b) "Chartered accountant" means a person who is a member of the Institute.
- (c) "Council" means the Council of the Institute constituted under section 9 of the Act.
- (d) "Institute" means the Institute of Chartered Accountants of India constituted under the Act.

4.1.4 All other words and expressions used but not defined herein have the same meaning as assigned to them within the Chartered Accountants Act, 1949 and the Rules, Regulations and Guidelines made there under.

4.1.5 Applicability of the Guidelines

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

4.2 Conduct of a Member being an employee

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

4.3 Maintenance of books of account

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

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

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

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

Provided that in the case of a firm of Chartered Accountants in practice, the "specified number of tax audit assignments" shall be construed as the specified number of tax audit

assignments for every partner of the firm.

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

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

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

4.4.2 Explanation:

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

- (a) in the case of a Chartered Accountant in practice or a proprietary firm of Chartered Accountant, 60 tax audit assignments, in a financial year, whether in respect of corporate or non-corporate assesses.
- (b) in the case of firm of Chartered Accountants in practice, 60 tax audit assignments per partner in the firm, in a financial year, whether in respect of corporate or non-corporate assesses.
- (c) Assesses having turn over exceeding Rs. 1 crore but not exceeding Rs. 2 crores, and also not opting for presumptive taxation u/s 44AD will be required to get their book of accounts audited u/s 44AB(a) of the Income Tax Act, 1961

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

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

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

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

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

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

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

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

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

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

4.5.2 Explanation 1:

For this purpose, the provision for audit fee in accounts signed by both - the auditee and the auditor along with other expenses , if any, incurred by the auditor in connection with the audit, shall be considered as “undisputed audit fees”

4.5.3 Explanation 2:

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

4.6 Specified number of audit assignments

4.6.1 A member of the Institute in practice shall not hold at any time appointment of more than the “specified number of audit assignments” of Companies under Section 141 of the Companies Act 2013.

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

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

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

4.6.2 Explanation:

For the above purpose, the “specified number of audit assignments” means – (a) in the case of a Chartered Accountant in practice or a proprietary firm of Chartered Accountant, thirty audit assignments whether in respect of private Companies or other Companies., with the exception of One person Companies as defined under Section 2(62) of Companies Act, 2013, and dormant companies as defined under Section 455 of Companies Act, 2013.

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

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

(a) the number of audit of such Companies, which he or any partner of his firm has accepted whether singly or in combination with any other Chartered Accountant in practice or firm of such Chartered Accountants, shall be taken into account.

(b) the audit of the head office and branch offices of a Company by one Chartered Accountant or firm of such Chartered Accountants in practice shall be regarded as one audit assignment.

(c) the audit of one or more branches of the same Company by one Chartered Accountant in practice or by firm of Chartered Accountants in practice in which he is a partner shall be construed as one audit assignment only.

(d) the number of partners of a firm on the date of acceptance of audit assignment shall be taken into account.

4.6.4 A Chartered Accountant in practice, whether in full-time or part-time employment

elsewhere, shall not be counted for the purpose of determination of “specified number of audit of Companies” by firms of Chartered Accountants.

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

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

S. No.	Name of the Company	Registration Number	Date of Appointment	Date of Acceptance	Date on which Form ADT-I filed with Registrar of Companies
1	2	3	4	5	6

4.7 Appointment as Statutory auditor

4.7.1 A member of the Institute in practice shall not accept the appointment as statutory auditor of Public Sector Undertaking(s)/ Government Company(ies)/Listed Company(ies) and other Public Company(ies) having turnover of Rs. 50 crores or more in a year where he accepts any other work(s) or assignment(s) or service(s) in regard to the same Undertaking(s)/ Company(ies) on a remuneration which in total exceeds the fee payable for carrying out the statutory audit of the same Undertaking/company.

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

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

4.7.3 For the above purpose,

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

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

4.8 Appointment of an auditor when he is indebted to a concern

4.8.1 A member of the Institute in practice or a partner of a firm in practice or a firm shall not accept appointment as auditor of a concern while indebted to the concern or given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding Rs. ~~40,000/-~~1,00,000/-

Provided the limit of indebtedness of relative(s) of the member or of the Institute in practice or a partner of a firm will be applicable as per the limit , if any, prescribed in the statute.

4.9 Directions in case of unjustified removal of auditors

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

4.10 Repeal and Saving

4.10.1 The Notifications as specified in the Schedule hereto, issued under erstwhile Clause (ii) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 by the Council from time to time shall stand repealed from the date herein.

4.10.2 Notwithstanding such repeal:-

- (a) Anything done or any action taken or purported to have been done or taken, any enquiry or investigation commenced or show cause notice issued in respect of the said notifications shall be deemed to have been done or taken under the corresponding provisions of these guidelines.
- (b) Any application made to the Council or Director (Discipline) under the said Notifications and pending before the Director (Discipline), Board of Discipline, Disciplinary Committee and the Council shall be deemed to have been made under the corresponding provisions of these Guidelines.

CHAPTER 5

SELF-REGULATORY MEASURES RECOMMENDED BY THE COUNCIL

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

The more important of these recommendations are as under:

5.2 Branch Audits

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

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

5.3 Joint Audit

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

5.4 Ratio Between Qualified and Unqualified Staff

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

5.5 Disclosure of Interest by Auditors in other Firms

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

APPENDICES

APPENDIX 'A'

(Please refer to page-----)

List of Engagement and Quality Control Standards			
S.No.	Standard Number (SQC) (1-99)	Standards on Quality Control (SQCs)	Date from which effective
1	1	Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements	Effective for all engagements relating to accounting periods beginning on or after April 1, 2009.
Audits and Reviews of Historical Financial Information			
	Standard Number (SA) (100-999)	Standards on Auditing (SAs)	Date from which effective
	100-199	Introductory Matters	
	200-299	General Principles and Responsibilities	
2	200	Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing	Effective for audits of financial statements for periods beginning on or after April 1, 2010.
3	210	Agreeing the Terms of Audit Engagements	Effective for audits of financial statements for periods beginning on or after April 1, 2010.
4	220	Quality Control for an Audit of Financial Statements	Effective for audits of financial statements for periods beginning on or after April 1, 2010.
5	230	Audit Documentation	Effective for audits of financial statements for periods beginning on or after April 1, 2009.
6	240	The Auditor's Responsibilities Relating to Fraud in an Audit	Effective for audits of financial statements for

		of Financial Statements	periods beginning on or after April 1, 2009.
7	250	Consideration of Laws and Regulations in an Audit of Financial Statements	Effective for audits of financial statements for periods beginning on or after April 1, 2009.
8	260(Revised)	Communication with Those Charged with Governance	Effective for audits of financial statements for periods beginning on or after April 1, 2017.
9	265	Communicating Deficiencies in Internal Control to Those Charged with Governance and Management	Effective for audits of financial statements for periods beginning on or after April 1, 2010.
10	299	Responsibility of Joint Auditors	Effective for all audits related to accounting periods beginning on or after April 1, 1996
10	299(Revised)	Joint Audit of Financial Statements	Effective for audits of financial statements for periods beginning on or after April 1, 2018
	300-499	Risk Assessment and Response to Assessed Risks	
11	300	Planning an Audit of Financial Statements	Effective for audits of financial statements for periods beginning on or after April 1, 2008.
12	315	Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment	Effective for audits of financial statements for periods beginning on or after April 1, 2008.
13	320	Materiality in Planning and Performing an Audit	Effective for audits of financial statements for periods beginning on or after April 1, 2010.
14	330	The Auditor's Responses to Assessed Risks	Effective for audits of financial statements for periods beginning on or after April 1, 2008.
15	402	Audit Considerations Relating to an Entity Using a Service Organisation	Effective for audits of financial statements for periods beginning on or after April 1, 2010.
16	450	Evaluation of Misstatements Identified during the Audit	Effective for audits of financial statements for periods beginning on or after April 1, 2010.

