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DRAFT ICAI CODE OF PROFESSIONAL ETHICS, 2014

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[As finalised at 126th Meeting of ESB held on 10.1.2014]

27.1.2014

- **The additions in Code of Ethics, 2009 are shown in underlined and bold.**
- **The deletions are shown in strikethrough and bold.**
- **Due to reorganization necessitated by formation of divisions, several provisions have been shifted from their position in the 2009 edition to the corresponding new divisions.**
- **The method of changes effected in 'Framework of Professional Ethics' (i.e. IESBA based Code of Ethics) is separately mentioned therein.**
- **'Clause', erstwhile appearing in the Code, has been replaced by 'Item', for synchronization with the usage in the Act (except in case laws).**

Structure of ICAI Code of Professional Ethics, 2014:

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INTRODUCTORY

Meaning of Ethics

Ethics means "Moral beliefs and rules about right and wrong". The word 'ethics' is derived from the Greek word 'ethos' (character) and Latin word 'moras' (customs). Taken together these two words define how individuals choose to interact with one another. The Oxford Dictionary defines 'Ethics' as "moral principles that govern a person's behaviour or the conducting of an activity."

Thus, ethics is about choices. It signifies how people act in order to make the 'right' choice and produce 'good' behaviour. It encompasses the examination of principles, values and norms, the consideration of available choices to make the right decision and the strength of character to act in accordance with the decision. Hence, ethics, as a practical discipline, demands the acquisition of moral knowledge and the skills to properly apply such knowledge to the problems of daily life.

Ethics may be phrased differently as philosophical ethics, ethical theory, moral theory, or moral philosophy.

Professional Ethics is a branch of ethics which encompasses the personal, organizational and corporate standards of behaviour expected of professionals. Professionals , by virtue of the basic nature of their work, exercise specialist knowledge and skill. How the use of this specialist knowledge should be governed when providing a service to the public is by and large a moral issue , and is known as professional ethics.

Significance of Ethics

Professionals are capable of making judgements, applying their skills and reaching informed decisions in situations that the general public cannot, because they have not received the relevant training. Therefore, it is of utmost importance that the professionals are governed by a set of ethical standards.

Ethics are important for Chartered Accountants because of the sensitive nature of their work, and huge and multifarious financial implications of their work . Ethics make clear the concept of right and wrong in given set of circumstances for the circumstances. They help the chartered accountants to build personal fortitude to make a right decision. By being aware of ethical implications of ones actions , members may easily tide

away conflicting peer pressure. They would thus not sway away for any short term gains , and will be able to keep away any laxity or acting an unwarranted manner . Professional ethics induce the members to think in terms of long term relationship with clients, corporate world and the general public. They come to realize that any successful venture has to manage things , not for short term, but for long term perspective. Ethical behaviour makes way for rightful procedure to be adopted in circumstances involving conflict , like personal relations , or in case of fraud. Steady concentration on ethical factors encourages a chartered accountant to build an inner strength, having its base in integrity , and persuading them to make an ethical choice in the situation. Going by the essential requirements of the profession , ethics ought to be first priority for members, who can easily deal with ethical dilemmas and areas that are not black and white.

Ethical behaviour is one of the essential personal skill that chartered accountants must possess. An accountant can never succeed in his field if he ignores ethics. It is very essential to define ethics within the accounting profession. Professional accountants must possess high degree of integrity. Ethics are particularly pertinent as a foundation of the accounting profession. Working to the highest standards of ethics and professionalism allows the public, investors and regulators to have confidence in them. Ethical behavior not only protects the individual chartered accountants, but also seves to protect and dignify the the accounting profession as a whole.

Importance of Code of Ethics for Professionals

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.

A code of ethics is essential to a profession as it provides an ethical starting point for the professionals and for others outside the profession. A code of ethics also ensures quality in treatment of members of the profession and those the profession serves.

A code of ethics provides a guide for dealing with ethical situations which arise in the course of the job. This is not a clear cut set of rules or policies for all situations, rather a set of statements of professional belief which should inform members of the profession about the viewpoints they should consider in making a decision.

Additionally, a code of ethics communicates the ethical viewpoint of the profession to others. It serves to promote the values of the profession over the personal, societal, and (sometimes) institutional values. It serves as a guideline for professionalism and quality of service. It should not be confused, however, with professional standards. A code of ethics does not set standards to which a professional must perform, but is instead a compliation of the values of the profession which members must adhere to in order to act in a consistent and professional manner.

Overview of the accounting profession in India

The auditing profession is one of the oldest professions of India. The first ever Companies Act in India was legislated in the year 1857. In the year 1866, law relating to maintenance of accounts and audit thereof was introduced and formal qualification as auditor was now required.

Thereafter, in the year 1913, the new Companies Act was enacted which specified how books of accounts are to be maintained. Therein, the formal qualification to act as an auditor was named.

A Certificate from the local government was required to be held in order to act as an auditor. An unrestricted Certificate entitled a person to act as auditor throughout British India. A Restricted Certificate entitled him to act as auditor only within the Province concerned and in the languages specified in the certificate.

In the year 1918, Government Diploma in Accounting (GDA) was launched in Bombay. On completion of articleship of three years under an approved accountant and passing the Qualifying Examination the candidate became eligible for the grant of an Unrestricted Certificate.

Subsequently, in 1920, the issue of Restricted Certificates was discontinued and thereafter, in 1927, the society of auditors was founded in Madras.

In 1930, the Government decided to control and regulate the accountancy profession and provided for the grant of certificates to auditors through the amendment in the Indian Companies Act. It has also provided for maintenance of a Register of Accountants. Any person who had been enrolled on the Register of Accountants maintained by the Government under the Auditor's Certificate Rules, 1932 was designated as a

Registered Accountant (RA) and allowed to practice throughout India.

Two set of rules, namely, The Auditors' Certificates Rules, 1932 and The Restricted Certificates Rules, 1932 were framed under Section 144(2) of the erstwhile Indian Companies Act, 1913.

The Auditors' Certificates Rules, 1932, were divided into 4 parts and contained 77 rules. Under these Rules, the Governor General in Council was empowered to maintain a Register of Accountants, who were entitled to apply for certificates to practise as auditors of companies throughout British India. A person on being enrolled on the Register was entitled to use the designation "Registered Accountant" after his name. The term continues to appear in Section 2 (1) (h) of the Chartered Accountants Act, 1949. The Rules also contained provisions regarding removal of names of persons from the Register under certain circumstances like non-payment of fees etc.

The Rules made it mandatory for the persons, intending to enroll themselves on the Register, to qualify two exams, the First Examination and the Final Examination. The Rules contemplated holding of the First and Final Examination once every year in the month of March or April. In addition to this, in order to be eligible to have his name entered in the Register, a person was also required to serve as an article with an approved accountant (approved accountant means an accountant approved by the Governor General in Council for the purpose of taking articled clerks) for the prescribed time period, which was generally three years. An Approved Accountant was authorized to employ upto three articled clerks at one time. The Rules also made provision regarding maintenance of Register of articled clerks by the Governor General in Council.

The Rules provided for the establishment of The Indian Accountancy Board which comprised of fifteen to twenty members. Out of total members, at least two members had to be persons in the service of Government and of the remainder, atleast two-thirds had to be chartered accountants. The Indian Accountancy Board was to be headed by a Chairman, who was to be appointed by the Governor General in Council from the members in the service of the Government. The Rules made it mandatory for the Board to have atleast one meeting every year. The Board was also authorized to form Committees to work on particular matters included within the scope of their functions.

The Governor General in Council was also authorized to form Local Accountancy Boards for any area, which comprised of three to eight members and was headed by a Chairman, who was

appointed by the Governor General in Council from amongst the members of the Indian Accountancy Board. The decision making by the Local Accountancy Board was done through majority of votes and in case of equality of votes, the Chairman had a casting vote.

The Rules also contained four appendices which contained performa of various forms and certificates to be filed under the Rules, such as, form of application for enrolment on the Register of Accountants, certificate of enrolment on the Register of Accountants, Auditors' Certificates etc.

The Restricted Certificates Rules, 1932 were formulated by the Governor General in Council under Section 3 (2) of the Indian Companies (Amendment) Act, 1930.

These Rules were applicable to those persons who had been granted a temporary or permanent certificate to act as an auditor within a particular province. Section 2 (1) (d) of the Chartered Accountants Act, 1949, defines 'holder of a restricted certificate' as a person holding a permanent or temporary restricted certificate granted by a Provincial Government under the Restricted Certificates Rules, 1932. Such persons were required to submit their certificate or a certified copy thereof to the Secretary, Department of Commerce, Government for noting of the particulars.

Further, under this Rules, it was mandatory for holders of Restricted Certificate, who desired to continue to act as an auditor in the particular province, to submit a report to that effect in the month of April in each year. Item 8 of Part I of the First Schedule to the Chartered Accountants Act, 1949 mandates communication with the previous auditor, including a certified auditor who has been issued certificate under the Restricted Certificates Rules, 1932.

The Governor General in Council was empowered to suspend or cancel the restricted certificate in certain circumstances, for instance, if the holder of the restricted certificate was adjudged to be a person of unsound mind by a competent court or if he was an undischarged insolvent etc.

The Rules also contained an Appendix which provided a list of acts and omissions by an accountant which are deemed to be breaches of professional propriety. A list of nine such acts was provided which made an accountant guilty of professional propriety.

In the year 1933, the first ever examination was held by the Indian Accountancy Board. However, the GDAs were exempted

from taking the test and in 1935 the first final examination was held.

Later in 1943 GDA was abolished.

An Expert Committee formed in 1948 to examine the scheme of an autonomous association of accountants in India and in 1949 the Chartered Accountants Act was passed on 1st May.

The term 'chartered' was preferred over other terms like 'Certified Public Accountant' while the discussions over the passing of Act were underway . Accountants had also endorsed the view. After much debate in the Indian Constituent Assembly, the term 'chartered' was accepted. When the Chartered Accountants Act, 1949 came into force on 1 July 1949, the term "Chartered Accountant" superseded the title of "Registered Accountant". This day is celebrated as Chartered Accountants day every year.

CHARTERED ACCOUNTANTS ACT, 1949

The Chartered Accountants Act, 1949 (hereinafter also referred to as "Act") came into force on the 1st day of July 1949 in pursuance of Notification no. 10-A(4)/49 of the Central Government to regulate the profession of Chartered Accountants in India. Under this Act, the Institute of Chartered Accountants of India was established to educate, register and regulate Chartered Accountants in India. The Act provides for ethical practices of Chartered Accountants and disciplinary proceedings against a Chartered Accountant.

The Act consists of 57 sections and is divided into 8 chapters. The Act also contains two schedules, first schedule and second schedule.

Chapter I of the Act consists of Sections 1 and 2 and prescribes the applicability of the Act and the definitions under the Act.

Chapter II of the Act comprises of Sections 3 to 8 and contains provisions regarding entitlement of persons to get their names entered in the register of members, fellow members and associate members, certificate of practice and disabilities of persons.

Chapter III of the Act is titled 'Council of the Institute' and consists of Sections 9 to 18. It contains the composition of the Council, manner of election to the Council, functions to be performed by the Council, committees of the Council and finances of the Council.

Chapter IV of the Act contains two sections, 19 and 20. It provides for particulars of members to be entered in register and removal of name from register of members.

Chapter V is one of the most important chapters of the Act and contains provisions regarding misconduct. It comprises of Sections 21 to 22G and explains the disciplinary mechanism under the Act.

Chapter VI, which contains provisions regarding Regional Councils, consists of one Section, i.e. Section 23.

Chapter VII is titled 'Penalties' and comprises of Sections 24 to 28. It provides penalties for various illegalities under the Act like falsely claiming to be a member, using the name of the Council etc.

Chapter VIIA contains exclusive provisions with regard to Quality Review Board, its establishment, functions and procedure and comprises of Sections 28A to 28D.

Chapter VIII which is the last chapter of the Act is the miscellaneous chapter and contains Sections 29 to 33.

This Act has been amended four times since it has come into force, in 1952, 1959, 2006 and 2011.

The Chartered Accountants (Amendment) Act, 1959 (No. 15 of 1959) published in the Gazette of India dated 7th May, 1960 came into effect from 1st July, 1959, and brought out some very significant changes in the Act like introduction of two schedules, namely the first schedule and the second schedule. The fist schedule dealt with professional misconduct with respect to members of the Institute in practice, members of the Institute in service and members of the Institute generally and the second schedule dealt with professional misconduct with respect to the members of the Institute in practice and members of the Institute generally requiring action by the High Court. Prior to this, the Act comprised of one Schedule only. It also widened the scope of the term articled clerk to include audit clerk as well and it entitled the Secretary to attend the meetings of the Council without having the power to vote thereat.

The Chartered Accountants (Amendment) Act, 2006 (No. 9 of 2006) received the assent of the President on the 22nd March, 2006 and was published in Part II Section I of the Gazette of India, Extraordinary dated 23rd March, 2006. This Amendment Act, which came into effect from 8th August, 2006, brought out some far reaching changes in the Act and introduced various new provisions, for example, provisions regarding establishment of a Quality Review Board and establishment of a Tribunal for

settlement of disputes pertaining to elections to the Council. It also overhauled the disciplinary procedure under the Act completely by inserting new sections like Section 21A, 21B, 21C, 21D, 22A, 22B, 22C, 22D, 22E, 22F and 22G with regard to Board of Discipline, Disciplinary Committee and Appellate Authority. This Amendment Act also replaced the words articled clerks with articled assistants. It also carried out changes in Section 6 (regarding annual fees to be paid by the members), Section 10 (regarding re-election or re-nomination to the Council) and Section 15 (functions of the Council). The schedules to the Act were also changed by this Amendment Act.

The Chartered Accountants (Amendment) Act, 2011 (No. 3 of 2012) received the assent of the President on the 8th January, 2012, and was published in Part II Section I of the Gazette of India Extraordinary dated 9th January, 2012. This Amendment Act, which came into effect from 1st February, 2013, predominantly inserted certain new definitions under the Act such as firm, partner, partnership and sole proprietorship. Firm as defined under this Amendment Act also includes a limited liability partnership and sole proprietorship. Similarly, partnership as defined under the Act includes both partnership under Indian Partnership Act, 1932 as well as a limited liability partnership which has no company as its partner. It also amended Section 25 of the Act (companies not to engage in Accountancy) to include a limited liability partnership having a company as its partner, within the ambit of company as mentioned in the Section.

Rules framed under the Chartered Accountants Act, 1949

Under Section 29A of the Chartered Accountants Act, 1949, the Central Government is empowered to make rules to carry out the provisions of the Act. In pursuance of this, the Central Government has notified six rules on different matters.

The Chartered Accountants Regulations, 1988

Section 30 of The Chartered Accountants Act, 1949 empowers the Council to make , by notification in the "Gazette of India", regulations for the purpose of carrying out the objects of this Act. The Chartered Accountants Regulations, 1988 (hereinafter also referred to as "Regulations") have been issued by the Council . The said Regulations had two precursors, namely, the Chartered Accountants Regulations, 1949 and the Chartered Accountants Regulations 1964.