	500–599	Audit Evidence	
17	500	Audit Evidence	Effective for audits of financial statements for periods beginning on or after April 1, 2009.
18	501	Audit Evidence - Specific Considerations for Selected Items	Effective for audits of financial statements for periods beginning on or after April 1, 2010.
19	505	External Confirmations	Effective for audits of financial statements for periods beginning on or after April 1, 2010.
20	510	Initial Audit Engagements—Opening Balances	Effective for audits of financial statements for periods beginning on or after April 1, 2010.
21	520	Analytical Procedures	Effective for audits of financial statements for periods beginning on or after April 1, 2010.
22	530	Audit Sampling	Effective for audits of financial statements for periods beginning on or after April 1, 2009.
23	540	Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures	Effective for audits of financial statements for periods beginning on or after April 1, 2009.
24	550	Related Parties	Effective for audits of financial statements for periods beginning on or after April 1, 2010.
25	560	Subsequent Events	Effective for audits of financial statements for periods beginning on or after April 1, 2009.
26	570(Revised)	Going Concern	Effective for audits of financial statements for periods beginning on or after April 1, 2017.
27	580	Written Representations	Effective for audits of financial statements for periods beginning on or after April 1, 2009.
	600-699	Using Work of Others	

28	600	Using the Work of Another Auditor	Effective for all audits related to accounting periods beginning on or after April 1, 2002.
29	610(Revised)	Using the Work of Internal Auditors	Effective for audits of financial statements for periods beginning on or after April 1, 2016.
30	620	Using the Work of an Auditor's Expert	Effective for audits of financial statements for periods beginning on or after April 1, 2010.
	700-799	Audit Conclusions and Reporting	
31	700	Forming an Opinion and Reporting on Financial Statements	Effective for audits of financial statements for periods beginning on or after April 1, 2012.
31	700(Revised)	Forming an Opinion and Reporting on Financial Statements	Effective for audits of financial statements for periods beginning on or after April 1, 2018
32	701	Communicating Key Audit Matters in the Independent Auditor's Report	Effective for audits of financial statements for periods beginning on or after April 1, 2018
33	705	Modifications to the Opinion in the Independent Auditor's Report	Effective for audits of financial statements for periods beginning on or after April 1, 2012.
33	705(Revised)	Modifications to the Opinion in the Independent Auditor's Report	Effective for audits of financial statements for periods beginning on or after April 1, 2018
34	706	Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report	Effective for audits of financial statements for periods beginning on or after April 1, 2012.
34	706(Revised)	Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report	Effective for audits of financial statements for periods beginning on or after April 1, 2018
35	710	Comparative Information - Corresponding Figures and Comparative Financial Statements	Effective for audits of financial statements for periods beginning on or after April 1, 2011.

36	720	The Auditor's Responsibility in Relation to Other Information in Documents Containing Audited Financial Statements	Effective for audits of financial statements for periods beginning on or after April 1, 2010.
36	720(Revised)	The Auditor's Responsibilities Relating to Other Information	Effective for audits of financial statements for periods beginning on or after April 1, 2018
	800-899	Specialized Areas	
37	800	Special Considerations-Audits of Financial Statements Prepared in Accordance with Special Purpose Frameworks	Effective for audits of financial statements for periods beginning on or after April 1, 2011.
38	805	Special Considerations-Audits of Single Financial Statements and Specific Elements, Accounts or Items of a Financial Statement	Effective for audits of financial statements for periods beginning on or after April 1, 2011.
39	810	Engagements to Report on Summary Financial Statements	Effective for audits of financial statements for periods beginning on or after April 1, 2011.
	Standard Number (SRE) (2000-2699)	Standards on Review Engagements (SREs)	Date from which effective
40	2400(Revised)	Engagements to Review Historical Financial Statements	Applicable for reviews of financial statements for periods beginning on or after April 1, 2016.
41	2410	Review of Interim Financial Information Performed by the Independent Auditor of the Entity	Applicable for reviews of interim financial information for periods beginning on or after April 1, 2010.
Assurance Engagements Other Than Audits or Reviews of Historical Financial Information			
	Standard Number (SAE) (3000-3699)	Standards on Assurance Engagements (SAEs)	Date from which effective
	3000-3399	Applicable to all Assurance Engagements	
	3400-3699	Subject Specific Standards	
42	3400	The Examination of Prospective Financial Information	Effective in relation to reports on projections/ forecasts, issued on or after April 1, 2007

43	3402	Assurance Reports on Controls at a Service Organisation	Effective for assurance reports covering periods ending on or after April 1, 2011
44	3420	Assurance Engagements to Report on the Compilation of Pro Forma Financial Information Included in a Prospectus	Effective for assurance reports dated on or after April 1, 2016
Related Services			
	Standard Number (SRS) (4000-4699)	Standards on Related Services (SRSs)	Date from which effective
45	4400	Engagements to Perform Agreed-upon Procedures Regarding Financial Information	Applicable to all agreed upon procedures engagements beginning on or after April 1, 2004
46	4410(Revised)	Compilation Engagements	Effective for compilation engagements undertaken after March 31, 2016.

APPENDIX 'B'
(Please refer to page----)

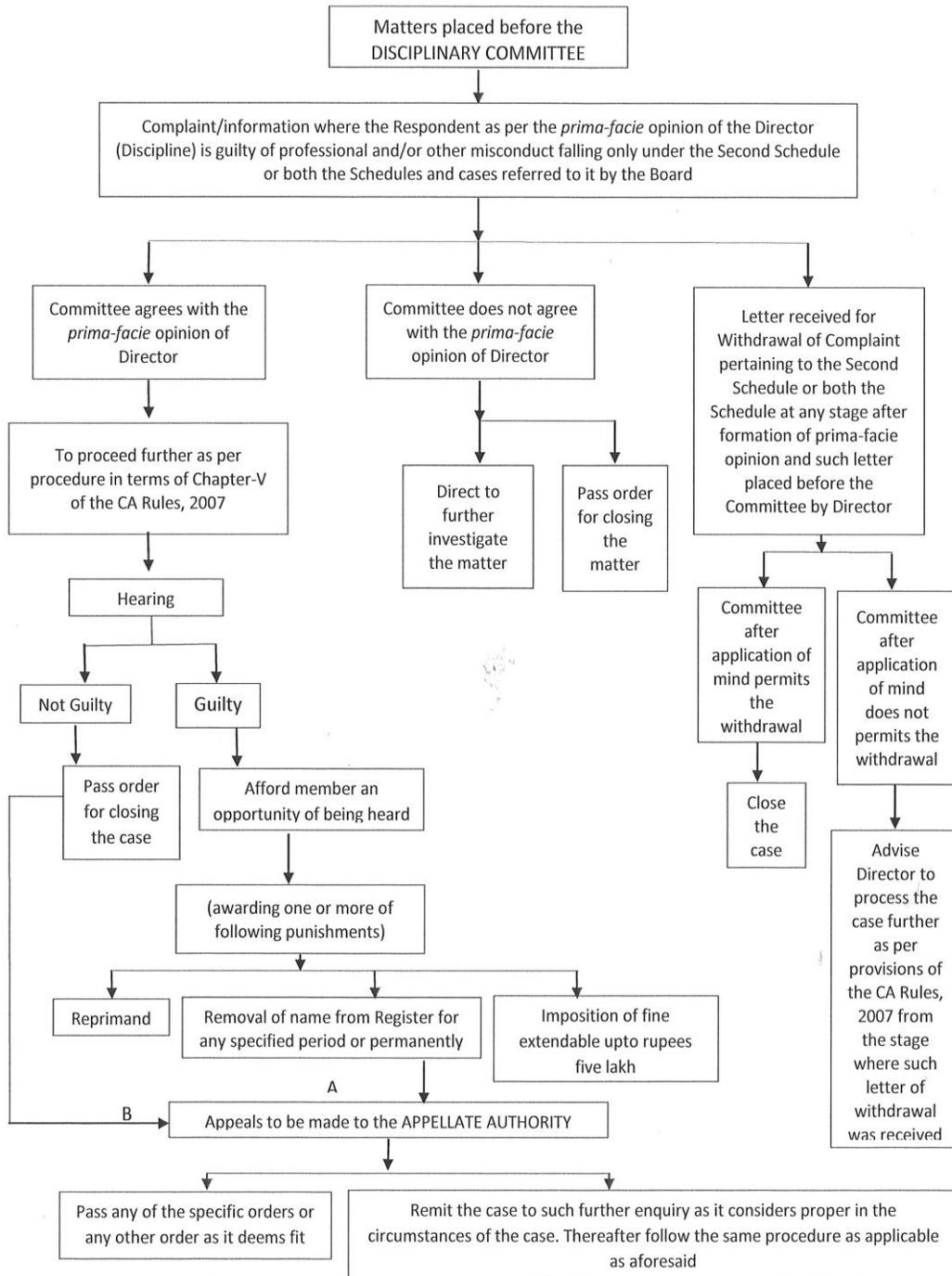
List of Accounting Standards effective as on April 01, 2019

S.no.	Accounting Standard	Description
1.	AS 1	Disclosure of Accounting Policies
2.	AS 2	Valuation of Inventories
3.	AS 3	Cash Flow Statements
4.	AS 4	Contingencies and Events Occurring After the Balance Sheet Date
5.	AS 5	Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies
6.	AS 7	Construction Contracts
7.	AS 9	Revenue Recognition
8.	AS 10	Property, Plant and Equipment
9.	AS 11	The Effects of Changes in Foreign Exchange Rates
10.	AS 12	Accounting for Government Grants
11.	AS 13	Accounting for Investments
12.	AS 14	Accounting for Amalgamations
13.	AS 15	Employee Benefits
14.	AS 16	Borrowing Costs
15.	AS 17	Segment Reporting
16.	AS 18	Related Party Disclosures
17.	AS 19	Leases
18.	AS 20	Earnings Per Share
19.	AS 21	Consolidated Financial Statements
20.	AS 22	Accounting for Taxes on Income
21.	AS 23	Accounting for Investments in Associates in Consolidated Financial Statements
22.	AS 24	Discontinuing Operations
23.	AS 25	Interim Financial Reporting
24.	AS 26	Intangible Assets
25.	AS 27	Financial Reporting of Interests in Joint Ventures
26.	AS 28	Impairment of Assets
27.	AS 29	Provisions, Contingent Liabilities and Contingent Assets

List of Ind AS effective as on April 01, 2019

Ind AS 101	First-time Adoption of Indian Accounting Standards
Ind AS 102	Share-based Payment
Ind AS 103	Business Combinations
Ind AS 104	Insurance Contracts
Ind AS 105	Non-current Assets Held for Sale and Discontinued Operations
Ind AS 106	Exploration for and Evaluation of Mineral Resources
Ind AS 107	Financial Instruments: Disclosures
Ind AS 108	Operating Segments
Ind AS 109	Financial Instruments
Ind AS 110	Consolidated Financial Statements
Ind AS 111	Joint Arrangements
Ind AS 112	Disclosure of Interests in Other Entities
Ind AS 113	Fair Value Measurement
Ind AS 114	Regulatory Deferral Accounts
Ind AS 115	Revenue from Contracts with Customers
Ind AS 116	Leases
Ind AS 1	Presentation of Financial Statements
Ind AS 2	Inventories
Ind AS 7	Statement of Cash Flows ⁴
Ind AS 8	Accounting Policies, Changes in Accounting Estimates and Errors
Ind AS 10	Events after the Reporting Period
Ind AS 12	Income Taxes
Ind AS 16	Property, Plant and Equipment
Ind AS 19	Employee Benefits
Ind AS 20	Accounting for Government Grants and Disclosure of Government Assistance
Ind AS 21	The Effects of Changes in Foreign Exchange Rates
Ind AS 23	Borrowing Costs
Ind AS 24	Related Party Disclosures
Ind AS 27	Separate Financial Statements
Ind AS 28	Investments in Associates and Joint Ventures
Ind AS 29	Financial Reporting in Hyperinflationary Economies
Ind AS 32	Financial Instruments: Presentation
Ind AS 33	Earnings per Share
Ind AS 34	Interim Financial Reporting
Ind AS 36	Impairment of Assets
Ind AS 37	Provisions, Contingent Liabilities and Contingent Assets
Ind AS 38	Intangible Assets
Ind AS 40	Investment Property
Ind AS 41	Agriculture

DISCIPLINARY COMMITTEE



The CA Rules, 2007 means The Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

A	Member of Institute	Within 90 days of the date on which the order concerned is communicated or even later if Appellate Authority is satisfied with reasons for delay
B	Director (Discipline) if authorised by the Council	

Appendix – “D”

(Please refer to page -----)

Guidelines for Practice in Corporate Form of Practice

As per the existing Code of Ethics, a member in practice is permitted generally to be a ‘Director Simplicitor’ in any company and as such he is not required to obtain any specific permission in this regard irrespective of whether he and/or his relatives hold substantial interest in that company. However, a member in practice shall not hold the position of Managing Director or Whole-time Director of a Body Corporate if he and/or his relatives hold substantial interest in such concern. In the alternative, a member in practice can occupy such positions by surrendering his Certificate of Practice (CoP). Where substantial interest is not so held, a member in practice can hold these positions only after obtaining specific and prior approval of the Council in which case the member will be regarded as being in part-time practice and therefore, can neither do attest function nor he can train articled/audit assistants.