The Chartered Accountants Regulations, 1949 consisted of 9 chapters and 85 regulations. It dealt with diverse issues such as important definitions comprising of articled clerk, fellow, graduate etc. It also contained provisions governing the members of the Institute. It provided for register of members, qualifications required for entry of name in register of members, membership fees, certificate of membership, certificate of practice, misconduct of members, cancellation of certificate of practice etc., provisions regarding admission to first examination and final examination and related matters, admission tickets, examination certificates, examination results, practical training etc.

The Chartered Accountants Regulations, 1964 came into force on 18th July, 1964 and comprised of 181 Regulations divided into 10 Chapters and 5 schedules. They were much more detailed than the Chartered Accountants Act, 1964 and provided guidance on various matters such as constitution of student's association, jurisdiction of regional councils, their functions and duties, meetings of regional councils, meetings of the council, notice of council meeting, chairman of council, quorum at council meetings etc. The provisions regarding elections were also much more detailed in this edition of regulations, and contained certain new provisions governing withdrawal of candidature, mode of election, polling booths, polling officer, ballot paper etc.

Guidelines

Guidelines issued by the Council have mandatory compliance , as the Item 1 of Part-II of Second Schedule to The Chartered Accountants Act, 1949 says that a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council. This Code introduces Guidelines, 2014 , issued by the Council, and hence non-compliance of which is misconduct under the aforesaid Item . These Guidelines include matters as contained in the erstwhile Council General Guidelines, 2008 , and under the Advertisement Guidelines, 2008 . Further, these also contain matters that have been earlier known to be as Guidelines generally , e.g. Network , Logo , etc.
'Framework' (Short for Framework for professional Ethics) is the term used for Guideline based on provisions of IESBA Code of Ethics , 2014. Framework consists of five fundamental principles

which all chartered accountants have to follow, threats to these principles, and safeguards to be adopted to counter such threats.

DIVISION I

THE CHARTERED ACCOUNTANTS ACT, 1949

CHAPTER I

PRELIMINARY

~~**(a) GENERAL PROVISIONS:**~~

~~**5.1** 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.~~

Chapter I of the Act is titled as 'Preliminary'. It contains two Sections, 1 and 2.

This Act, applicable for whole of India, came into force on the 1st day of July 1949 in terms of Notification no. 10-A(4)/49 of the Central Government passed under sub-section (3) of Section 1 of the Act.

Section 2 of the Act provides definitions under the Act. It defines various important terms which are subsequently referred to under the Act, like a chartered accountant, firm, partner, partnership etc. It is pertinent to mention here that the terms such as firm, partner etc. were introduced by the Chartered Accountants (Amendment) Act, 2011 for the first time and they also include a limited liability partnership as stated in Chapter 2 above.

As per this Section, 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.

This section also throws light on the significant issue as to which members are deemed to be members in practice and stipulates that a member is deemed to be in practice when

individually or in partnership with chartered accountants in practice he engages in the practice of accountancy; 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; renders professional services or assistance in matters of principle or detail relating to accounting procedure or the recording, presentation or certification of financial facts or data; or renders such other services as are rendered by a chartered accountant in practice.

An important clarification has also been provided under this Section according to which an associate or a fellow of the Institute who is a salaried employee of a chartered accountant in practice or a firm of chartered accountants is deemed to be in practice for the limited purpose of the training of articled assistants.

~~**5.2 Members who are deemed to be in practice**~~

~~5.2.1 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.~~

~~5.2.2~~ 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" when individually or in partnership with Chartered Accountants in practice, **or in partnership with members of such other recognised professions as may be prescribed**, he, in consideration of remuneration received or to be received-

(i) engages himself in the practice of accountancy; or

(ii) offers to perform or performs 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 of such chartered accountants or firm consisting of one or more chartered accountants and members of any other professional body having prescribed qualifications** shall, notwithstanding such employment, be deemed to be in practice for the limited purpose of the training of articled assistants ".

~~**5.2.3**~~ Pursuant to Section 2(2) (iv), the Council has passed a resolution permitting a Chartered Accountant in practice to render entire range of "Management Consultancy and other Services" given below:

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

*(i) Financial management planning and financial policy determination.

*(ii) Capital structure planning and advice regarding raising finance.

*(iii) Working capital management.

*(iv) Preparing project reports and feasibility studies.

(v) Preparing cash budget, cash flow statements, profitability statements, statements of sources and application of funds etc.

(vi) Budgeting including capital budgets and revenue budgets.

(vii) Inventory management, material handling and storage.

(viii) Market research and demand studies.

(ix) Price-fixation and other management decision making.

(x) Management accounting systems, cost control and value analysis.

(xi) Control methods and management information and reporting.

(xii) Personnel recruitment and selection.

(xiii) Setting up executive incentive plans, wage incentive plans etc.

(xiv) Management and operational audits.

(xv) Valuation of shares and business and advice regarding amalgamation, merger and acquisition.

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* 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".

(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.

~~**5.2.4**~~ 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.

~~**5.2.5**~~ 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.

~~**5.2.6**~~ A member of the Institute is deemed to be in practice during the period he renders 'service with armed forces'.

CHAPTER II

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

The Institute has the characteristics of an artificial legal person and is a corporate legal personality. It has perpetual succession and a common seal and has the power to acquire, hold and dispose of property, both movable and immovable. It also has the power to sue and be sued in its own name.

The list of the persons who are entitled to have their names entered in the register of members has been provided in this Chapter and it includes all those persons who are registered accountants or holders of a restricted certificate at the commencement of this Act, any person who has passed such examination and completed such training as may be prescribed for members of the Institute, any person who has passed the examination for the Government Diploma in Accountancy or an examination recognised as equivalent thereto, any person who, at the commencement of this Act, is engaged in the practice of accountancy in any Part B State and who, although not possessing the requisite qualifications to be registered as an accountant under the Auditor's Certificates Rules, 1932, fulfils such conditions as the Central Government may specify in this behalf.

Further, it includes any person domiciled in India who at the commencement of this Act is studying for any foreign examination and is at the same time undergoing training, whether within or without India, or, who, having passed such foreign examination, is at the commencement of this Act undergoing training, whether within or without India. However, this is subject to the condition that any such examination or training was recognised before the commencement of this Act for the purpose of conferring the right to be registered as an accountant under Auditor's Certificates Rules, 1932, and provided further that such person passes the examination or completes the training within five years after the commencement of this Act.

All the persons mentioned above are required to make an application to the Institute in this regard and pay the requisite fees which shall not exceed Rs. 3,000/-, for having their name entered in the register. The Council may also prescribe a fees higher than Rs. 3,000/- but not more than Rs. 6,000/- upon

obtaining the prior approval of the Central Government in this regard.

The members of the Institute are divided into two classes, which is, associates and fellows. Upon enrollment with the Institute, the members are entitled to use the designation A.C.A. after their name as they are deemed to have become an associate member of the Institute.

An associate member is entitled to become a fellow of the Institute upon fulfillment of the below mentioned conditions:

a) **He has been in continuous practice for a period of atleast five years, or**

b) **He possesses such qualifications as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a chartered accountant.**

If an associate fulfills the above two positions, he is entitled to become a fellow of the Institute and use the designation F.C.A. after his name upon payment of the requisite fees in this regard which shall not exceed Rs. 5,000/-. However, the Council may prescribe a fee which is higher than Rs.5,000/- but which may not exceed Rs. 10,000/- upon obtaining prior permission of the Central Government in this regard.

~~**5.3 Significance of the certificate of Practice**~~

~~**5.3.1**~~ 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. 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. 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. 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.

~~5.3.2~~ 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."

~~5.3.3~~ 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.

~~5.4 A Member in practice is prohibited from using a designation other than Chartered Accountant~~

~~5.4.1~~ Under Section 7 of the Chartered Accountants Act, 1949 a member in practice cannot use any designation other than that of a Chartered Accountant, nor can he use any other description, whether in addition thereto or in substitution therefore, but a member who is not in practice and does not use the designation of a Chartered Accountant may use any other description. Nevertheless a member in practice may use

any other letters or description indicating membership of Accountancy Bodies which have been approved by the Council ~~**(See Appendix 'A')**~~ or of bodies other than Accountancy Institutes so long as such use does not imply adoption of a designation and/or does not amount to advertisement or publicity.

~~**5.4.2**~~ For example, though a member cannot designate himself as a Cost Accountant, he can use the letters A.I.C.W.A. after his name, when he is a member of that Institute.

~~**5.4.3**~~ 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.

~~5.5 Disabilities for purpose of Membership~~

~~**5.5.1**~~ 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.

~~**5.5.2**~~ 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.

CHAPTER III

COUNCIL OF THE INSTITUTE

The functions and composition of the Council of the Institute have been enumerated in this Chapter. The Council is responsible for the management of the affairs of the Institute and for discharging the functions assigned to it under this Act.

The Council comprises of 32 persons elected by the members of the Institute from amongst the fellows of the Institute. Hence, only the fellows of the Institute are eligible to be elected as council members.

However, a fellow of the Institute who has been found guilty of any professional or other misconduct and whose name is removed from the Register or has been awarded penalty of fine, shall not be eligible to contest the election:

(*i*) in case of misconduct falling under the First Schedule of this Act, for a period of three years;

(*ii*) in case of misconduct falling under the Second Schedule of this Act, for a period of six years,

from the completion of the period of removal of name from the Register or payment of fine, as the case may be.

The following persons are not eligible for election to the Council of the Institute:

(i) A person holding a post under the Central Government or a State Government

(ii) A person who has been auditor of the Institute. Such a person shall be ineligible for election to the Council for a period of three years after he ceases to be an auditor of the Institute.

As a general rule, every member of the Council is eligible for re-election/re-nomination to the Council. However, a member is not permitted to serve as a council member for more than three consecutive terms i.e. if a member has served as a Council member for three consecutive terms, he will not be eligible to contest elections for the next council.

Also, a council member who is elected as a President of the Institute, shall not be eligible for election/nomination as a member of the Council thereafter.

Any person aggrieved by the conduct of elections to Council may make an application in this regard to the Secretary of the Institute. Such an application must be made within 30 days of the declaration of the results of the election.

There is also provision regarding establishment of a tribunal in case an application is received regarding election as stated above. Such a tribunal shall be constituted by the Central Government by notification and shall consist of:

a) **A Presiding Officer, and**

b) **Two members**

In order to be appointed as the Presiding Officer of the Tribunal, a person should be a member of the Indian Legal Service and should have held a post in Grade I of the service for at least three years.

Further, in order to be appointed as a member of the Tribunal, the following qualifications have been prescribed:

a) **The person should have been a member of the Council for at least one full term and should not be a sitting member of the Council or should not have been a candidate in the election under dispute, or**

b) **The person should hold the post of a Joint Secretary to the Government of India or any other post under the Central Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India.**

The expenses of the Tribunal are to be met by the Council and the terms and conditions of service of the Presiding Officer and Members of the Tribunal, their place of meetings and allowances shall be such as may be specified.

The Council elects two of its members as the President and the Vice-President of the Institute. The President has been given the designation of Chief Executive Authority of the Institute. The President/ Vice-President hold office for one year from the date of election as a President/ Vice-President.

However, the President and the Vice-President may continue to hold office and discharge such administrative and other duties as may be prescribed on the expiration of the duration of the Council until such time as a new President and the Vice-President has been elected and taken over charge of their duties.

The Council Members may resign from membership at any time during their term as a council member. Such a resignation

must be made in writing and should be addressed to the President of the Institute. The resignation shall be effective once it is notified in the Official Gazette.

A Council Member is deemed to have vacated his seat in the following circumstances:

a) **if he is declared by the Council to have been absent without sufficient excuse from three consecutive meetings of the Council, or**

b) **he has been found guilty of any professional or other misconduct and awarded penalty of fine, or**

c) **if his name is, for any cause, removed from the Register under the provisions of Section 20.**

The duration of the Council is prescribed as three years. This lifespan of three years is to be calculated from the date of the first meeting of the Council. Upon expiration of these three years, the Council stands dissolved and a new council is constituted in accordance with the provisions of the Act.

However, in case there is a time gap between the dissolution of the former council and the constitution of the new council, then for that period of the time, the former council may continue to exercise its functions as provided under the Act till the formation of the new council.

The functions of the Council are enumerated in detail under this chapter. The Council has the duty of overall control, guidance and supervision of the Institute. Further, the responsibility of carrying out the provisions of the Act and ensuring their implementation also vests in the Council.

A list of 16 functions of the Council has also been provided. These functions are :-

i. **to approve academic courses and their contents;**

ii. **the examination of candidates for enrolment and the prescribing of fees therefor;**

iii. **the regulation of the engagement and training of articled and audit assistants;**

iv. **the prescribing of qualifications for entry in the Register;**

v. **the recognition of foreign qualifications and training for the purposes of enrolment;**

vi. **the granting or refusal of certificates of practice under this Act;**

vii. **the maintenance and publication of a Register of persons qualified to practice as chartered accountants;**

viii. **the levy and collection of fees from members, examinees and other persons;**

ix. **subject to the orders of the appropriate authorities under the Act, the removal of names from the Register and the restoration to the Register of names which have been removed;**

x. **the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;**

xi. **the carrying out, by granting financial assistance to persons other than members of the Council or in any other manner, of research in accountancy;**

xii. **the maintenance of a library and publication of books and periodicals relating to accountancy;**

xiii. **to enable functioning of the Director (Discipline), the Board of Discipline, the Disciplinary Committee and the Appellate Authority constituted under the provisions of this Act;**

xiv. **to enable functioning of the Quality Review Board;**

xv. **consideration of the recommendations of the Quality Review Board made under item (a) of Section 28B and the details of action taken thereon in its annual report; and**

xvi. **to ensure the functioning of the Institute in accordance with the provisions of this Act and in performance of other statutory duties as may be entrusted to the Institute from time to time.**

With regard to imparting of education by Universities and other bodies, it has been stipulated that universities established by law or bodies affiliated to the Institute may impart education on the subjects covered by the academic courses of the Institute. However, this has to be in accordance with the provisions of the Act.

Such universities or bodies have to ensure that the awarding of degree, diploma or certificate or bestowing of any designation by them does not resemble or is not identical to one awarded by the Institute.

It is further provided that a University or a body is not permitted to adopt a name or nomenclature which is similar to that of the Institute in any way.

Provisions regarding officers and employees of the Institute and their salary and allowances also find a mention in the Chapter. The Council has the duty to appoint the following officers:

i. **Secretary**

ii. **Director (Discipline)**

The Council is also empowered to appoint other officers and employees, as considered necessary, for the performance of the functions and duties of the Institute and prescribe the salaries, fees and allowances of the officers and employees and their terms and conditions of service.

The Council is empowered to constitute two kinds of committees, which is, Standing Committees and Non-Standing Committees. The Standing Committees of the Council are as follows:

i. **Executive Committee**

ii. **Examination Committee**

iii. **Finance Committee**

Each of the above stated committees consist of the following members:

i. **The President, ICAI (ex-officio member)**

ii. **The Vice President, ICAI (ex-officio member)**

iii. **3-5 members to be elected by the Council from amongst its members**

The President is the Chairman and Vice-President is the Vice-Chairman of the Standing Committees.

Regarding the Non-Standing Committees, the Council has the power to form such other committees from amongst its members as it considers necessary for the purpose of carrying out the provisions of this Act. Such Non-Standing Committees are also authorized to co-opt such other members of the Institute not exceeding one-third of the members of the committee, and any member so co-opted is entitled to exercise all the rights of a member of the committee.