To empower the members to face the emerging challenges in the service sector as well as to equip them for the opportunities in the non-audit service area, the Council at its 261st meeting held from 1st to 3rd August, 2006 reviewed the aforesaid position and in the interest of the profession, decided to allow members in practice to render Management Consultancy and Other Services in Corporate form, subject to the guidelines to be issued by the Institute in this regard.

The Council decided to allow members in practice to hold the office of Managing Director, Whole-time Director or Manager of a body corporate within the meaning of the Companies Act, 1956 provided that the body corporate is engaged exclusively in rendering Management Consultancy and Other Services permitted by the Council in pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949 and complies with the conditions(s) as specified by the Council from time to time in this regard.

The members can retain full time Certificate of Practice besides being the Managing Director, Whole-time Director or Manager of such Management Consultancy Company. There will be no restriction on the quantum of the equity holding of the members, either individually and/ or along with the relatives, in such Company. Such members shall be regarded as being in full- time practice and therefore can continue to do attest function either in individual capacity or in Proprietorship/Partnership firm in which capacity they practice and wherein they are also entitled to train articled/audit assistants.

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

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

The guidelines for Corporate Form of Practice are as follows:

1. Definition

(i) Managing Director, Whole-time Director and Manager - The term “Managing Director”, “Whole-time Director” and “Manager” shall have the same meaning as defined/understood in the Companies Act, 1956. For this purpose, the member in practice who is a Managing Director, Whole-time Director or Manager shall be full-time practitioner/proprietor/partner in a Chartered Accountants firm.

(ii) Act – Act means The Chartered Accountants Act, 1949.

(iii) Regulations – Regulations means the Chartered Accountants Regulations, 1988.

(iv) Code of Ethics – Code of Ethics means the Code of Ethics issued by the Institute and decisions of the Council in this regard.

(v) Institute – Institute means the Institute of Chartered Accountants of India.

(vi) Council – Council means the Central Council of the Institute.

(vii) Member – Member means a Member in Practice. Member in Practice means a ‘Member in Practice’ as defined in the Chartered Accountants Act, 1949 and its Regulations.

(viii) Management Consultancy & Other Services – Management Consultancy & Other Services or MCS means ‘Management Consultancy & Other Services’ permitted by the Council in pursuance to Section 2(2)(iv) of the Chartered Accountants Act, 1949. The definition of the expression “Management Consultancy and other Services” as appears at pages 8-10 of the Code of Ethics, 2005 edition is as under:

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 ad-vice 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.
- (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 work loads.
- (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.

(xx) Investment counseling in respect of securities [as defined in the Securities Contracts (Regulation) Act, 1956 and other financial instruments.] (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).

(xxi) Acting as registrar to an issue and for transfer of shares/other securities. (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).

(xxii) Quality Audit.

(xxiii) Environment Audit.

(xxiv) Energy Audit.

(xxv) Acting as Recovery Consultant in the Banking Sector.

(xxvi) Insurance Financial Advisory Services under the Insurance Regulatory & Development Authority Act, 1999, including Insurance Brokerage.

(ix) Management Consultancy Company – Management Consultancy Company means a Company, which complies with the Guidelines for Practice in Corporate Form issued by the Institute.

(x) Relative – Relative means “Relative” as defined in Appendix (9) of the Chartered Accountants Regulations, 1988, 2013 edition.

2.Name of the Management Consultancy Company:

(i) The Management Consultancy Company shall have a distinct name which shall be approved by the Institute. The prescribed format of application for approval of name for Management Consultancy Company is at Form ‘G’.

(ii) Standards prescribed in Regulations 190 of the Chartered Accountants Regulations, 1988 shall be applicable to the name of the Management Consultancy Company. However, even if a name is provided and subsequently it is found that the same is undesirable then, the said name can be withdrawn at any time by the Institute. The provisions in respect of name of companies as prescribed in the Companies Act, 1956 shall be applicable in letter and spirit.

(iii) The name of Management Consultancy- Company may indicate the area of ‘Management Consultancy & Other Services’ permitted by the Council from time to time.

(iv) The Management Consultancy Company shall neither be permitted to advertise nor to use logo.

3.Registration:

After approval of the name under Guideline 3 and incorporation under the Companies Act, 1956, the Management Consultancy Company is required to be registered with the Institute in a prescribed Form 'H' .

4.Ethical Compliance:

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

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

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

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

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

6.Object of Management Consultancy Company:

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

The Object Clause should restrict itself only to the Management Consultancy & Other Services permitted by the Council in pursuance to Section 2(2)(iv) of the Chartered Accountants Act, 1949.

7.Violation of Act:

In case of alleged violation of the provisions of the Act, Regulations framed there under, guidelines/directions laid down by the Council from time to time and Code of Ethics issued by the Council, the individual practitioner/sole-proprietorship firm/partnership firm in general and the Managing Director/Whole-time Director/Manager of such company in particular, would be answerable.

8. Applicability of Companies Act, 1956* and other laws:

All the provisions of the Companies Act, 1956* and other laws that are applicable to a Company formed under the Companies Act, 1956* shall be applicable to the Management Consultancy Company. The Guidelines are in addition to the provisions contained in the Companies Act, 1956*.

9. Benefits available to members if the Guidelines framed are complied with:

- i) The member can retain full time Certificate of Practice besides being the Managing Director/Whole-time Director/Manager of Management Consultancy Company.
- ii) The member will be entitled to train articled/ audit assistant(s).
- iii) There will be no restrictions on the quantum of the equity holding of the member, either individually and/or along with his relatives, in such a company.

10. Transitory Provisions:

i) Any member who wishes to become Managing Director/Whole-time Director/ Manager of an existing Company, which is rendering Management Consultancy & Other Services, and wishes to take other benefit contained in the Guidelines, shall comply with the Guidelines for Practice in Corporate Form.

ii) The Company is required to take approval of name and then apply for registration with the Institute.

iii) If the Institute has reservation over the name of an existing Company that wishes to come under the provisions of this Guidelines, the Company shall be required to apply for change in name.

iv) The Company is also required to change its object clause, if the same contains objects other than those provided in the Guidelines.

Appendix – “E”

(Please refer to page No. -----)

2.15.1D(ii) The Council had recognised membership of the following bodies for the purpose of permitting partnerships by Indian Nationals abroad as are referred to in that clause

- The Institute of Chartered Accountants of India;
- The Institute of Chartered Accountants of Ceylon;
- The Institute of Chartered Accountants in England and Wales;
- The Institute of Chartered Accountants of Scotland;
- The Institute of Chartered Accountants in Ireland.

2.15.1D(iii) The Council had passed the following resolution under Section 4(1)(v) of the Chartered Accountants Act, 1949:

“Resolved that the examinations and training in the United Kingdom of the following four Institutes (formerly six) mentioned in Rule 7 of the Auditor’s Certificates Rules, 1932, be recognised by the Council under Section 4(1)(v) of the Act as being equivalent to the examination and training prescribed for the members of this Institute:

- (a) The Institute of Chartered Accountants in England and Wales;
- (b) The Institute of Chartered Accountants of Scotland;
- (c) The Institute of Chartered Accountants in Ireland;
- (d) The Society of Incorporated Accountants and Auditors, London.

Provided that under the proviso to Section 4(1)(v), the following further conditions be prescribed in the case of persons not permanently residing in India:

- (i) That such persons be required to reside in India to practise the profession of Accountancy or to serve as an assistant in a Chartered Accountant’s office in India; and
- (ii) That such persons be not eligible for membership of the Council or the Regional Councils or to the right of voting in elections under the Chartered Accountants Act, 1949; and
- (iii) That the membership of the Institute will cease if and when the persons concerned ceases to reside or practise in India; and
- (iv) That the Board of Trade in the United Kingdom accords the right to the members of this Institute to practise the profession of Accountancy in the United Kingdom in respect of the audit of public Companies as defined in the (U.K.) Companies Act, 1948.”

2.15.1D(iv) However, the Council of the Institute at its meeting held in December, 1995 decided to withdraw the above resolution w.e.f. December 8, 1995. In view of the above, persons qualified from any of the aforementioned four Institutes in the United Kingdom are not entitled to have their names entered in the Register of Members maintained by the Institute effective from December 8, 1995..

2.15.1D(v) The Council of the Institute at its meeting held in January 1998 had also decided that effective from December 8, 1997, no person who has undergone training and has passed the examination conducted by any of the following five institutions, organisations, etc. is entitled to have his name entered in the Register of Members maintained by the Institute of Chartered Accountants of India:

- (i) The Institute of Chartered Accountants of Ceylon;
- (ii) The Public Accountants and Auditor’s Board of South Africa;
- (iii) The Institute of Chartered Accountants of Pakistan;
- (iv) The Registered Accountants of Burma; and
- (v) The Institute of Chartered Accountants in Australia

APPENDIX 'F'

(Please refer to page -----)

Guidelines for common CA Logo

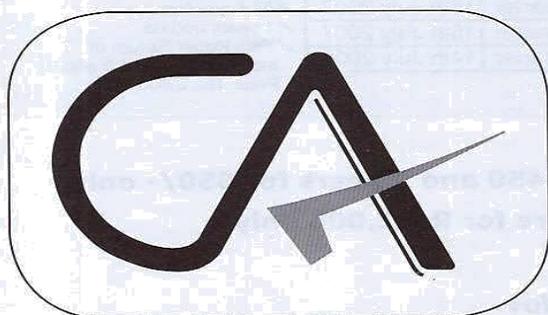
New Logo for Members of ICAI

As part of the ongoing drive to promote the brand of the CA profession, and responding to the long felt need to have a symbol of CA profession in India, the ICAI has come up with a new unique logo for its members. The new logo has been artistically designed to display the dynamism of the profession in modern times. Encapsulating the current beliefs, attitudes and values of the profession, the new logo seeks to enhance the identity of the members. Attempt has been made to



keep the new logo simple yet aesthetically pleasing and full of meaning and vigour.

Logo in Black & White



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

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

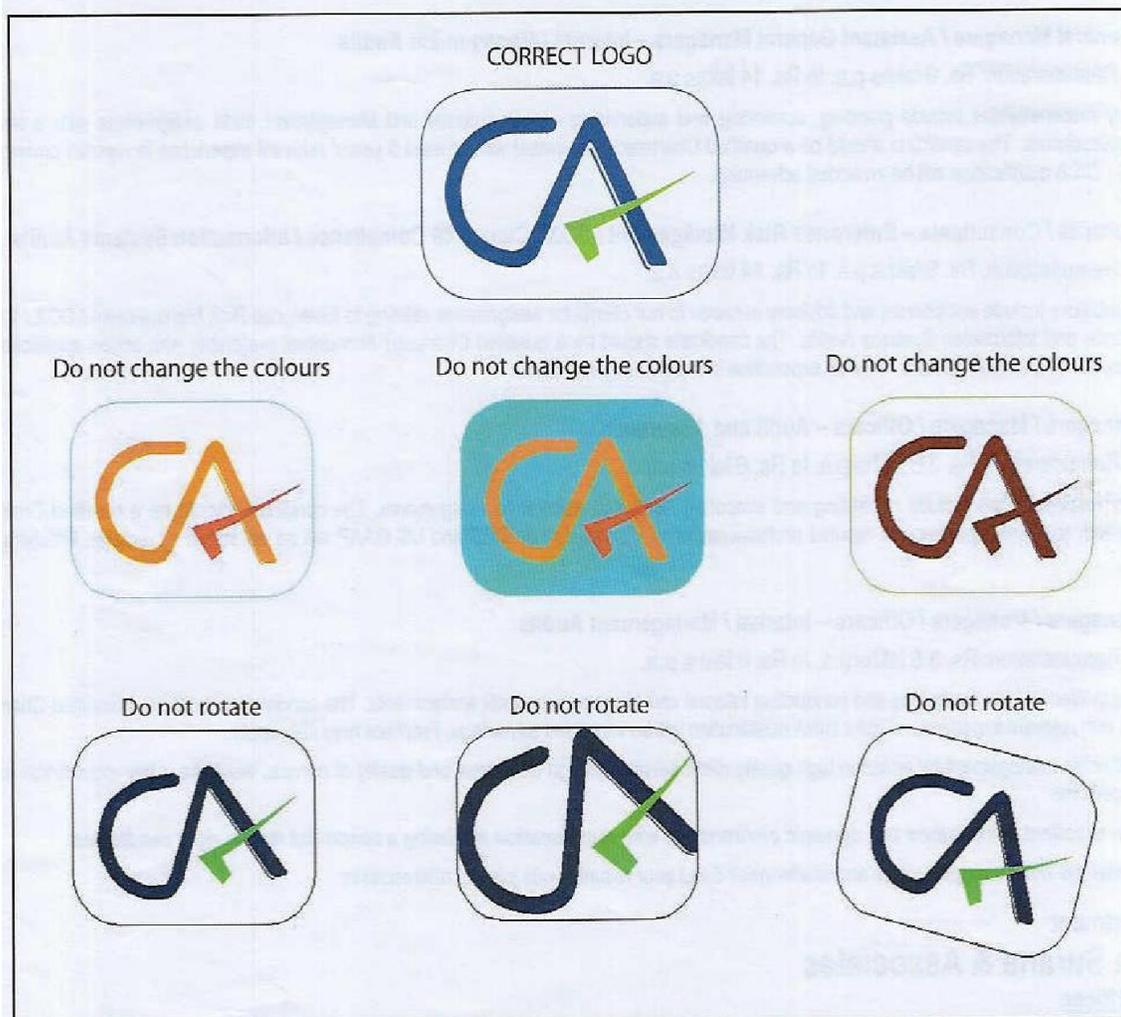
Colours of the logo



80 C, 40 M, 40 K



50 C, 80 Y



APPENDIX 'G'**(Please refer to page -----)**

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(set up by an Act of Parliament)

NOTIFICATION

New Delhi, the 2nd August, 2019

No.1-CA(7)/192/2019.—Whereas, to curb the malpractice of false certification/attestation by the unauthorized persons & to eradicate the practice of bogus certificates and to save various regulators, banks, stakeholders etc. from being misled, the Council of the Institute decided to implement an innovative concept to generate Unique Document Identification Number (UDIN) mandatorily for all kinds of the certificates/GST and tax audit reports and other attest function in phased manner, for which members of the ICAI were notified through the various announcements published on the website of ICAI www.icai.org at the relevant times.