Regarding the finances of the Institute, a fund is established under the Act which is under the management and control of the Council.

All moneys received by the Council are to be paid into the said fund and all expenses and liabilities incurred by the Council are also to be met out of the said fund. The duty is cast upon the Council to keep proper accounts of the fund and distinguish capital from revenue in the manner as may be prescribed.

It is also open for the Council to invest any money standing to the credit of the above stated fund in any Government security or in any other security approved by the Central Government.

The Council is also required to prepare an annual financial statement (the budget) indicating all its anticipated revenues as well as all proposed expenditures for the forthcoming year. Such annual financial statement is to be prepared in the manner prescribed and is also required to be approved prior to the start of the financial year.

The annual accounts of the Council are required to be audited by a chartered accountant in practice. Such chartered accountant is to be appointed annually by the Council and he shall prepare the accounts in such manner as may be prescribed.

The following persons are not permitted to be appointed as auditor of the Institute:

i. **Member(s) of the Council, or**

ii. **a person who has been a member of the Council during the last four years, or**

However, a person who is in partnership with such member shall be eligible for appointment as an auditor of the Institute.

Further, the Council has the power to cause a special audit of the Institute to be conducted in case it is brought to the notice of the Council that the accounts do not represent a true and fair view of the finances.

The Central Government is also empowered to highlight the fact that the accounts of the Council do not represent a true and fair view of its finances. In that case, the Council may cause a special audit or take such other action as it considers necessary and shall furnish an action taken report on it to the Central Government.

It is further stipulated that at the end of each year, the Council has the responsibility to circulate the audited accounts to

its members at least fifteen days in advance and consider and approve these accounts in a special meeting convened for the purpose.

In case the Council requires any money for meeting its liabilities on capital account on the security of the fund or on the security of any other assets for the time being belonging to it or for the purpose of meeting current liabilities pending the receipt of income, by way of temporary loan or overdraft, it is permitted to borrow the same from a scheduled bank, as defined in the Reserve Bank of India Act, 1934, or from the Central Government.

CHAPTER IV

REGISTER OF MEMBERS

The Council has the duty to maintain a Register of members.

The following details are required to be entered in the Register with respect to every member of the Institute:

i. **his full name, date of birth, domicile, residential and professional address;**

ii. **the date on which his name is entered in the Register;**

iii. **his qualifications;**

iv. **whether he holds a certificate of practice; and**

v. **any other particulars which may be prescribed.**

The members are required to pay annual membership fees upon entry of their name in the Register of members. The fees is determined by the Council and should not exceed rupees five thousand. However, the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand, which shall not in any case exceed rupees ten thousand.

~~**5.6 Removal from the Register**~~

~~**5.6.1**~~ **Section 20 of the Act provides that the Council may remove from the Register the name of any member of the Institute—**

i. **who is dead; or**

ii. **from whom a request has been received to that effect; or**

iii. **who has not paid any prescribed fee required to be paid by him; or**

iv. **who is found to have been subject at the time when his name was entered in the Register, or who at any time thereafter has become subject, to any of the disabilities mentioned in Section 8, or who for any other reason has ceased to be entitled to have his name borne on the Register.**

~~**5.6.2**~~ **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.**

CHAPTER V

MISCONDUCT

~~5.7 Procedure in Inquiries for Disciplinary Matters relating to misconduct of the members of the Institute~~

~~5.7.1~~ The Chartered Accountants (Amendment) Act, 2006, which came into effect from 8th August, 2006, has for the first time introduced the provisions for imposition of fine as a punishment for the misconduct.

~~5.7.2~~ 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:-

- reprimand the member
- remove the name of the member from Register upto a period of three months
- 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:-

- reprimand the member
- remove the name of the member from the Register permanently or for such period as it may think fit.
- 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,

- summoning and enforcing attendance of any person and examining him on oath;
- discovery and production of any document; and
- 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 authority constituted under the provisions of Section 22A – 22D of the Act.

~~5.8~~ 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.

(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) 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. Mukherjea" (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."

(3) Some decided cases, where a member has been found guilty of the misconduct in any other circumstances (earlier "other misconduct") under the aforesaid provisions rendering himself unfit to be a member are:-

Where a Chartered Accountant admitted before the Examination Committee that he had issued a certificate to a person that he worked with him knowing it to be false. - Held he was guilty of other misconduct.

(K.C. Jain Satyavadi in Re:- Page 98 of Vol. II of the Disciplinary Cases and pages 221-222 of December, 1955 issue of the Institute's Journal - Judgement delivered on 7th November, 1955).

Where a Chartered Accountant retained the books of account and documents and failed to hand them over to the clients regardless of their repeated requests. - Held he was guilty of "other misconduct".

(Jamnadas Harakchand and Others vs. P.C. Parekh - Page 492 of Vol. IV of the Disciplinary Cases and pages 26-44 of July, 1967 issue of the Institute's Journal - Judgement delivered on 12th January, 1967).

Where a paid assistant on whom the employer had implicit reliance took absolutely no steps whatsoever to check the cash balance facilitating and resulting in serious defalcations. Though no doubt he did pass on some information as to what he was doing to his employer he did not mention any fact from which the employer could have known that he had been so grossly negligent. - Held he was guilty of "other misconduct" as envisaged in Section 21 of the Act.

(D.B. Parelkar in Re:- Page 805 of Vol. IV of the Disciplinary Cases and pages 502-504 of March, 1969 issue of the Institute's Journal - Judgement delivered on 27th November, 1968).

Where a Chartered Accountant had exercised undue influence and coercion in securing from the Company payment of his fee and the letter

of appointment for the next year. -Held he was guilty of professional misconduct of a type not specified in the Schedules.

Where a Chartered Accountant committed acts of commission and omission in regard to the minute book of a Company containing the minutes of the proceedings of the annual general meeting purported to be held on a particular date thus knowingly made a false record. - Held he was guilty of professional misconduct for acts not specified in the Schedules.

(Qaroon Trading and Finance Pvt. Ltd. vs. Laxmi Narain Saxena and Jitendra Mohan Chadha - Page 828 of Vol. IV of the Disciplinary Cases and pages 47-49 of July, 1969 issue of the Institute's Journal - Judgement delivered on 12th February, 1969).

Where a Chartered Accountant had misrepresented to a firm while seeking employment as an Accountant that he had worked for 3 years as a senior Assistant with another firm. Held he was guilty of "other misconduct" in terms of Section 21 of the Act.

(B.K. Chakraborty in Re:- Page 872 of Vol. IV of the Disciplinary Cases and pages 254-255 of October, 1969 issue of the Institute's Journal - Judgement delivered on 19th July, 1969).

A Chartered Accountant was charged with misconduct for having used the services of his audit clerk during the period of his audit service for promoting the agricultural activities of the former. The Disciplinary Committee though satisfied from the evidence recorded that the audit clerk was required to attend to the agricultural activities of his employer during office hours, very regrettably came to the conclusion that engaging the services of the audit clerk for agricultural operations not casually but for a considerable time during his service as an audit clerk did not render the member guilty of professional or other misconduct. The Council, having found the member not guilty of any professional or other misconduct, dismissed the complaint.

On appeal made by the audit clerk against the order of the Council, the High Court held that the conduct of the member in having asked the audit clerk to attend to his agricultural work instead of giving training to him to make him an auditor clearly amounted to "other misconduct".

(P.N.S. Murthy vs. D.V. Lakshmana Rao - Page 26 of Vol. V of the Disciplinary Cases and page 579 of June, 1975 issue of the Institute's Journal - Judgement delivered on 21st March, 1975).

A Chartered Accountant being the Secretary & Treasurer of the Central India Regional Council of the Institute misappropriated a large amount and utilised it for his personal use. - Held that the Chartered Accountant was guilty of charge of misappropriation and the Court directed the removal of his membership for a period of five years. It was observed that warnings and reprimands in such cases would undermine the basic

purpose of Sections 21 and 22 of the Act and instead of acting as a deterrent for such misconduct may embolden erring members to entertain hopes of lenient punishment.

(J.C. Tandon in Re:- Published at pages 548-549 of December, 1979 issue of the Institute's Journal and page 26 of Vol. VI(1) of Disciplinary Cases - Judgement delivered on 6th August, 1979).

A Chartered Accountant issued consumption certificate of a firm on the strength of which Export Authorities issued licence for importing raw material and components. The Chartered Accountant failed to verify the certificate inspite of repeated enquiries raised by the Export Authorities. - Held the Chartered Accountant was guilty of misconduct by not replying within a reasonable time and without a good cause to the letters of the Deputy Chief Controller of Imports & Exports. It was his implicit duty to verify the certificate issued by him in the case of an inquiry by Public Authority and in not doing so he committed an act of impropriety.

The words "professional or other misconduct" used in Section 21(1) are meaningful as they widen the authority of the Council not only to inquire into the professional misconduct of the members, but misconduct otherwise also.

(Sri Gopal Shukla in Re:- Published at pages 546-548 of December, 1979 issue of the Institute's Journal and page 32 of Vol. VI(1) of Disciplinary Cases - Judgement delivered on 6th August, 1979).

Where a Chartered Accountant, being a tenant of premises, was searched in connection with the taxation matter of the owner of the said premises.

During the search, Income-tax assessment records of a Hindu Undivided Family (HUF) were found inside the steel almirah in the bedroom of the said Chartered Accountant. When interrogated, he explained that he had requested the concerned Income-tax Officer for one HUF assessment record to enable him to know how HUF accounts were prepared and maintained and, according to him the Income-tax Officer obliged him by handing over the said assessment records. The Income-tax Officer, however, categorically denied having passed on the Income-tax assessment records to him.

The Council was of the opinion that the possession of Government records by a Chartered Accountant constitutes "other misconduct" under Section 21 of the Chartered Accountants Act, 1949. A Chartered Accountant is not expected to be in possession of Government records or to retain them with him. Such an action on the part of a Chartered Accountant is grossly improper and unworthy of his status as a Chartered Accountant and is against the ethics of the profession. The said Chartered Accountant could not give any satisfactory explanation as to how the records came into his possession and also why he did not return the records to the Department

immediately when he came to know that the records came to be in his possession. He was held guilty of "other misconduct".

(S.K. Bhaumik in Re:- Page 568 of Vol. VI(1) of Disciplinary Cases - Judgement dated 5th March, 1990).

The Respondent, *inter alia*, had used objectionable, derogatory and abusive language. He made irrelevant, incoherent, irresponsible and insane statements, expressions in all his correspondence with the complainant. He was, *inter alia*, held guilty of "other misconduct".

(K. Bhattacharjee vs. B.K. Chakraborty - Page 86 of Vol. VII(1) of Disciplinary Cases – Council's decision dated 11th to 13th February, 1988 - Judgement dated 10th June, 1996).

The Respondent who was allotted the audit work of three branches of the Complainant-Bank for a year submitted bogus bills/receipts for claim of halting allowance expenses for audit of said branches, as found on the investigation by the Complainant-Banks Vigilance Department. He was held guilty of "other misconduct".

(State Bank of Patiala vs. Rishi K. Gupta – Page 291 of Vol. VII(1) of Disciplinary Cases – Council's decision dated 5th & 6th August, 1991 - Judgement dated 20th July, 2000).

The Respondent was entrusted with the work of incorporation of a Company. He was also entrusted with the work of filing the return for registration of the charge in Form No. 8 with the Registrar of Companies. After making enquiries, he made available a certificate of incorporation issued by the Registrar of Companies. But on enquiry from the Office of the Registrar of Companies, it was learnt that the name of the said Company, was not borne on the Register of Companies and Form No. 8 was not traceable in the Registrar's office. He had later admitted that the above certificate was fake, forged and not genuine. He had not filed any of the documents with the Registrar of Companies. He had failed to make available or return the documents despite requests on the pretext that the same were not traceable. He had provided to the Complainant a communication issued by the Office of the Registrar of Companies which had also been discovered to be fake. He was, *inter alia*, held guilty for "other misconduct".

(Deepak Pahwa vs. A.K. Gupta – Page 346 of Vol. VII (1) of Disciplinary Cases – Council's decision dated 6th September, 1995 - Judgement dated 4th September, 2000).

Where the Respondent published an advertisement in the newspaper with a malafide intention to malign the Complainant. Held that Respondent was inter alia guilty of "other misconduct".

(S.C. Katyal vs. O.P.C. Jain & O.P. Sharma –Page 1 of Vol. VIII-1 -21(6) of Disciplinary cases – Council's decision dated 25th to 27th February, 1999

- Judgement delivered on 27th April, 2001 and published in the September, 2001 issue of Journal at pages 309 to 311).

A Chartered Accountant while in employment with a Corporation conveyed acceptance as statutory auditor to the complainant and give a wrong declaration to the bank that he was a full time practicing Chartered Accountant and not employed elsewhere with an intention to obtain bank branch audits and derive undue benefits. The Respondent having committed an act which is unbecoming a Chartered Accountant was therefore inter alia guilty of "Other misconduct".

(The Senior Manager, Punjab National Bank vs. N.K. Chopra –Page 121 Vol. VIII-1-21 (6) of Disciplinary Cases – Council's decision dated 22nd July, 1997 - Judgement delivered on 20th May, 2003 and published in the December, 2003 issue of Institute's Journal at page 686).

The Respondent authored a book titled 'Tax Planning for Secret Income (Black Money)'. On going through the preface as well as the contents of the book it was seen that the author had explained in detail the various methods of creation of black money followed by different sections of society and the methods, legal as well as illegal, generally adopted to convert the same into white. Since it appeared that the title of the book, its preface, its contents and in totality the book was likely to create an impression in the eyes of common man that Chartered Accountants are experts in helping in the creation of black money and its conversion into white money though there is no direct reference as such to the Chartered Accountants; this might tend to lower the image of the profession in the public eyes. Held that the Respondent was guilty of "other misconduct".

The Hon'ble Gujarat High Court in its judgement dated 14th February, 2003 observed that:

> *"… Having regard to the old age of the Respondent, ailments that he is suffering from, repentance that he has shown in the Court and the time lag that has elapsed, as also his statement that he has never published any such writing after the publication of the said book, in our opinion, interest of justice will be met if the Respondent is removed forthwith from the membership of the Institute for a period of five years. We accordingly, while upholding the Respondent guilty of misconduct, direct that the Respondent be removed forthwith from the membership of the Institute for a period of five years. The reference stands disposed of accordingly with no order as to costs.*
>
> *At this stage, the learned counsel for the Respondent submits that the operation of this order may be stayed to enable the Respondent to approach the higher forum. In our opinion, in the facts and circumstances of the case, it will be improper for us to stay the operation of this order when the removal of the*

Respondent was due long back, having regard to the serious nature of the misconduct committed by him."

The Respondent filed a review petition and special Leave Petition against the above judgement of the Gujarat High Court, in the Supreme Court. The Supreme Court, by its judgement dated 6 August 2003, dismissed the review petition. The text of the order is given below:

"We have gone through the review petition and the connected papers. We do not find any good reason to review our order. It lacks merits. The review petition is therefore dismissed."

(P.C. Parekh in Re: –Page 63 Vol. VIII-1-21(6) of Disciplinary Cases – Judgement of the Gujarat High Court dated 14th February 2003 and judgement of Supreme Court dated 6th August, 2003 and published in the February, 2004 issue of Institute's Journal at pages 869 to 890).

Where a Chartered Accountant filed two separate returns of income in his individual capacity viz. one for the income from the profession as Chartered Accountant for and from the A.Y. 1965-66 to 1986-87 and another for the income from LIC Commission for and from A.Y. 1967-68 to 1986-1987. Thus, the Respondent evaded substantial income-tax and was liable for punishment. The Respondent was also guilty of committing fraud by giving two separate names to evade payment of the proper amount of income-tax. Held that the Respondent was guilty of "Other misconduct".

(The Chief Commissioner (Administration) & Commissioner of Income - Tax, Karnataka-I, Bangalore vs. H. Mohanlal Giriya- Page 137 Vol. VIII-1-21(6) of Disciplinary cases).

The Respondent had fabricated and filed challans for advance tax in respect of certain clients and relatives and then filed their returns of Income showing nominal income so as to claim refund against advance tax paid. On investigation it was found by the Income Tax Department that the Respondent had changed the amount of advance tax paid in copies of challans that are retained by the assessee and sent to the Department alongwith the return. The returns also, in many cases, were verified by him. The address given in the returns was his own so that the refund vouchers could reach him and he had, in fact, encashed these vouchers by opening bank accounts in the names of the assessees. The Respondent was said to have admitted having committed this forgery etc. thereby defrauding the exchequer to the tune of Rs. 15 lakhs. As per FIR filed by the Income Tax Officer, the Respondent was arrested and was remanded first to police custody and thereafter to judicial custody. Held that the Respondent was guilty of "Other misconduct". The Council also decided to recommend to the High Court that the name of the Respondent be removed permanently from the Register of Members.

The Hon'ble Gujarat High Court while delivering the order observed that:

"…The petitioner Council is one such representative body charged with responsibility of ensuring discipline and ethical conduct amongst its members and impose appropriate punishment on members who are found to have indulged in conduct which lowers the esteem of the professionals as a class. Adopting the aforesaid approach, it is not possible to find any infirmity, either on facts or in law, in the reasoning and the findings recorded by the Disciplinary Committee and the petitioner Council by holding the Respondent as being guilty of "other misconduct" under Section 21 read with Section 22 of the Act and hence, there is no necessity to interfere with the punishment recommended. It has been proved beyond reasonable doubt, in the facts and circumstances of the case and by the evidence on record, that the Respondent and only the Respondent, is guilty of "other misconduct" and hence liable to punishment under section 21(6)(c) of the Act i.e. removal from membership of the Institute permanently.

The reference is accordingly disposed of with a direction to the petitioner Council to remove the Respondent from the membership of the Institute permanently."

(Commissioner of Income - Tax, Gujarat -III, Ahmedabad -vs.- Mukesh R. Shah –Page 161 Vol. VIII-1-21(6) of Disciplinary Cases – Judgement delivered dated 11th November 2003 and published in the January, 2004 issue of Institute's Journal at pages 764 to 781).

While investigating into cases of some fraudulent imports and clearance, the Custom Department came across a case of one Chartered Accountant who issued false certificates to several parties for past exports for monetary consideration, without verifying any supporting records or documents. On the strength of these false certificates, certain unscrupulous importers were able to obtain import license, effect imports and clear these free of duty, perpetuating a fraud on Government revenue and depriving the Government of its legitimate revenue to the tune of several Crores of Rupees. In his statement recorded under section 108 of the Custom Act, 1962, the Respondent had also confessed his role in this affairs as well as the fact that he also got a share in this deal of issuing false certificates. Held that he was guilty of "Other Misconduct".

(Additional Collector of Customs, Department of Customs vs. K.N. Kanodia:- Page 691 Vol. VIII-1-21(6) of Disciplinary cases-Judgement dated 12th August, 2004).

Members are urged in their own interest to keep the aforesaid provisions in view and maintain requisite standards both in their professional and other conduct.

A Chartered Accountant demanded and received large sums of money towards advance payment and claimed expenses beyond the eligibility/entitlement as per RBI guidelines and failed to refund the unspent money. The Council held him guilty of "other misconduct" in

terms of Section 22 read with Section 21 of the Chartered Accountants Act, 1949 which was accepted by the High Court.

(*S.N. Banerjee, Dy. General Manager, State Bank of Hyderabad Vs. Lokesh Dhawan-Page323 Vol.IX -1-21(6)of Disciplinary cases- Council's decision dated 23rd June, 2001 and Judgement of High Court dated 5th November, 2007).*

A Chartered Accountant was engaged by his client for getting financial assistance from bank, but for disbursement of a term loan in favour of his client he issued a false certificate. The act of issuing the vague certificate by him contributed and enabled the officers of the bank to have paper formalities completed which amounted to aiding and abetting by the Chartered Accountant, for disbursement of the loan and for this act he was held guilty of "other misconduct". The High Court confirmed the decision of the Council.

(*Supdt. of Police, CBI, ACB, New Delhi vs. Dayal Singh - Page 177 & 288 Vol. IX-1-21(60) of Disciplinary cases- (25-CA(55)/92), Decision of the Council dated 30th April, 2001, 216th Meeting of the Council and Judgement of High Court dated 10th May, 2007).*

A Chartered Accountant, appointed as concurrent auditor of a bank, firstly used his influence for getting some cheque purchased and thereafter failed to repay the loan/overdraft. He acted in an irresponsible manner and had not discharged his duties professionally. Being a Concurrent Auditor used his position to obtain the funds and failed to repay the same to the Complainant. Though such conduct may not directly attract any particular ~~clause~~ **item(s)** specified in any of the schedule(s) of the Chartered Accountants Act, 1949, yet such act is certainly unpardonable. The Council held him guilty of "other misconduct" under Section 22 read with Section 21 of the Chartered Accountants Act, 1949 and the High Court further confirmed the same.

(Manager, Punjab National Bank vs. M.K. Sachdeva- page 273 Vol-IX-1-21(6), Decision of the Council dated 16th April, 2004, 242nd Meeting of the Council and Judgement of High Court dated 7th August, 2007).

Where a Chartered Accountant had not completed his audit work of the accounts of a Company, in spite of several reminders and payment of advance fee of audit, the Council held him guilty under ~~Clause~~ **item** (7) of Part I of the Second Schedule and 'other misconduct' within the meaning of Section 21 read with Section 22. The High Court also accepted the Council's decision and ordered to remove his name from the Register of members for a period of one year.

(*R. K. Goswami, Administrator, Delhi Nagrik Sekhari Bank Ltd. Vs. M/s Dayal Singh & Co – Page 288 Vol.IX -1-21(6)of Disciplinary cases, Council's decision dated* 16th April, 2004 and Judgement of High Court dated 7th August, 2007).

A Chartered Accountant was held guilty under ~~Clause~~ **item** (7) of Part I of the Second Schedule and "other misconduct as being a tax consultant and a tax auditor he failed to appear before the Income Tax Authorities for his client even after having instructions from his client. In spite of being fully paid for his professional services and provided all the books of account and other documents, he failed to satisfy the Income Tax Officer because of his negligence and careless attitude. There were several anomalies in the books of account. The opening and closing balances as per the bank statements and pass-books were not re-produced correctly in the cash book.

(R.C. Dutta Vs. Kailash C. Mishra - Page 143 Vol.IX-1-21(6) of Disciplinary cases-, Council's decision dated 5th January, 2005 and Judgement of High Court dated 1st March, 2007).

The Chapter also provides for the constitution of the Appellate Authority by the Central Government. Its composition is as follows:

i. **a person who is or has been a judge of a High Court, to be its Chairperson;**

ii. **two members to be appointed from amongst the persons who have been members of the Council for at least one full term and who is not a sitting member of the Council;**

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

The term of office of the Chairperson of the Appellate Authority is three years from the date of appointment as Chairperson, or attaining the age of sixty-five years whichever is earlier.

The term of office of the members of the Appellate Authority is three years from the date of appointment as a member, or attaining the age of sixty-two years whichever is earlier.

The Appellate Authority shall be based in Delhi and it has been given the power to regulate its own procedure. It also consists of such other officers and staff members as are considered necessary for the proper and effective functioning of the Authority.

In order to resign from their office, the Chairperson and members have to tender a notice in writing which is to be addressed to the Central Government.

The Chairperson/ Member may also be removed from their office by an order of the Central Government. Such an order can only be passed on the ground of proved misbehavior or incapacity after having conducted an inquiry in this regard. Further, the Chairperson/ Member is also required to be informed about the charges against him and given a reasonable opportunity of being heard in respect of such charges. Thus, the principles of natural justice are to be followed for removal of Chairperson/ Member.

An appeal may also be preferred to the Appellate Authority against the order of the Board of Discipline or the Disciplinary Committee 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.

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**

The Appellate Authority has to follow the principles of natural justice while deciding any appeal. It has to give an opportunity of being heard to the parties concerned before passing any order.

CHAPTER VI

REGIONAL COUNCILS

Chapter 6 consists of one section only, i.e., Section 23. It makes provision for the constitution of Regional Councils and also prescribes the functions to be performed by them. As per the provisions of this Section, the Council has been empowered to constitute Regional Councils. Such Regional Councils may be established as and when deemed fit by the Council for one or more of the regional constituencies that may be specified by the Central Government. The main function of the Regional Councils so established is to advise and assist the Council concerning its functions.

CHAPTER VI

PENALTIES

~~5.9~~ Penalty for falsely claiming to be Member etc.

As per Section 24, 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.

In a case under the above provision, the Court of Additional Chief Judicial Magistrate had by its judgement dated 18th July, 1989 found the accused guilty under Section 24(i)(a) & (b) of the Chartered Accountants Act and Section 465 of the Indian Penal Code. The Court imposed a fine on the accused and in the event of his failure to pay the fine, sentenced to rigorous imprisonment for three months. (Case of Prem Batra decided on 18.7.1989 and published in September, 1989 issue of the Institute's Journal at Page 246).

~~5.10~~ 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."

~~5.11~~ 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 extent to two lakh rupees or with both."

~~5.12~~ Maintenance of Branch Offices

~~5.12.1~~ 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 practicing 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.

~~5.12.2~~ 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.

~~**5.12.3**~~ 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.

~~**5.12.4**~~ 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.

Where a Chartered Accountant kept the branch office without putting a member in charge thereof thereby committing a breach of ~~Clause~~ **item** (i)

of Section 27 of the Act. - Held that the fault was only technical which had been made good and ordered the papers to be filed.

(P.N. Mehta in Re:- Page 774 of Vol. IV of the Disciplinary Cases and pages 396-399 of February, 1969 issue of the Institute's Journal - Judgement delivered on 12th November, 1968).

In order to prosecute a person under the provisions of this Act, a complaint by or under the order of the Council or the Central Government is necessary.

~~5.13~~ 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/C&AG audit.

CHAPTER VIII

QUALITY REVIEW BOARD

Chapter 7A, which consists of Section 28A to 28D, makes provision for a Quality Review Board which is to be established by the Central Government by way of notification.

The Quality Review Board consists of a Chairperson and 10 members who should be persons of eminence having experience in the field of:

- **Law,**
- **Economics,**
- **Business,**
- **Finance, or**
- **Accountancy**

The members of the Quality Review Board are to be nominated by the Council and the Central Government.

The Quality Review Board has been entrusted with the following functions:-

i. **to make recommendations to the Council with regard to the quality of services provided by the members of the Institute;**

ii. **to review the quality of services provided by the members of the Institute including audit services; and**

iii. **to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.**

The Quality Review Board is to meet at such time and place and follow such procedure in its meetings as may be specified and the terms and conditions of service of the chairperson and the members of the Quality Review Board and their allowances will also be such as may be specified. The Council has the duty to bear the expenditure of the Board.

Government of India has, in exercise of the powers conferred by clauses (f) and (g) of Sub-section (2) of Section 29A read with Section 28C and Sub-section (1) of Section 28D of the Chartered Accountants Act, 1949 made 'Chartered Accountants

Procedures of Meetings of Quality Review Board, and Terms and Conditions of Service and Allowances of the Chairperson and Members of the Board Rules, 2006'. These Rules have been issued vide notification G.S.R 735(E) dated 27th November, 2006 and published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) dated 5th December, 2006 and have come into force from that date.

CHAPTER IX

MISCELLANEOUS

This chapter contains provisions regarding several miscellaneous matters for which no provision is made in other parts of the Act like reciprocity, power to make rules, regulations etc.

With respect to reciprocity, it has been provided that if any country prevents persons of Indian domicile from becoming members of any institution similar to the Institute of Chartered Accountants of India or from practicing the profession of accountancy or subjects them to unfair discrimination in that country, no subject of any such country will be entitled to become a member of the Institute or practice the profession of accountancy in India.

In addition to the above, the Council is also empowered to prescribe the conditions subject to which foreign qualifications relating to accountancy shall be recognised for the purposes of entry in the Register.

The Central Government has been conferred the power to make rules under this Act on the following subject matters:

i. **the manner of election and nomination in respect of members to the Council under sub-section (*2*) of Section 9;**

ii. **the terms and conditions of service of the Presiding Officer and Members of the Tribunal, place of meetings and allowances to be paid to them under sub-section (*3*) of Section 10B;**

iii. **the procedure of investigation under sub-section (*4*) of Section 21;**

iv. **the procedure while considering the cases by the Disciplinary Committee under sub-section (*2*), and the fixation of allowances of the nominated members under sub-section (*4*) of Section 21B;**

v. **the allowances and terms and conditions of service of the Chairperson and members of the Authority and the manner of meeting expenditure by the Council under Section 22C;**

vi. **the procedure to be followed by the Board in its meetings under Section 28C; and**

vii. **the terms and conditions of service of the Chairperson and members of the Board under sub-section (*1*) of Section 28D**

In addition to the above, the Council is also empowered to make regulations on the following subject matters:

i. **the standard and conduct of examinations under this Act;**

ii. **the qualifications for the entry of the name of any person in the Register as a member of the Institute;**

iii. **the conditions under which any examination or training may be treated as equivalent to the examination and training prescribed for members of the Institute;**

iv. **the conditions under which any foreign qualification may be recognised;**

v. **the manner in which and the conditions subject to which applications for entry in the Register may be made;**

vi. **the fees payable for membership of the Institute and the annual fees payable by associates and fellows of the Institute in respect of their certificates;**

vii. **the manner in which elections to the Regional Councils may be held;**

viii. **the particulars to be entered in the Register;**

ix. **the functions of Regional Councils;**

x. **the training of articled and audit assistants, the fixation of limits within which premia may be charged from articled assistants and the cancellation of articles and termination of audit service for misconduct or for any other sufficient cause;**

xi. **the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;**

xii. **the carrying out of research in accountancy;**

xiii. **the maintenance of a library and publication of books and periodicals on accountancy;**

xiv. **the management of the property of the Council and the maintenance and audit of its accounts;**

xv. **the summoning and holding of meetings of the Council, the times and places of such meetings, the conduct of business thereat and the number of members necessary to form a quorum;**

xvi. **the powers, duties and functions of the President and the Vice-President of the Council;**

xvii. **the functions of the Standing and other Committees and the conditions subject to which such functions shall be discharged;**

xviii. **the terms of office, and the powers, duties and functions of the Secretary and other officers and servants of the Council;**

xix. **any other matter which is required to be or may be prescribed under this Act.**

All regulations made by the Council under this Section require prior publication and approval of the Central Government.