Now, in exercise of the powers conferred on it under Item No.(1) of Part- II of the Second Schedule to the Chartered Accountants Act, 1949, the Council of the Institute of Chartered Accountants of India hereby issue the following guidelines for information of public and necessary compliance by members of the Institute -

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

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

(ii) The above Guidelines shall come into force from the above dates for the various services respectively.

RAKESH SEHGAL, Acting Secy.

[ADVT.III/4//Exty./170/19]

APPENDIX 'H'

(Please refer to page -----)

Guidelines of the Council in the context of use of designation etc. and manner of Printing of Letter-heads and visiting cards

The Council issued guidelines/directions in the context of use of designation etc. and manner of printing letter-heads and visiting cards, of the President, Vice-President of the Institute, Members of the Council, Chairmen of various Non- Standing Committees of the Institute; Chairmen, other office- bearers and Members of the Regional Councils; Chairmen, other office bearers and Members of the Managing Committees of Branches, which are appearing hereunder.

Recently, the Council at its 280th Meeting held on 9th August, 2008 decided to revise the guidelines/directions on visiting cards. The guidelines/directions in full including the revised guidelines/directions on visiting cards are given hereunder:

LETTER-HEADS

1. The Institute will print the letter-heads for President and Vice- President of the Institute with their names, designation and address of the Institute with emblem. In these letter-heads, the President's or Vice-President's personal addresses, including their professional and residential addresses shall not be printed.
2. The Regional Councils and their Branches shall print the letter- heads for official use of the Chairmen of the respective Regional Councils/Branches with their designation, address of the Regional Council/Branch concerned and the Institutes emblem without mentioning their names in the letter-heads. As far as other office-bearers of Regional Councils and Branches are concerned, they should use the common letter-head bearing the name and address of the Regional Council or the Branch, as the case may be, and their designation may be typed below their signatures.
3. It is clarified that no member of the Council or any Regional Council or the Managing Committee of any Branch shall print any letter-head in relation to the position he holds in various Committees or as a member of the Council/Regional Council/ Managing Committee, at his cost.

VISITING CARDS

1. The visiting cards will be printed for both the elected and nominated Council members. The visiting cards be also printed for members of Regional Councils and Managing Committees of the branches. The visiting cards will be used only for official work of the Institute. The Head office of the Institute will print the visiting cards for President, Vice-President and Members of Council including Chairman / Vice – Chairman of the Committees of the Council. The offices of Regional Councils and Branches will print the visiting cards for respective Regional Councils and Branches. The members themselves will not print the visiting cards.
2. In the visiting card, the designation viz., President/ Vice-President/Member, Council/Chairman/Vice – Chairman of the respective Committee(s) of the

Council/Chairman of the Regional Council/Chairman of the Branch / Vice-Chairman of the Regional Council/Vice-Chairman of the Branch/Secretary of the Regional Council/Secretary of the Branch/Treasurer of the Regional Council/Treasurer of the Branch/Member of the Regional Council/Member of the Managing Committee of Branch of Regional Council will be used. There will not be any mention of any other designation. Besides the above, Council members who hold the office of Chairman/Vice Chairman of any of the Committees of the Council may mention such position in their visiting cards specifying the name of the Committee concerned and the relevant period for which they are holding such position. If a member of the Council holds Chairmanship/Vice-Chairmanship of more than one Committee of the Council, he may have separate cards printed as above for each such Committees.

3. The full term of the Council/Regional Council/Branch will be mentioned for example 2007 to 2010. In case of the President/Vice-President/ Chairman/Vice – Chairman of Committees of the Council/ Chairman, Regional Council and Branch/Vice-Chairman, Regional Council and Branch/ Secretary, Regional Council and Branch/Treasurer, Regional Council and Branch, the year of Presidentship/Vice-Presidentship/Chairmanship/Vice Chairmanship/Secretaryship/ Treasurership will be mentioned, for example, 2008-2009. The President, Vice-President, Chairman/Vice Chairman of Committees of the Council/ Chairmen of Regional Councils and Branches, Vice-Chairmen of Regional Councils and Branches, Secretary of Regional Councils and Branches and Treasurer of Regional Councils and Branches will use their cards for the year in which they are elected. Cards with the designation/description viz., membership of national/ international bodies even at personal cost will not be permitted. It is permissible to mention the last highest position held in ICAI as elected representative on the visiting card , provided it is mentioned without the emblem of ICAI and the visiting card is of the individual member only, and not of the Chartered Accountants Firm , wherein he may be the partner.

4. The address of the Institute in the case of Council members including Chairman/Vice Chairman of Committees of the Council, that of the concerned Regional Council in the case of Regional Council members and that of the concerned Branch in the case of Members of the Managing Committee of the Branch will be printed. The Telephone No., Fax No. & E-mail address of the Institute, Member's name, his E-mail identity and Mobile No. in the case of Council Member, those of concerned Regional Council in the case of the Regional Council Member and those of the concerned Branch in the case of Member of Managing Committee of the Branch will be given in the front of the visiting card. However, members of the Council including Chairman/Vice-Chairman of the Committees of the Council, members of the Regional Councils and of Managing Committees of Branches may print either their residential address or office address including telephone/fax no. without mentioning the firm's name on the back of the visiting cards.

5. The visiting cards will be returned to the offices of the Institute as soon as the term of the President and Vice-President, the Membership of the Council/ Chairmanship/Vice Chairmanship of respective Committees of the Council/ Chairmanship/Vice Chairmanship/Secretaryship / Treasurership /Membership of the Regional Council/Managing Committee of the Branch expires.

6. The number of cards permissible to be printed for the Council member will be

initially 500 and thereafter as and when requisition is made. The number of visiting cards permissible to be printed for Chairman, Vice-Chairman, Secretary, Treasurer and Member of Regional Councils and Branches will be 250 and 100 per year, respectively. The Council further decided not to permit any visiting cards to the office-bearers of study circle/chapters. For President and Vice-President, the number of cards to be printed will be left to be decided by them.

7. The visiting cards will be printed in the prescribed formats. The type of paper, printing, colour of ink of the visiting cards will be uniform and of the same type and manner.
8. In the visiting cards of Regional Councils and Branches, the name of the respective Regional Council and Branch will be printed in bold letters and the name of the Institute in normal letters.
9. In case, any further clarification/direction is required, the matter may be referred to the President.

APPENDIX 'I'

(Please refer to page -----)

Ethical Standards Board (ESB)

A. Purpose:

“The Institute of Chartered Accountants of India (ICAI) is a statutory body established under The Chartered Accountants Act, 1949 for the regulation of the profession of Chartered Accountants in India. The Council of ICAI is empowered to discharge the provisions of the Act, and regulate and maintain the standards of the profession. In pursuance of this, ICAI has established the Ethical Standards Board to function as standard setting body. The Ethical Standards Board develops and issues ethical standards and other pronouncements for chartered accountants. It works towards evolving a dynamic and contemporary Code of Ethics and ethical behaviour for members while retaining the long cherished ideals of ‘excellence, independence, integrity’ as also to protect the dignity and interests of the members”.

B. Objective

The objective of Ethical Standards Board is to set up ethical standards for chartered accountants, converge with the International best practices on ethics, subject to local laws, thereby enhancing the quality and consistency of services provided by chartered accountants and strengthening the public confidence in the profession.

C. Terms of Reference: (Revised by the Council at its 262 Meet dt. 6-8 Sept, 06.)

- To examine various issues concerning Code of Ethics governing the members of the Institute.
- _establish standards for Chartered Accountants for regulation and maintenance of status and standards of professional qualification of members of the Institute
- To examine and advise on any ethical matters referred to the committee.
- To review periodically and publish the revised Code of Ethics and their publications relating to ethics.
- To promote public awareness and confidence in the integrity, objectivity, competence and professionalism of members and to co-ordinate with other Committees.
- To examine and deal with the complaints of members against their unjustified removal as auditors of any entity as per procedure evolved and to take necessary steps to protect the interest of the members.

---- The Ethical Standards Board will review the terms of reference at every two years.

D. Procedure to be followed for dealing with the cases of unjustified removal of Auditors

(i) Where an auditor resigns from 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.

(ii) Where an auditor, willing for reappointment has not been re-appointed, 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.

(iii) The Ethical Standards Board, on a review of the communications referred to in paras (i) and (ii) 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.

(iv) In the case of removal of auditors by the Government, the Board will decide the procedure to be followed on consideration of the facts and circumstances of each case.

The Council at its 229th Meeting held in November 2002, while discussing the existing procedures for dealing with the cases of unjustified removal of auditors, the Council extended the power and scope of functioning of the Board. As per the additional power, the Board has been authorized to consider the cases of unjustified removal/non-reappointment of inconvenient auditor due to his alleged qualificatory remarks/queries. Now, in addition to the existing power, the Board has also been empowered to adopt the procedure narrated hereinunder:-

- (i) On receipt of a complaint from an auditor regarding his unjustified removal or non re-appointment due to alleged qualifications/queries, the Board may ask for the Statement of Reasons from the Complainant which as per complaint lead to his non re-appointment/removal.
- (ii) The Statement of reasons will be sent to the Incoming Auditor and Auditee for their Comments/ Observations. The Complainant and the Incoming Auditor will submit their Statement of Reasons, Observations/Comments thereof and other Submissions duly verified and in case of any wrong Submission, the members shall be liable for misconduct.
- (iii) The Incoming Auditor will be advised to consider the Statement of Reasons submitted by the Complainant while conducting the audit. The Incoming Auditor will be asked to submit a copy of his Audit Report for consideration of the Board. The Board, thereafter, shall examine the Statement of Reasons sent by the Complainant, the Observations/ Comments of Incoming Auditor and Auditee and the Audit Report of the Incoming Auditor to ensure that the issues raised by the Complainant have been adequately addressed to by the Incoming Auditor.
- (iv) It is clarified that this procedure is without prejudice to right of any person and legality of his appointment.
- (v) In case of any negligence by the Incoming Auditor the matter will be referred to the Disciplinary Directorate of the Institute to treat the same as 'Information'.
- (vi) It may be mentioned that so far as payment of undisputed fee of the Outgoing Auditor is concerned, the present position shall be maintained.
- (vii) The Board shall have the right to issue interim order, in appropriate cases.

In this regard, an announcement was published in the December 2002 issue of the Institute's Journal 'The Chartered Accountant'.

A member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he does not follow the direction given, by the Council or an appropriate Committee or on behalf of any of them, to the incoming auditors not to accept the appointment as auditors, in the case of unjustified removal of the earlier auditors. Attention of the members is invited to the Council

guidelines in chapter 3 of the book, and published at page 686 of October 2008 issue of the Institute's Journal, 'The Chartered Accountant'.

A case of cancellation of bank audit was brought to the notice of Ethical Standards Board (ESB) and the Council, in which a firm of Chartered Accountant was appointed as statutory branch auditor of two branches for year ended on 31st March by their Head office vide letter dated 16th March of that year. As stipulated in the appointment letter, the firm sent its acceptance on 31st March to Head office, Under Postal Certificate. The firm started the audit of first branch and completed the same on 10th April. On contacting the second branch on 11th April, the representatives of the firm were not permitted to commence the Audit by the branch manager and a written intimation was given to them to the effect that their appointment was cancelled by Banks Divisional office due to non-receipt of acceptance letter. The Board after considering the facts and circumstances of the case, the comments of the bank and the firm's observations thereon, decided that the appointment should not have been cancelled by the bank. The concerned bank was informed accordingly.

The form of the complaint and the list of the enclosures to be submitted along with the Complaint/Statement of Reasons is given as under:-

The Institute of Chartered Accountants of India,
ICAI Bhawan Noida Sector 62- 201309

FORM OF COMPLAINT/STATEMENT OF REASONS*
Before the Ethical Standards Board (ESB)

1. Name of the Complainant:

Complainant's Membership No.	-
Address	-
Phone No.	-
Fax	-
E-mail address	-
Website	-
2. Name of the Incoming Auditor

Membership No.	-
Address	-
Phone No.	-
Fax	-
E-mail address	-
Website	-
3. Name & address of the Entity

Address	-
Phone No.	-
Fax	-
E-mail address	-
Website	-
4. Particulars of complaint/Statement of Reasons leading to removal/ non-reappointment. (Please attach separate sheet for details)
5. Particulars of evidence, oral and documentary, if any, to substantiate the complaint. (Please

To be filed along with a D.D/NEFT of Rs. 1.000/- in favour of the Secretary, ICAI
The complaint may be filed vide email, wherein scanned copy of NEFT payment proof be also enclosed. In case the complaint is made vide hard copy, triplicate copies of complaint and enclosures be sent., along with the Demand Draft.

see the list at Annexure for suggested documents to be attached)

6. Relief sought from the Committee including the interim order.
7. Reasons/justifications for Interim Order.
8. Any legal prosecutions initiated and their status including all the relevant documents.