The Central Government is also empowered to give directions to the Council for making regulations under the Act or amending them, by issuing an order in writing, within such period as it may specify in this behalf.

The Section further states that if the Council fails or neglects to comply with the order passed by the Central Government under this Section within the specified time period then the Central Government may make regulations or amend or revoke the regulations made by the Council either in the form specified in the order or with such modifications thereof as the Central Government thinks fit.

Every rule and regulation made under the provisions of this Act and every notification issued under this Act is to be laid before each House of Parliament as soon as it is made or issued. If both the Houses agree in making any modification in the rule, regulation or notification , then the rule, regulation or notification shall have effect in such manner as may be modified by the Parliament. Further, if both Houses agree that the rule, regulation or notification should not be made or issued then the rule, regulation or notification shall have no effect. However any such modification or annulment by the parliament is without prejudice to the validity of anything previously done under that rule, regulation or notification.

The Central Government is also empowered to issue directions to the Council in order to ensure that the Council functions as per the provisions of the Act. The Council is obligated to comply with such directions as may be issued by the Central Government in the discharge of its functions under this Act.

The Central Government may also dissolve the Council if it is of the opinion that the Council has persistently made default in giving effect to the directions issued by the Central Government

under this Section after giving it an opportunity of being heard. Thereafter, the Central Government shall constitute a new Council in accordance with the provisions of this Act with effect from such date as may be decided by it. However, the Central Government shall ensure that a new Council is constituted in accordance with the provisions of this Act within a period of one year from the date of its dissolution.

In case the Central Government issues notification under this Section for the dissolution of the Council then it is required to nominate any person or body of persons not exceeding five members to manage the affairs and discharge all or any of the functions of the Council under this Act, pending the constitution of a new Council.

It is further provided that no suit, prosecution or other legal proceeding shall lie against the Central Government or the Council or the Authority or the Disciplinary Committee or the Tribunal or the Board or the Board of Discipline or the Disciplinary Directorate or any officer of that Government, Council, Authority, Disciplinary Committee, Tribunal, Board, Board of Discipline or the Disciplinary Directorate, for anything which is done in good faith or intended to be done under this Act or any rule, regulation, notification, direction or order made under it.

DIVISION II

THE FIRST SCHEDULE

INTRODUCTION

The First Schedule is divided into 4 parts and spells in detail the various acts and omissions entailing professional/other misconduct, which are dealt with punishment in accordance with Chapter-V of the Act.

Part I deals with professional misconduct in relation to chartered accountants in practice and consists of 12 items. Part II governs professional misconduct in relation to members of the Institute in service and consists of 2 items. Part III defines professional misconduct in relation to members of the Institute generally and comprises of 3 items. The last part, Part IV, deals with other misconduct in relation to members of the Institute generally and comprises of 2 items.

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.

The first schedule differs from the Second Schedule on the basis of gravity of misconduct and quantum of punishment for the misconduct, the First Schedule pertaining to comparably less grave misconduct and lesser punishment.

~~(b) SCHEDULES TO THE ACT:~~

~~5.14 Professional/other misconducts by the members as provided in Schedules~~

~~The expression "*professional or other misconduct*" within the meaning of Section 22 of the Chartered Accountants Act shall be deemed to included 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.*~~

~~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.~~

~~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 implications of the different clauses in the Schedules are discussed below:~~

~~5.15 The First Schedule~~

~~A member *who is* engaged in the profession of accountancy whether in practice or in service should conduct/restrict his action in accordance with the provisions contained in the respective parts of 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.~~

PART I OF THE FIRST SCHEDULE

Professional misconduct in relation to Chartered Accountants in practice

A Chartered Accountant in practice shall be deemed to be guilty of

professional misconduct, if he:-

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

*The above **~~clause~~** **item** 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.*

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

~~Clause~~ Item (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.;*

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

The Council has prescribed (Regulation 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)

~~**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

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 **or legal representative** 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.

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.

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."

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

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, child/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.

In recent years it has become necessary for members to work in association with engineering, **software,** legal or other professionals on specified projects. In such cases, care should be taken by the member not to extend his service beyond the normal sphere of professional practice and any reports or recommendations should clearly delimit the responsibilities assumed and services rendered.

Some of the decisions under this ~~**clause**~~ **item** are given below:

In a decision of the Council, where a Chartered accountant entered into an agreement whereby he had clearly agreed to pay the share in profits of his professional business to the complainant and another person who were not the members of the Institute, it was held that he was guilty of professional misconduct under the ~~**clause**~~ **item.**

(Vadilal V. Shah vs. J.B. Sanghavi - Page 239 of Vol.V of the Disciplinary Cases -decided from 13th to 16th February, 1974).

A Chartered Accountant gave 50% of the audit fees received by him to the complainant, who was not a Chartered Accountant, under the nomenclature of office allowance and such an arrangement continued for a number of years, it was held by the Council that in substance the Chartered Accountant had shared his profits and, therefore, was guilty of professional misconduct under the ~~**clause**~~ **item**. It is not the nomenclature to a transaction that is material but it is the substance of

the transaction which has to be looked into.

(D.S. Sadri vs. B.M Pithawala - page 300 of Vol. V of the Disciplinary cases - decided from 14th to 17th September, 1977)

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

~~**Clause**~~ **Item (3):** *accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute;*

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

Just as a member cannot share his fees with a non-member, he is also not permitted to receive and share the fees of others except for sharing with Member of such professional body or other person having *such* qualification as may be prescribed (Regulation 53A of The Chartered Accountants Regulations, 1988) by the Council f*or the purpose of* ~~***Clause***~~ ***Items** (2), (3) and (5) of Part I of **the** First Schedule **to The Chartered Accountants Act, 1949*** . 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**~~ **item.**

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

~~**Clause**~~ **Item (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.*

The Council has prescribed (Regulation 53 A ~~(3)~~ and 53B of The Chartered Accountants Regulations, 1988) for the persons qualified and the professional bodies **vide Notification No. 1-CA(7) /116/2008 dated 25th September, 2008:-**

"53A. Other professional bodies. – (1) For the purposes of Items (2), (3) and (5) of Part I of the First Schedule to the

Act, a person has to be a member of any of the following professional bodies, namely:-

(a) The Institute of Company Secretaries of India established under the Companies Act, 1980 (No.56 of 1980);

(b) The Institute of Cost and Works Accountants of India established under the Cost and 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.20 of 1972);

(e) The Institute of Actuaries of India established under the Actuaries Act, 2006 (No.35 of 2006).

(2) The membership of the professional bodies or institutions outside India whose qualifications relating to accountancy are recognised by the Council under sub-section (2) of section 29 shall also be taken into consideration for the purposes of Items (2), (3) and (5) of the Part I of the First Schedule to the Act.

(3) For the purposes of Items (2), (3), (4) and (5) of Part I of the First Schedule to the Act, the following shall be the persons qualified in India, namely:-

(i) Company Secretary within the meaning of the Company Secretaries Act, 1980;

(ii) Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959;

(iii) Actuary within the meaning of the Actuaries Act, 2006;

(iv) Bachelor in Engineering from a University established by law or an Institution recognised by law;

(v) Bachelor in Technology from a University established by law or an institution recognised by law;

(vi) Bachelor in Architecture from a University established by law or an institution recognised by law;

(vii) Bachelor in Law from a University established by law or an institution recognised by law;

(viii) Master in Business Administration from Universities established by law or technical institutions recognised by All India Council for Technical Education.

53B. Membership of professional bodies for partnership. – (1) For the purposes of entering into partnership under Item (4) of Part I of the First Schedule to the Act, a person shall be a member of any of the following professional bodies, namely:-

(a) Company Secretary, member, The Institute of Company Secretaries of India, established under the Company Secretaries Act, 1980;

(b) Cost Accountant, member, The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959;

(c) Advocate, member, Bar Council of India established under the Advocates Act, 1961;

(d) Engineer, member, The Institution of Engineers, or Engineering from a University established by law or an institution recognized by law.

(e) Architect, member, The Indian Institute of Architects established under the Architects Act, 1972;

(f) Actuary, member, The Institute of Actuaries of India, established under the Actuaries Act, 2006.

(2) Professional bodies or institutions outside India whose qualifications relating to accountancy are recognised by the Council under sub-section (2) of section 29 of the Act.;

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. 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.

~~**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 item :**~~

~~**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.**~~

~~**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."**~~

~~However,~~ ~~the~~ **The** Council of the Institute at its meeting held in December, 1995 decided to withdraw the ~~above~~ resolution **passed by it in February, 1958 ,** ~~w.e.f. December 8, 1995,~~ ~~In~~ in view of **which** 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. An announcement published in February 1998 issue of the Journal, 'The Chartered Accountant' at page 53 giving effect to the above decision of the Council is appearing as Appendix 'B' to this ~~book~~ **Code**.

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.

An announcement published in May, 1998 issue of the Journal, 'The Chartered Accountant' from pages 93 to 96 giving effect to the above decision of the Council is appearing as **Appendix 'C'** to this ~~Book~~ **Code**.

~~In other words,~~ **Accordingly,** effective from December 8, 1997, no fresh enrolment of persons with the qualifications of any of the above-mentioned institutions, organisations, etc. is permissible.

Based on the above developments, partnership between members of the Institute and members of above foreign professional bodies will not be permissible from the above dates.

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~~ **item** the prohibition on entering into partnership with non-Chartered Accountants was confined to the practice of the profession of Chartered Accountants. The reference to aforesaid judgments is appearing under ~~clause~~ **item** (11) of this ~~book.~~ **Code.**

The decision of the Council under this ~~clause~~ **item** is given below:

Where a Chartered Accountant had engaged himself as a partner in two business firms and Managing Director in two Companies and was also holding Certificate of Practice without obtaining permission of the Institute. Held that he was a guilty of professional misconduct inter alia under ~~Clauses~~ **Items** (4) and (11).

(Harish Kumar in Re:– Pages 286 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001)

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

(Assistant Director of Income Tax (Investment), Calicut v. P. Subramanian (25-CA(G-191)/2003) - to be published later under Disciplinary Cases Volume X -2B–21(4). Council decision of 281st Meeting held in October, 2008)

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

~~**Clause**~~ **Item (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" is a dictum by Marcus Aurelius which though applicable for a man in every walk of life is more so in the case of a professional. 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.

The decision of the Council under this ~~**clause**~~ **item** is given below:

A Chartered Accountant wrote various letters to officers of different Army Canteens giving details about him and his experience, his partner & office and the norms for charging audit fees. He was held guilty for violation of ~~**Clauses**~~ **Items** (5) & (6).

(Jethanand Sharda vs. Deepak Mehta) – Council's decision dated 1st to 4th July, 1998 – Page 61 of Volume VIII(2) of Disciplinary Cases).

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

~~**Clause**~~ **Item (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;

It is an elaboration of the principle propounded in the preceding ~~**clause**~~ **item** enjoining that for securing professional work the help of others should not be sought. This ~~**clause**~~ **item** 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.

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

A little reflection would show that professional work cannot be secured either by advertisement or by circulars or by solicitation. It can only be obtained by a member gradually building confidence in his ability and integrity. The service 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:-

(a) 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 and E-mail address.

(b) Application for empanelment for allotment of audit and other professional work

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

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

(c) Publication of Name or Firm Name by Chartered Accountants in the Telephone or other Directories published by Telephone Authorities or Private Bodies

The Council has held that it would not be proper for a Chartered Accountant to have entries made in a Telephone Directory either by making a special request or by means of an additional payment. The

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

1. The entry should appear in the section/category of 'Chartered Accountants'.
2. The member/firm should belong to the town/city in respect of which the directory is being published.
3. The entry should be in normal type of letters. Entry in bolder type or abnormal type of letters or in a box is not permissible.
4. The order of the entries should be alphabetical and logical.
5. The entry should not appear in a manner giving the impression of publicity/advertisement. Entry should not be given in a manner which gives prominence to it as compared to other entries.
6. The payment, if any, for the entry should not be unreasonable.
7. The entries should not be restricted and should be open to all the Chartered Accountants/firms of Chartered Accountants in the particular city/town in respect whereof the directory is published.
8. Subject to the above conditions, the members can also include their names in trade directories which are published and/or otherwise available such as electronic media e.g. internet, telephone services like "Ask Me Services", **"Just dial',** etc.

(d) Responding to Tenders, Advertisements and Circulars

It is not prohibited to the members to respond to tenders and requests made by users of professional work.

(e) Publication of Books or Articles

A member is not permitted to indicate in a book or an article, published by him, the association with any firm of Chartered Accountants.

(f) Issue of greeting cards or invitations

The Council does not approve of the issue of greeting cards or personal invitations by members indicating their professional designation, status and 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.

(g) Soliciting professional work by making roving enquiries

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

(h) Seeking work from professional colleagues

The issue of an advertisement or a circular by a Chartered Accountant, seeking work from professional colleagues on any basis whatsoever except as provided above would be in violation of this ~~**Clause**~~ **Item**.

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

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.

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

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

(k) Giving public interviews

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

(l) 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**~~ **item .**

(m) Website

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

~~**Website Guidelines**~~

~~(1) The Chartered Accountants and/or Chartered Accountants' Firms would be free to create their own Website subject to the overall guidelines laid down by the Council hereunder. The actual format of the Website is not being prescribed nor any standard format of the Website is being given to provide independence to the Members. There is no restriction on the colours which may be used in the Website.~~

~~(2) Individual Members would also be permitted to have their Web pages in their trade name or individual name.~~

~~(3) The Chartered Accountants and/or Chartered Accountants' Firms would ensure that their Websites are run on a "pull" model and not a "push" model of the technology to ensure that any person who wishes to locate the Chartered Accountants or Chartered Accountants' firms would only have access to the information and the information should be provided only on the basis of specific "pull" request.~~

~~(4) The Chartered Accountants and/or Chartered Accountants' Firms should ensure that none of the information contained in the Website be circulated on their own or through E-mail or by any other mode or technique except on a specific "pull" request.~~

~~(5) The Chartered Accountants would also not issue any circular or any other advertisement or any other material of any kind whatsoever by virtue of which they solicit people to visit their Website. The Chartered Accountants would, however, be permitted to mention their Website address on their professional stationery.~~

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

~~(i) Member/Trade/Firm name.~~

~~(ii) Year of establishment.~~

~~(iii) Member/Firm's Address (both Head Office and Branches)~~

~~Tel. No(s)~~

~~Fax No(s)~~

~~E-mail ID(s)~~

~~(iv) Nature of services rendered (to be displayable only on specific "pull" request)~~

~~(iv) Partners~~

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

~~(vi) Details of Employees –~~

~~Professional~~	~~Others~~	~~Name~~	~~Designation~~	~~Area of experience (to be displayable only on specific "pull" request)~~

~~(vii) Job vacancies for the Chartered Accountant/firm of Chartered Accountants (including articleship).~~

~~(viii) No. of articled **clerks** **assistants**. (to be displayable only on specific "pull" request).~~

~~(ix) Nature of assignments handled (to be displayable only on specific "pull" request). Names of clients and fee charged cannot be given.~~

~~(7) Since Chartered Accountants in practice/firms of Chartered Accountants are not permitted to use logo with effect from 1st July, 1998, they cannot use logo on Website also.~~

~~(8) Display of Passport size photograph is permitted.~~

~~(9) The members may include articles, professional information, professional updation and other matters of larger importance or of professional interest.~~