Signature [Partner/Proprietor/Member]

M. No.

VERIFICATION

I, the Complainant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, theday of 20 at

Signature [Partner/Proprietor/Member]

M. No.

Enclosures to be submitted along with the Complaint/ Statement of Reasons:

Certified true copies of the following documents:

- (i) Engagement Letter of the Complainant and Resolution for engagement of the Complainant;
- (ii) Documents/evidence indicating removal/non-reappointment of the Complainant;
- (iii) Relevant correspondence exchanged between the Complainant and Incoming Auditor;
- (iv) Relevant correspondence exchanged between the Complainant and entity;
- (v) Copy of Certificate/Audit Report and other Certificates/Draft Audit Report/Qualifications/Final accounts which lead to his removal, if any;
- (vi) Extract of the Relevant Rules/Regulations for engagement of Auditor;
- (vii) Any other relevant papers/documents on the issues involved.

APPENDIX 'J'

(Please refer to pages -----)

[APPENDIX (9) - C.A. REGULATIONS, 1988]

In pursuance of Regulation 166 of the Chartered Accountants Regulations, 1964 (190A of the Chartered Accountants Regulations, 1988) and in supersession of the earlier resolutions on the subject, it was resolved that:

(A) Permission granted generally

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

1. Employment under Chartered Accountants in practice or firms of such Chartered Accountants.
2. Private tutorship.
3. Authorship of books and articles.
4. Holding of Life Insurance Agency Licence for the limited purpose of getting renewal commission.
5. Attending classes and appearing for any examination.
6. Holding of public elective offices such as M.P., M.L.A. & M.L.C.
7. Honorary office-bearership of charitable, educational or other non-commercial organisations.
8. Acting as Notary Public, Justice of the Peace, Special Executive Magistrate and the like.
9. Part-time tutorship under the Coaching Organisation of the Institute.
10. Valuation of papers, acting as paper-setter, head- examiner or a moderator for any examination.
11. Editorship of professional journals.
12. Acting as Surveyor and Loss Assessor under the Insurance Act, 1938.
13. Acting as Recovery consultant in the Banking Sector.
14. Owning agricultural land and carrying out agricultural activity.

(B) Permission to be granted specifically:

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

1. Full-time or part-time employment in business concerns provided that the member and/or his relatives do not hold substantial interest in such concerns.
2. Full-time or part-time employment in non-business concerns.
3. Office of a Managing Director or a whole time Director of a body corporate within the meaning of the Companies Act, 2013, provided that the member and/or any of his relatives do not hold substantial interest in such concern.
4. Interest in family business concern or concern in which interest has been

acquired as a result of relationship and in the management of which no active part is taken.

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

Further resolved that the Council may refuse permission in individual cases though covered under any of the above categories.

It was also decided that for the purpose of the above resolution:-

- (I) the expression "relative", in relation to a member means the husband, wife, brother or sister or any lineal ascendant or descendant of that member; and
- (II) a member shall be deemed to have a "substantial interest" in a concern -

(i) in a case where the concern is a Company

a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed;

For the purpose of proviso to sub-clause (i) of clause (d) of sub-section (3) of section 141, a relative of an auditor may hold securities in the company of face value not exceeding rupees one lakh:

Provided that the condition under this sub-rule shall, wherever relevant, be also applicable in the case of a company not having share capital or other securities:

Provided further that in the event of acquiring any security or interest by a relative, above the threshold prescribed, the corrective action to maintain the limits as specified above shall be taken by the auditor within sixty days of such acquisition or 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.

Explanation:

- (a) The relevant years in the context of Clause (4) of Part I of the First Schedule to the Chartered Accountants Act, 1949 read with Appendix (17) mean the year/period to which the report/certificate relates and the

year/period during which the said report/certificate is signed.

- (b) The relevant years in the context of Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 read with Appendix (10) mean the year/period in which not less than 20% of voting power/20% share of profits were owned beneficially.

Attention of the members is also invited to para 3 of the above Resolution relating to the holding of office of a Managing Director or a whole time Director in a Company. In such cases, a member can accept the office of a managing director or a whole-time Director only after obtaining the specific and prior approval of the Council. Attention of the members is also invited to the provisions of Section 2(54) of the Companies Act, 2013 under which even where a person is not designated as a managing director, he can be deemed to be a managing director if he is entrusted with the whole or substantially the whole of the management of the affairs of the Company. Section 2(94) of the Companies Act, 2013 defines Whole-Time Director as a Director in the whole time employment of the Company.

It may be pointed out that a member cannot accept and hold the office of a managing director or a whole-time director in a Company if the member/and/or his partners is interested in such a Company as an auditor.

The Council at its 241st meeting held in March 2004 decided that effective from 1.4.2005, any member in part-time practice (namely, holding certificate of practice and is also engaging himself in any other business and/or occupation) is not entitled to perform attest function, and that the resolution passed under Regulation 190A.

The Council at its 242nd meeting held in May 2004 noted the recommendations made to it by the Executive Committee in this regard and accordingly passed the following resolution as a part of and in continuation of the existing resolution under Regulation 190A which appears as Appendix No.9 to the C.A. Regulations, 1988 (2002 edition).

“Further resolved that the general and specific permission granted by the Council is subject to the condition that:

- (i) any member engaged in any other business or occupation, in terms of general or specific permission granted shall not be entitled to perform any attest function. However, a member engaging in any of the following area(s), in terms of the specific or general permission so granted, shall be entitled to perform attest function:
- (a) Authorship of books and articles
 - (b) Holding of Life Insurance Agency Licence for the limited purpose of getting renewal commission.
 - (c) Attending classes and appearing for any examination.
 - (d) Holding of public elective offices such as M.P., M.L.A. & M.L.C.
 - (e) Honorary office-bearership of charitable, educational or other non-commercial organisations.
 - (f) Acting as Notary Public, Justice of the Peace, Special Executive Magistrate and the like.
 - (g) Part-time tutorship under the Coaching Organisation of the Institute.
 - (h) Valuation of papers, acting as paper-setter, head-examiner or a

moderator for any examination.

- (i) Editorship of professional journals – (not in employment)
 - (j) Acting as surveyor and Loss Assessor under the Insurance Act, 1938 - (not in employment).
 - (k) Acting as Recovery consultant in the Banking Sector - (not in employment).
 - (l) Any coaching assignment organized by the Institute, its Regional Councils and Branches of Regional Councils.
 - (m) Engagement as Lecturer in an University, affiliated college, educational institution, coaching organisation, private tutorship, provided the direct teaching hours devoted to such activities taken together do not exceed 25 hours a week.
 - (n) Owning agricultural land and carrying out agricultural activity.
 - (o) Engagement in any other business or occupation permitted by the Executive Committee from time to time.
- (ii) A member who is not entitled to perform attest function shall not be entitled to train articled assistants.
- (iii) The decision (of the Council) taken at its 223rd meeting held in February, 2002 prescribing the criteria for individual cases of articleship shall continue to be in operation, mutatis mutandis.

The Council in this connection clarified that the Attest function for the purpose of this Resolution would cover services pertaining to audit, review, certification, agreed upon procedures, and compilation, as defined in the Framework of Statements on Standard Auditing Practices and Guidance Notes on Related Services published in the July, 2001 issue of the Institute's Journal."