~~(10) The bulletin boards can be provided.~~

~~(11) The chat rooms can be provided which permit chatting amongst members of the ICAI and between Firms and its clients. The confidentiality protocol would have to be observed.~~

~~(12) The members/firms can provide on line advice to their clients who specifically request for the advice whether free of charge or on payment.~~

~~(13) The listing on suitable search engine should be permitted. However, the field of search should be restricted only to the field~~

~~of "Chartered Accountants" or "CA" or "Indian CA", "Indian CPA", "Indian Chartered Accountant" or any permutation or combination related thereto. The Websites would be subjected to the guidelines contained herein and normally would not be vetted by the Institute of Chartered Accountants of India (ICAI). ICAI at its sole discretion may vet any of the Websites created by its members or individual Chartered Accountant or firms of Chartered Accountants and would have powers to direct deletion of certain portions and/or issue specific directions. In addition, necessary action can be taken in accordance with the Chartered Accountants Act, 1949 and the Regulations framed thereunder, in case there is any violation of the above guidelines.~~

~~(14) The details in the Website should be so designed that it does not amount to soliciting client or professional work. In case any content or technical feature of Website is against the professional Code of Conduct and Ethics as well as the restrictions contained in the schedules to the Chartered Accountants Act, 1949 or against the guidelines or directions issued by ICAI from time to time, appropriate action will be initiated by the ICAI in terms of its disciplinary mechanism either suo motto or on complaint as provided under the Chartered Accountants Act, 1949.~~

~~(15) The Website should ensure adequate secrecy of the matters of the clients handled through Website.~~

~~(16) A number of Chartered Accountants Societies or other bodies are creating data bases of Chartered Accountants or Chartered Accountants' Firms and are offering listing to Chartered Accountants. Such listing would be permitted with or without payment. In case a Chartered Accountant or Chartered Accountants' Firm is a member of a professional body or association or Chamber of Commerce and they offer listing to the members or firm, the same would be permitted.~~

~~(17) The Institute of Chartered Accountants of India will regularly inform the aforesaid guidelines to the members and the Chartered Accountants' Firms to ensure the strict compliance of the guidelines. The guidelines may be revised from time to time.~~

~~(18) No Advertisement in the nature of banner or any other nature will be permitted on the Website.~~

~~(19) The Website should be befitting the profession of Chartered Accountants and should not contain any information or material which is unbecoming of a Chartered Accountant.~~

~~(20) The Website may provide a link to the Website of ICAI, its Regional Councils and Branches and also the Website of Govt./Govt. Departments/Regulatory authorities/other Professional Bodies, such as, American Institute of Certified Public Accountants (AICPA), the Institute of Chartered Accountants of England & Wales (ICAEW) and The Canadian Institute of~~

~~Chartered Accountants (CICA).~~

~~(21) The address of the Website can be different from the name of the firm. But it should not amount to soliciting clients or professional work or advertisement of professional attainments or services. The Website address should be as near as possible to the individual name/trade name, firm name of the Chartered Accountant in practice or firm of Chartered Accountants in practice. The Ethical Standards Board (ESB) of ICAI will decide in case there is any difficulty.~~

~~(22) The Website should mention the date upto which it is updated and the information should not be at material variance from the information as per the ICAI's records.~~

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

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

Solicitation

Where a Chartered Accountant sent a printed card and circular letters soliciting work. - Held, he was guilty under the **~~clause~~ item .**

(M.J. Gadre vs. W.G. Ambekar - Page 43 of Vol. I of the Disciplinary Cases and pages 87-89 of August, 1952 issue of the Institute's journal-judgement delivered on 4th April, 1952)

Where a Chartered Accountant firm issued a letter of authority in favour of two other Chartered Accountants to accept and carry out audits of Co-operative Societies on its behalf and they (the two Chartered Accountants) issued circulars of which the firm was not aware. Held, that the firm was not guilty of professional misconduct.

(V.B. Kirtane in Re: - Page 423 of Vol.III of the Disciplinary Cases and page 465 of January, 1958 issue of the Institute's journal - Judgement delivered on 11th November, 1957)

But the person, in whose favour the letter of authority was given in the above case, was held guilty.

(M.R. Walke in Re: - Page 441 of Vol.III of the Disciplinary Cases and pages 469-470 of January, 1958 issue of the Institute's journal- Judgement delivered on 11th November, 1957)

Where a Chartered Accountant sent an application to the Chairman of a Co-operative Society offering himself for appointment as an auditor. - Held that the infringement was a serious breach of professional ethics.

(G.K. Joglekar in. Re: and D.G. Jawalker in Re:- Pages 429 and 433 of Vol. III of the Disciplinary Cases and pages 466-469 of January, 1958 issue of the Institute's Journal-Judgement delivered on 11th November, 1957)

A letter of request was sent for being appointed as auditor. Held he was guilty.

(B.K. Swain in Re: - Page 134 of Vol. IV of the Disciplinary Cases and pages 356-358 of March, 1960 issue of Institute's Journal - Judgement delivered on 12th February, 1960)

A Chartered Accountant sent a printed circular to a person unknown to him offering his services in profit planning and profit improvement programmes The circular conveyed the idea that it was meant for strangers only. Held, the Chartered Accountant was guilty of professional misconduct under the ~~**clause**~~ **item** as he used the circulars to solicit clients and professional work.

(B.S.N Bhushan in Re: - Page 989 of Vol.IV of the Disciplinary cases decided on 11th & 12th January, 1965)

A Chartered Accountant wrote several letters to the Assistant Registrar of Co-operative Societies, Government of West Bengal stating that though his firm was on the panel of auditors, no audit work was allotted to the firm and requested them to look into the matter. Held the Chartered Accountant was guilty of professional misconduct under the ~~**clause**~~ **item**.

(D.C. Pal in Re: - Page 1001 of Vol. IV of the Disciplinary Cases - decided on 12th, 13th and 14th September, 1966)

A Chartered Accountant wrote several letters to Assistant Registrars/Registrars of Co-operative Societies, Government of West Bengal requesting for allotment of audit work and to enroll his name on panel of auditors. - Held he was guilty of professional misconduct under the ~~**clause**~~ **item**. The activities of the Chartered Accountant went much beyond the instructions of the Council to the effect that

roving enquiries should not be made with the Government Department for empanelling the name unless it had been ascertained in advance that specific panel was being maintained. It was also held that an auditor of co-operative societies under a licence granted by co-operative department was not its employee and, therefore, he could not solicit work.

(Chief Auditor of Co-operative Societies, West Bengal vs. B.B. Mukherjee - Page 1007 of Vol. IV of the Disciplinary Cases - decided on 16th September, 1967)

A Chartered Accountant, inspite of the previous reprimand, sent letters to Registrar, Co-operative Societies, Calcutta, stating that no allotment of audit was made to him and requested to take action immediately and oblige. Held he was guilty of professional misconduct under the ~~**clause**~~ **item**.

(D.N. Das Gupta, Chief Auditor of Co-operative Societies, West Bengal vs. B.B. Mukherjee - Page 1028 of Vol. IV of the Disciplinary Cases-decided on 15th and 16th September, 1969)

A Chartered Accountant approached the Principal of a Secondary school through a third person known to the Principal for his appointment as auditor of that school. Further, the Chartered Accountant misrepresented to the previous Auditor that he had been offered appointment as Auditor of the School and enquired whether he had any objection to his accepting the same though it was a fact that the appointment of Chartered Accountant was not made.- Held, the Chartered Accountant was guilty of professional misconduct under the ~~**clause**~~ **item**. It was further held that writing letter by the Chartered Accountant to the previous auditor offering his services to audit the accounts of School was not wrong as it was an offer to a professional colleague and not to a prospective client.

(M.L. Agarwal in Re: - Page 1033 of Vol. IV of the Disciplinary Cases-decided on 16th and 17th February, 1973)

An assistant of the Chartered Accountant under his authorisation wrote letter to a stranger association requesting for appointment as auditor. Held the Chartered Accountant was guilty of professional misconduct under the ~~**clause**~~ **item**.

(S.N. Mukherji & Co. vs. P.K. Ghosh - Page 273 of Vol.V of the Disciplinary Cases-decided on 20th & 21st February, 1975)

A member was found guilty of professional misconduct under ~~**Clauses**~~ **Items** (6) and (7) of Part I of the First Schedule for having issued circular letter regarding change of address of his firm to persons who were not in professional relationship with him and for having written to the shareholders thanking them for appointing him as auditor. He was reprimanded by the Council under Section 21(4). On an appeal made by him against the order of the Council, the High Court confirmed the order passed by the Council having regard to the ethical requirements

about publicity by the members of the Institute as laid down in the Code of Conduct.

(K.K. Mehra vs. M.K. Kaul - Page 80 of Vol. V of the Disciplinary Cases and pages 189-191 of February, 1976 issue of the Institute's Journal - Judgement delivered on 23rd October, 1975)

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

(a) The advertisement which had been put in by the member is a noticeable one and the profession of Chartered accountancy should maintain high standards of integrity, professional ethics and efficiency.

(b) If soliciting of work is allowed the independence and forthrightness of a Chartered Accountant in the discharge of duties cannot be maintained and therefore some discipline must be maintained by the profession.

(G.P. Agrawal in Re: - Page 14 of Vol. VI(2) of Disciplinary Cases - Judgement dated 30.4.1982).

A member had published an advertisement in a newspaper inviting professional work for accounts writing, Income-tax matters etc. It was held that the insertion of an advertisement of such a nature amounted to soliciting professional work by advertisement and the member was found guilty in terms of this ~~**Clause**~~ **Item.**

(Vallabh C. Shah in Re: - Page 25 of Vol. VI(2) of Disciplinary Cases - Decided from 20th to 23rd April, 1983)

A member had issued a circular letter highlighting his attainments and offering his professional services. He was found guilty in terms of this ~~**Clause**~~ **Item**.

(R.K. Chawla in Re: - Page 61 of Vol. VI(2) of Disciplinary Cases - Decided on 29th, 30th and 31st December, 1987)

A member who got an advertisement published in a newspaper offering his services in matters of Accounts, Income-tax, Labour Laws, law matters and Management Services was found guilty in terms of this ~~**clause**~~ **item** as also under ~~**clause**~~ **item** (7).

(Anil K. Garg in Re: - Page 70 of Vol. VI(2) of Disciplinary Cases - Decided on 29th, 30th and 31st December, 1987)

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

(i) the nature of the advertisement

(ii) the function organised on that occasion

(iii) the persons invited

(iv) the medium used

(v) the names of various concerns which had conveyed their good wishes

(vi) the advertisement having been released by the Respondent himself, and he had solicited professional work by advertisement, he was found guilty in terms of this ~~**clause**~~ **item**.

(Shashindra S. Ostwal in Re: - Page 81 of Vol. VI(2) of Disciplinary Cases - Decided on 11th, 12th and 13th February, 1988)

A member issued a printed circular letter to a Company highlighting the details of his professional attainments and services which he could render in various fields offering his professional services on a contractual basis. He was found guilty in terms of this ~~**clause**~~ **item**.

(Parimal Majumder in Re: - Page 333 of Vol. VI(2) of Disciplinary Cases - Decided on 11th,12th,13th and 14th September, 1989)

A member gave an advertisement in a Newspaper seeking works from other professionals. He was found guilty in terms of this ~~**clause**~~ **item.**

(B.K. Sharma in Re: - Page 340 of Vol. VI(2) of Disciplinary Cases - Decided on 11th, 12th, 13th and 14th September, 1989)

A member wrote a letter to a Company in standard format highlighting his expertise in Sales tax matters and had requested for a draft of Rs. 200/- if his knowledge of the Sales tax matters has been found worthwhile. The member was found guilty in terms of this ~~**Clause**~~ **item**.

(K.A. Gupta in Re: - Page 371 of Vol. VI(2) of Disciplinary Cases - Decided on 18th, 19th and 20th December, 1989)

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

(Bijoy Kumar in Re: - Page 69 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 16th September, 1991)

Where a Chartered Accountant had visited personally the clients for securing the appointment as auditors of the Institutions. Held that he was guilty under ~~**clause**~~ **item** (6) of Part I of First Schedule.

(J.S. Bhati vs. M.L. Aggarwal - Page 87 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 4th & 5th December, 1975 - Judgement dated 30th October, 1991)

Where a Chartered Accountant had addressed an undated but signed

letter to a Bank requesting for empanelment of his firm as auditor alongwith the particulars of his firm showing the past experience and other details of the firm; and a Member of Parliament had also sent a letter to the Bank recommending the name of the said Chartered Accountants firm for immediate empanelling for Internal Audit/Inspection Audit/Management Audit, Expenditure Audit. Held that the member was guilty under ~~**clause**~~ **item** (6) of Part I of the First Schedule.

(Naresh C. Agarwal in Re: - Page 160 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 16th to 18th July, 1992)

Where a Chartered Accountant had published an advertisement in two newspapers mentioning that he was a Senior Chartered Accountant having administrative ability and was available on retainership for setting up Accounts Department/Internal Auditing/Finance Management. Held that he was guilty under the ~~**clause**~~ **item**.

(D.M. Kothari in Re: - Page 253 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 5th to 7th August, 1993)

Where a Chartered Accountant had issued undated and unsigned cyclostyled inland letter containing the name & address of his firm and also bearing his firms rubber stamp with address on its reverse in the space earmarked for senders name and address seeking audit assignment from a Cooperative Society. Held that the member was guilty under the ~~**clause**~~ **item.**

(V.M.Chhallani in Re: - Page 262 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 5th to 7th August, 1993)

Where a Chartered Accountant had sent a letter on the letterhead of his firm to a non-member introducing himself as a Chartered Accountant giving details of services rendered by him and the schedule of his fees for rendering various kinds of services. Held that he was guilty under the ~~**clause**~~ **item**.

(V.K. Goel in Re: - Page 340 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 5th to 7th December, 1994)

Where a Chartered Accountant had written a letter to a Co-operative Society wherein he had mentioned that he had been authorised by the Registrar of Societies to conduct the statutory audit of the Societies and requested it to contact him. Held that it tantamounts to solicitation of the audit and he had violated the provisions of the ~~**clause**~~ **item**.

(M.V. Lonkar in Re: - Page 410 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 23rd & 24th February, 1996)

Where a Chartered Accountant had solicited clients and professional work by personal communication as also by enclosing a circular with his communication, utilized the influence of a Minister as well as created political pressure to secure professional work, etc. Held he was guilty under the ~~**clause**~~ **item**.

(K. Bhattacharjee vs. B.K. Chakraborty - Page 462 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 11th to 13th February, 1988 and Judgement dated 10th June, 1996 dismissing appeal filed by the Respondent)

A Chartered Accountant had issued a letter to a shareholder of a Company informing him about his eligibility for appointment as statutory auditor of any Company and the said shareholder had forwarded the aforesaid letter of the Chartered Accountant to the Company proposing the Chartered Accountant's appointment as auditor, as a special notice under Section 225 read with Section 224(2)(d) of the Companies Act, 1956. The Company had informed the shareholder that it could not take any action on his letter as the Chartered Accountant's certificate in terms of Section 224(1) of the Companies Act had not been received. The Chartered Accountant had directly written to the Complainant Company certifying that the appointment, if made, would be in accordance with the limits specified in Section 224(1B) of the Companies Act. Besides the above Company, other 9 Companies had also received such notices under Section 225 of the Companies Act. It was held by the Council that he was guilty under ~~**clause**~~ **item** (6). The Council decided that his name be removed from the Register of Members for a period of one month. He appealed against the decision of the Council to the High Court. The High Court allowed the appeal in part. While upholding the finding of the Council that he was guilty of committing professional misconduct, the Court modified the punishment awarded to him by substituting the same with a censure that he shall be careful in future in observing the high tradition and best standards of the noble profession of Chartered Accountants.

(V.K. Goenka, VC & MD, Warren Tea Ltd. vs. P.K. Lodha - Page 588 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 6th to 8th December,1995 and judgement of the High Court dated 29th August, 1996)

A Chartered Accountant had addressed a letter to the Managing Director of a Company seeking appointment as its internal auditor. He had stated that he was of the bona fide belief that the Company might be maintaining a panel of Chartered Accountants for assigning the internal audit work. He was held guilty for violation of ~~**clause**~~ **item** (6).

(P.G. Biswas in Re:- Page 790 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 8th to 10th December, 1997).

A Chartered Accountant wrote various letters to officers of different Army Canteens giving details about him and his experience, his partner & office and the norms for charging audit fees. He was held guilty for violation of ~~**Clauses**~~ **Items** (5) & (6).

(Jethanand Sharda vs. Deepak Mehta – Council's decision dated 1st to 4th July, 1998 – Page 61 of Vol. VIII(2) of Disciplinary Cases).

A Chartered Accountant sent New Year Greeting Cards bearing his name, qualification, the name and address of his firm and also containing the following:

"List of super hit books written by Suresh D. Chauhan. Guide to win girls – Income-Tax raid. Contact for any type of bank for institutional loans or deposits". Held that the Chartered Accountant contravened ~~**Clause**~~ **Items** (6) & (7) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 in having solicited assignment relating to any type of bank or institutional loans or deposits.

(S.D. Chauhan in Re. – Page 226 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 1st - 3rd August, 2001)

The Souvenir published on the occasion of "Navaratrotsav" by 'Parel Paschim Vibhag Va Tata Mills Welfare Centre 1991' contained an advertisement with a caption "With best compliments from Abhiraj R. Ranawat B.Com., A.C.A. (Chartered Accountant) Share and Stock Sub-Broker. The said advertisement also contained office timing 8 A.M. to 10 A.M., telephone nos. of market and residence and addresses of office and market. Arising out of the above, the Respondent was, inter alia, held guilty in having published his designation as Chartered Accountant with telephone nos., office address etc. in the Souvenir for soliciting professional work directly or indirectly in violation to ~~**Clause**~~ **Item** (6).

(A.R. Ranawat in Re:- Page 414 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 26th to 28th August, 2001)

A Chartered Accountant had issued the following advertisements in "Hindustan Times" –

"Experienced C.A. having Posh Office with telephones, Computer, Telex, Car, Qualified Staff available for taxation, Company Law, Accounts, Internal control, Financing from banks and institutions, contact phone ……." By issuing the above advertisement, the Respondent has tried to (i) Solicit clients of professional work either directly or indirectly, (ii) Advertised his professional attainments of services in violation of ~~**Clause**~~ **Items** (6) & (7) Part I of First Schedule to the Chartered Accountants Act, 1949. Held that he was guilty of professional misconduct under the said ~~**Clauses**~~ **Items.**

(Rajeev Sharma in Re:- Pages 454 of Volume VIII (2) of Disciplinary Cases – Council's decision dated 26th to 28th August, 2001)

A Chartered Accountant issued circular/letter to Chartered Accountants/firms of Chartered Accountants outside Kanpur. In the said circular, while offering his services, the details regarding expenses to be incurred and fees to be charged by him for rendering professional services etc. were also mentioned. Held that he was guilty of professional misconduct under the ~~**Clause**~~ **Item.**

(Sanjeev Srivastava in Re: – Page 249 Vol. IX-2A-21(4) of Disciplinary Cases – Council's decision dated 11th to 13th November 2002)

Where a Chartered Accountant approached the Chairman of an Institution and offered to accept the audit of said Institution. Held that he was inter alia guilty of professional misconduct within the meaning of ~~**Clause**~~ **Item** (6) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(L.K. Kathare vs. G. Sreenivasa – to be published in Volume of Disciplinary Cases – Page 784 Vol. X-2A-21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September 2003)

The Respondent issued circular offer to a Govt. Agency, antedated in the nature of offer-cum-appointment seeking letter/circular tantamounting to enquiries, advertisement and soliciting the work. It is noteworthy that the above letter of the Respondent did not indicate reference of any enquiry by the Agency in response to which the said offer was made. The Respondent had used his acquaintance with the then Chairman/D.M. of the Agency for fetching the assignment, ignoring the recommendations of original committee and influencing the subordinate officers for changing the recommendation in favour of the Respondent. The said act of the Respondent amounted to solicitation of work. Held that the Chartered Accountant is guilty of professional misconduct within the meaning of ~~**Clause**~~ **Item** (6) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(A.K. Gupta of M/s G.P. Jaiswal & Co. vs. Habibullah – Page 110 Vol.X-2B-21(4) of Disciplinary Cases – to be published in Volume of Disciplinary Cases – Council's decision dated 15th to 17th April, 2004)

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

~~**Clause**~~ **Item (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;*

This ~~**clause**~~ **item** 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 6 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.

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

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".

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

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. However in the Website, the year of establishment can be given on the specific "pull" request.

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

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.

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

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.

It is not proper for a Chartered Accountant 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**~~ **Item** (6).

The name, description and address of member (or firm) may appear in any directory or list of members of a particular body in which the names are listed alphabetically. For a specialised directory or a publication such as a "Who's Who" (including those compiled on purely local basis), a member should use his discretion in supplying information, bearing in mind the nature and purpose of the publications. In addition to his name,

description and address and those of his firm, a member may give where appropriate, 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. ~~**Refer Council Guidelines Chapter 3 of the book.**~~

Detailed directions of the Council in regard to publication of Name or Firm Name by Chartered Accountants in the Telephone or other Directories published by Telephone Authorities or Private Bodies are published under ~~**Clause**~~ **Item** (6).

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

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.

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 ~~**clerks**~~ **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.

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

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.

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.

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.

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.

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

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. Use of glow signs or lights on large-sized boards as is used by traders or shop-keepers would not be proper. A member can have a name board at the place of his residence with the designation of a Chartered Accountant, provided it is a name plate or name board of an individual member and not of the firm.

The Council'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**~~ **Items** (6) and (7) of Part I of the First Schedule to the Chartered Accountants Act**, 1949.**

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.

The Council has permitted Network amongst the firms registered with the Institute. **In accordance with the Networking guidelines of the Institute ,** ~~**A**~~ **a** Network is neither permitted to advertise nor to use logo. The firms constituting a Network are permitted to use the words "Affiliates/Members of ……." (a Network of Indian CA 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. Members attention is drawn to the announcement hosted in the website of the Institute and published in February 2005 issue of the Journal in this regard.

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. Accordingly, an announcement was published in October 1995 issue of Journal at page 66.

Subsequent to above, the Institute came across cases of registration of firm name in circumvention of the provisions contained in the Regulation

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

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

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 has come up with a new unique logo for its members. The new logo has been drastically designed to display the dynamism of the profession in the modern times. 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 detailed guidelines on use of logo by members as issued by the Council are provided in Division VII of the Code of Professional Ethics.

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

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 'D'** to this ~~**book**~~ **Code** .

The decisions of the Council/High Courts on this ~~**clause**~~ **item** are given below:

Where a Chartered Accountant used the designation 'Incorporated Accountant, London' and 'Registered Accountant, India', in the Balance Sheet and also failed to report to the shareholders in the prescribed form under the Banking Companies Act - Held the Chartered Accountant was guilty of the two charges. The word 'member' in Section 21 of the Act should be construed as including a past member for the purpose of enquiry, as what was required was membership at the time of the commission of the alleged misconduct.

(Mirza M. Hussain in Re: - Page 24 of Vol. II of the Disciplinary Cases and pages 26-29 of July, 1955 issue of the Institute's Journal- Judgement delivered on 10th May, 1955).

A Chartered Accountant used the designation 'Industrial and Management Consultant' in addition to the designation 'Chartered Accountant' on printed circular sent to a stranger. Held, he was guilty of professional misconduct under the ~~**clause**~~ **item**.

(B.S.N. Bhushan in Re: - Page 989 of Vol.IV of the Disciplinary Cases- decided on 11th and 12th January, 1965).

A Chartered Accountant wrote several letters to Government Department, inter alia, pointing out seniority of his firm, sending his life sketch and stating that he had a glorious record of service to the country as well as to the organisation of accountancy profession with a view to get the audit work. These letters were clearly in the nature of advertising professional attainments. - Held, he was guilty of professional misconduct under the~~ **clause**~~ **item**.

(Sirdar P.S. Sodhbans in Re: - Page 1022 of Vol. IV of the Disciplinary Cases - decided on 13th and 14th March, 1969).

Where a Chartered Accountant in his firm's letter head had used the designation 'Manager (Liaison & Sales)'. Held that he was guilty under ~~**clause**~~ **item** (7) of Part I of the First Schedule.

(Bijoy Kumar in Re: - Page 69 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 16th September, 1991).

Where a Chartered Accountant had issued two insertions in a Journal published by a Chamber of Commerce offering various services and expressing his willingness to offer the concession in respect of all services offered by him. Held that he was guilty under ~~**clauses**~~ **items** (6) & (7).

(N.O. Abraham Isaac Raj in Re: - Page 117 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 9th to 11th April, 1992).

Where a Chartered Accountant had addressed a letter to the Managing Director of a Company offering his services as a practising Chartered Accountant and giving impression that the letter had been addressed to more than one organisation for the above purpose, it was held that the member had contravened the provisions of ~~**clauses**~~ **items** (6) & (7).

(Yogesh Gupta in Re: - Page 400 of Vol.VII(2) of Disciplinary Cases - Council's decision dated 23rd & 24th February, 1996)

Where a Chartered Accountant had used the designation and expression other than the Chartered Accountant, mentioned his experience as General Manager of a Cooperative Bank, expressed himself as President and Chief Executive of an Institute in his professional documents and had depicted religion and politics in his letterheads and letters for professional attainments. Held he was guilty under ~~**clause**~~ **item** (7).

(K. Bhattacharjee vs. B.K. Chakraborty - Page 462 of Vol.VII(2) of Disciplinary Cases - Council's decision dated 11th to 13th February, 1988 and Judgement dated 10th June, 1996 dismissing appeal filed by the Respondent).

A Chartered Accountant had published a classified advertisement in a newspaper saying that his services as Chartered Accountant were available for various types of work. The advertisement contained his name, designation as Chartered Accountant and also details of the services rendered by him. He was held guilty of violation of ~~**Clauses**~~ **Items** (6) & (7).

(S.C. Gupta in Re: - Page 618 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 5th to 6th December, 1996).

A Chartered Accountant had issued an advertisement in a newspaper, saying that he was available for various types of work. By issuing the said advertisement, he had tried to (i) solicit clients or professional work either directly or indirectly, and (ii) advertise his professional attainments or services. Even though there was no direct evidence to prove the guilt on his part, yet his non-cooperative attitude in facing the enquiry, the enquiries by the Institute's office, the evidence tendered by the witness and the replies of the Respondent made the Council to hold him guilty under ~~**Clauses**~~ **Items** (6) & (7). It was held that he had, in fact, been instrumental in issuing the impugned advertisement with a view to solicit clients and had also advertised the professional services offered by him.

(S.C. Gupta in Re: - Page 628 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 5th to 6th December, 1996).

A Chartered Accountant sent New Year Greeting Cards bearing his name, qualification, the name and address of his firm and also

containing the following:

"List of super hit books written by Suresh D. Chauhan. Guide to win girls – Income-Tax raid. Contact for any type of bank for institutional loans or deposits". Held that the Chartered Accountant contravened ~~**Clause**~~ **Items** (6) & (7) of Part-I of the First Schedule in having solicited assignment relating to any type of bank or institutional loans or deposits.

(S.D. Chauhan in Re: – Page 226 of Vol.VIII(2) of Disciplinary Cases – Council's decision dated 1st - 3rd August, 2001)

Where the Respondent used the designation "Share and Stock Sub-broker" alongwith the designation of "Chartered Accountant" violating inter alia provisions of this ~~**clause**~~ **item**.

(A.R. Ranawat in Re: - Page 414 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 26th to 28th August, 2001)

A Chartered Accountant had issued the following advertisements in "Hindustan Times" –

"Experienced C.A. having Posh Office with telephones, Computer, Telex, Car, Qualified Staff available for taxation, Company Law, Accounts, Internal control, Financing from banks and institutions, contact phone ……." By issuing the above advertisement, the Respondent has tried to (i) solicit clients of professional work either directly or indirectly, (ii) advertised his professional attainments of services in violation of ~~**Clause**~~ **Items** (6) & (7) Part I of the First Schedule.

(Rajeev Sharma in Re: - Page 454 of Vol.VIII(2)of Disciplinary Cases – Council's decision dated 26th to 28th August, 2001)

Where a Chartered Accountant advertised services and used designations/expression other than "Chartered Accountant" in professional stationery. Held that he was inter alia guilty of professional misconduct under the ~~**Clause**~~ **Item** (7) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Sri Nath Prasad vs. Vineet Aggarwal – Page 23 Vol. IX-2B-21(4) of Disciplinary Cases – Council's decision dated 2nd to 4th February, 2004)

A Chartered Accountant firm was working as Recovery Agent for Housing Finance Company without taking any permission from the Council to engage in any work other than the profession of Chartered Accountancy. The Respondent had written a letter to the Complainant for recovery of money wherein he represented himself as an agent of LIC housing Finance Ltd. He intimidated the Complainant with harsh and coercive method of recovery. Held that the Respondent is guilty under ~~**clauses**~~ **items** (7) & (11) of Part I of First Schedule.

(Yogesh Kumar Sharma v. O.P. Maheshwari of M/s O.P. Maheshwari & Co. (25-CA(212)/2003). - to be published later under Disciplinary Cases Volume X-2B–21(4). Council decision of 281st Meeting held in

October, 2008)

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

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

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

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.

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, 1956 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 224 and 225 of the Companies Act as mentioned in **~~Clause~~ Item** (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, 1956 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 **Chapter II of Division VI of this Code .~~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 or the auditor shall be considered as " undisputed" audit fee and " sick unit" shall mean where the net worth is negative.*

In the last case, however, he may accept the audit if he is satisfied that the attitude of the retiring auditor was not proper and justified. If, on the other hand, he feels that the retiring auditor 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.

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.

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

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

The view taken by the Council has been confirmed in a decision by the Rajasthan High Court in J.S. Bhati 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."

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

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

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

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

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

The Council has taken the view that it is not obligatory for the auditor appointed to conduct a Special Audit under Section 233A of Companies Act, 1956 to communicate with the previous auditor who had conducted the regular audit for the period covered by the Special Audit.

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

1. The requirement for communicating with the previous auditor being a Chartered Accountant in practice would apply to all types of audit viz., statutory audit, tax audit, internal audit, concurrent audit, **VAT Audit** or any other kind of audit **to be carried out by a chartered accountant , prescribed under any statute**.
2. Various doubts have been raised by the members about the terms "audit", "previous auditor", "Certificate" and "report", normally while interpreting the aforesaid Clause (8). These terms need to be clarified.
3. As per para 2 of the Institute's publication viz. Standard on Auditing (SA) 200, "Basic Principles Governing an Audit", an "audit" is the independent examination of financial information of any entity, whether profit oriented or not, and irrespective of its size or legal form, when such an examination is conducted with a view to expressing an opinion thereon.
4. The term "previous auditor" means the immediately preceding auditor who held same or similar assignment comprising same/similar scope of work. 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.
5. As explained in para 2.2 of the Institute's publication viz., 'Guidance Note on Audit Reports and Certificates for Special Purposes', a

"certificate" is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion. A "report", on the other hand, is a formal statement usually made after an enquiry, examination or review of specified matters under report and includes the reporting auditor's opinion thereon. Thus, when a reporting auditor issues a certificate, he is responsible for the factual accuracy of what is stated therein. On the other hand, when a reporting auditor gives a report, he is responsible for ensuring that the report is based on factual data, that his opinion is in due accordance with facts, and that it is arrived at by the application of due care and skill.

6. A communication is mandatorily required for all types of audit/report where the previous auditor is a Chartered Accountant. For certification, it would be healthy practice to communicate. In case of assignments done by other professionals not being Chartered Accountants, it would also be a healthy practice to communicate.

7. Although the mandatory requirement of communication with previous auditor being Chartered Accountant applies, in uniform manner, to audits of both government and non-government entities, yet in the case of audit of government 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.

The decisions of the Council/High Court on this matter are briefly given in the following paragraphs:-

Where a Chartered Accountant failed to communicate in writing with the previous auditor of his appointment as auditor of a Co-operative Bank and such omission was not intentional-Held that the breach was only technical and that it was open to the High Court to award a lesser punishment than removal of a member.

(S.V. Kharwandikar vs. D.K. Borkar - Page 113 of Vol.I of the Disciplinary Cases and page 236 of November, 1952 issue of the Institute's Journal-Judgement delivered on 18th August, 1952).

A chartered Accountant commenced the work of audit on the very day he sent letter to the previous auditor - Held, he was guilty of

professional misconduct under the ~~clause~~ **item**. The appointment could be accepted only when the outgoing auditor does not respond within a reasonable time.

(S.N. Johri vs. N.K. Jain - Page 1042 of Vol.IV of the Disciplinary Cases - decided on 13th, 14th & 15th September, 1973).

A Chartered Accountant sent a registered letter to the previous auditor after the commencement of the audit by him. - Held he was guilty of professional misconduct under the ~~clause~~ **item**.

(Radhe Shyam vs. K.S. Dubey - Page 234 of Vol. V of the Disciplinary Cases - decided on 15th & 16th February, 1974).

A Chartered Accountant commenced the audit within five days of the date of his appointment without sending any communication to the previous auditor. The previous auditor also denied the receipt of any communication - Held he was guilty of professional misconduct under the ~~clause~~ **item**.

(S.B. Chidrawar vs. C.K. Rao - Page 251 of Vol. V of the Disciplinary Cases - decided on 19th & 20th July, 1974).

A Chartered Accountant had sent a communication to the previous auditor under certificate of posting without obtaining any acknowledgement thereof. The Council held the member guilty in terms of this ~~Clause~~ **Item**.

On an appeal made by the member, the High Court observed that the expression "in communication with" when read in the light of the instructions contained in the booklet "Code of Conduct" could not be interpreted in any other manner but to mean that there should be positive evidence of the fact that the communication addressed to the outgoing auditor had reached his hands. Certificate of Posting of a letter could not in the circumstances be taken as positive evidence of its delivery to the addressee.

(M.L. Agarwal vs. J.S. Bhati - Page 65 of Vol. V of the Disciplinary Cases and pages 305-307 of November, 1975 issue of the Institute's Journal - Judgement delivered on 29th August, 1975).

A Chartered Accountant sent under postal certificate, letters to the previous auditor before appointment and also before commencement of audit by him but there was no proof that they were received by the previous auditor. - Held he was guilty of professional misconduct under the ~~clause~~ **item**. The communication was not proper within the meaning of the words Communication with occurring in the ~~clause~~ **item**.

(Mehra Khanna & Co. vs. Man Mohan Mehra - Page 292 of Vol.V of the Disciplinary Cases - decided on 22nd & 23rd December, 1976).

A Chartered Accountant sent a letter by ordinary post to the previous auditor after the acceptance of the audit assignment. Moreover, no evidence was produced to show that the said letter was either sent to

or was received by the previous auditor. - Held he was guilty of professional misconduct under the ~~clause~~ **item** as the same amounts to non-communicating with the previous auditor.

(K.K. Sud vs. K.N. Chandla - Page 306 of Vol. V of the Disciplinary Cases - decided on 27th, 28th & 29th October, 1978).

A member sent under Certificate of posting a letter to the previous auditor before accepting his appointment as the auditor of a society but there was no proof that the said letter was received by the previous auditor. He was found guilty in terms of this ~~Clause~~ **Item** because a mere posting of a letter under certificate of posting is not sufficient to establish communication with the retiring auditor unless there is some other evidence to show that the letter has in fact reached the person communicated with.

(A.K. Todani vs. A.P. Bhadani - Page 177 of Vol.VI(2) of Disciplinary Cases - Decided on 15th, 16th and 17th December, 1988)

The provision of ~~Clause~~ **Item** (8) requiring a communication with the previous auditor is absolute and applicable even in respect of appointment by the Government agencies and even in cases where the member is aware that the previous auditor had been made aware of the appointment.

(Rajeev Kumar vs. R.K. Agrawal - Page 143 of Vol. VI(2) of Disciplinary Cases - Decided on 15th, 16th and 17th December, 1988).

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

(i) if there is evidence that a communication to the previous auditor had been by R.P.A.D.

(ii) if there was positive evidence about delivery of the communication to the previous auditor.

In the absence of both, the member should be found to have contravened this ~~Clause~~ **Item .**

(R.M. Singhai & Associates vs. R.V. Agarwal - Page 155 of Vol. VI(2) of Disciplinary Cases - Decided on 15th, 16th and 17th December, 1988)

A member sent "under Certificate of posting" letter to the previous auditor before accepting the audit of a charitable society. He could not produce any conclusive evidence that the said letter was received by the previous auditor. Mere posting of a letter "under Certificate of posting" is not sufficient to prove communication with the retiring auditor unless there is other evidence that the letter has in fact reached the person communicated with. He was found guilty in terms of this ~~Clause~~ **Item .**

(J. Patnaik vs. Y. Pani - Page 219 of Vol. VI(2) of Disciplinary Cases - Decided on 5th, 16th and 17th December, 1988).

A member sent "under Certificate of posting" letter to the previous auditor before accepting the tax audit of a partnership firm. But there

was no proof that the said letter was received by the outgoing auditor. He was found guilty in terms of this ~~**Clause**~~ **Item** because a mere posting of a letter "under certificate of posting" is not sufficient to establish communication with the retiring auditor unless there is some other evidence to show that the letter has in fact reached the person communicated with.

(S.K. Jain vs. D.K. Karmakar - Page 348 of Vol. VI(2) of Disciplinary Cases - Decided on 11th, 12th, 13th and 14th September, 1989)

Where a Chartered Accountant had conducted tax audit of a firm without first communicating in writing with the Complainant, who was the previous tax auditor of the said firm. Held that he was guilty under the ~~**clause**~~ **item**.

(V.A. Parikh vs. R.I. Galledar - Page 19 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 6th to 8th June, 1991).

Where a Chartered Accountant had accepted a position as auditor of a co-operative bank previously held by the Complainant without first communicating with him in writing before accepting the audit. Held that he was guilty under the ~~**clause**~~ **item**.

(D.H. Firke vs. L.B. Jadhav - Page 26 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 6th to 8th June, 1991).

Where a Chartered Accountant had not replied to two letters which were sent to him and had conducted the audits without communicating with the Complainant in writing. Held that the member was guilty under the ~~**clause**~~ **item**.

(V.K. Gupta vs. A.K. Jain - Page 49 of Vol.VII(2) of the Disciplinary Cases – Council's decision dated 16th September, 1991).

Where a Chartered Accountant had not communicated with the Complainant before accepting the appointment as auditor of a school. Held that he was guilty under the ~~**clause**~~ **item**.

(J.S. Bhati vs. M.L. Aggarwal - Page 87 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 4th & 5th December, 1975 and Judgement dated 30th October, 1991 of Rajasthan High Court)

Where a Chartered Accountant had accepted the position as an auditor of two Companies previously held by the Complainant without first communicating with him in writing. Held that he was guilty under the ~~**clause**~~ **item**.

(S.K. Kansal vs. S.L. Gupta - Page 131 & 141 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 16th to 18th July, 1992).

Where a Chartered Accountant had accepted the audit of a firm under Section 44AB of the Income-tax Act without first communicating with the Complainant. Held that he was guilty under the ~~**clause**~~ **item**.

(M.R. Daga vs. R.K. Vora - Page 174 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 25th to 27th September, 1992).

Where a Chartered Accountant had accepted the position as tax auditor of a Company and as statutory auditor of another Company previously held by the Complainant without first communicating with the Complainant in writing. Held that he was guilty under the ~~clause~~ **item**.

(Naresh H. Kumbhani vs. P.V. Dalal - Page 272 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 24th to 26th November, 1993).

Where a Chartered Accountant had accepted the position as a statutory auditor of a Company without first communicating in writing with the Complainant's Firm which was the previous auditor. Held that he was guilty under the ~~clause~~ **item**.

(Naresh H. Kumbhani vs. P.V. Dalal - Page 309 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 24th to 26th November, 1993).

A Chartered Accountant accepted the tax audit work of a unit of a State Textile Corporation, for the assessment years 1986-87 and 1987-88 under Section 44AB of the Income-tax Act, 1961, without communicating with the Complainant who had done the work for assessment year 1985-86. Although the tax audit report of the Assessment Year 1985-86 was signed much later, yet there was no doubt that the Complainant was holding the position of the tax auditor of the said unit, on the date of appointment of the said Chartered Accountant for the next two years viz., 1986-87 and 1987-88. Accordingly, it was incumbent upon him to communicate with the Complainant before accepting the tax audit of the Corporation as a whole for the assessment years 1986-87 and 1987-88. Therefore, he was held guilty under ~~Clause~~ **Item** (8).

(M.S. Padmanabhan Nair vs. R. Chidambaram - Page 501 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 5th to 6th December, 1996).

It was alleged that the Respondent had obtained the work of internal audit of a club by personal communication and personal visits. Also, he had accepted the position of Internal Auditor of the said club without having made any communication in writing with the Complainant. The charge of solicitation of professional work could not be proved. Since he had accepted the appointment as Internal Auditor of the club before he sent the letter of communication under Certificate of Posting, he was held guilty under the ~~Clause~~ **Item.**

(N.C. Bhargava vs. Akshay Kumar - Page 636 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 16th to 18th January, 1997).

A Chartered Accountant conducted the tax audit of a unit without first communicating with the retiring auditor and the same was admitted by him during the course of enquiry. He was held guilty under ~~Clause~~

Item (8).

(M.L. Agarwal vs. N.K. Gupta - Page 800 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 8th to 10th December, 1997).

The Complainant, a Chartered Accountant alleged that the Respondent had accepted the position as auditor of a Company: (i) without first ascertaining whether the requirements of Section 224 and 225 of the Companies Act, 1956 in respect of such appointment had been duly complied with; (ii) without communicating with him in writing in respect of such appointment; and (iii) in such conditions as to constitute under-cutting. He was held guilty under ~~**Clause**~~ **Item** (8) and not guilty under ~~**Clauses**~~ **Items** (9) and (12).

(Anil M. Parikh vs. K. Narayanan – Council's decision dated 1st to 4th July, 1998 – Page 26 of Volume VIII(2) of Disciplinary Cases).

A Chartered Accountant accepted the tax audit assignment of a private medical agency without first communicating with the Complainant, the previous auditor. The Council held him guilty under ~~**Clause**~~ **Item** (8).

(Hariom Agarwal vs. Sukhdev Madnani - Council's decision dated 4th to 6th September, 1995 and 1st to 4th July, 1998. Page 50 of Volume VIII(2) of Disciplinary Cases).

Where a Chartered Accountant accepted the appointment as auditor without first communicating with the previous auditor and without first ascertaining from the Company whether the requirement of Sections 224 & 225 of the Companies Act, 1956 had been duly complied with. Held that he was guilty under the ~~**Clauses**~~ **Items** (8) & (9).

(Lalit K. Gupta of M/s Lalit K. Gupta & Co. vs. Ajay Bansal – Page 145 of Vol.VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001)

Where a Chartered Accountant accepted audit of three Companies without first communicating in writing with the previous auditor. He also accepted the audit without ascertaining whether the provisions of Section 225 of the Companies Act, 1956 had been complied with. Held that he was guilty of professional misconduct under the ~~**Clauses**~~ **Items** (8) & (9).

(J.R. Kakadiya vs. M.S. Chokshi – Page 179 of Vol. VIII (2) of Disciplinary Cases – Decision of the Council dated 1st to 3rd August, 2001)

Two Chartered Accountants accepted and conducted statutory audit and tax audit of three entities without first communicating with the previous auditor. The Respondents had sent Communication through 'Certificate of Posting' as against the required mode of sending it through registered A.D. prescribed by the Council. Held that the Respondents were guilty of professional misconduct under the ~~**Clause**~~ **Item.**

(V.K. Khanna vs. Rakesh K. Mehrotra & Deepak Seth – Page 207 of

Vol. VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001)

Where a Chartered Accountant accepted tax audit without communicating with the previous auditor. Held that he was guilty of professional misconduct under ~~**Clause**~~ **Item** (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Ms. Urmila Atul Shah vs. R. P. Sharma.- Page 303 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001)

Where a Chartered Accountant accepted the tax audit and communicated with the previous auditor after completing the same. Thus, proper communication was not made by the Respondent with the previous auditor within the time. Held that he was guilty of professional misconduct under the ~~**Clause**~~ **Item**.

(Kamlesh K. Agarwal vs. Pawan K. Agarwal - Pages 391 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001)

Where a Chartered Accountant accepted the position as auditor of Army Canteen without prior communication in writing with the previous auditor. Held that he was guilty of professional misconduct under the ~~**Clause**~~ **Item**.

(Jethanand Sharda vs. Deepak Mehta - Pages 403 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001. Also published in the December 2002 issue of Institute's journal at page 628)

Where a Chartered Accountant accepted the position as auditor without first ascertaining from the Company as to whether the provisions of Section 224 (7) of the Companies Act were complied with and without first communicating with the previous auditor of the Company. Held that he was inter alia guilty of professional misconduct under ~~**Clauses**~~ **Items** (8) & (9) of the First Schedule of the Chartered Accountants Act, 1949.

(M/s Jha & Associates vs. S. Dhar - Page 466 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 6th to 8th December, 2001)

Where a Chartered Accountant accepted and conducted the audit without first communicating with the previous auditor. Held that he was guilty of professional misconduct under ~~**Clause**~~ **Item** (8) of the First Schedule to the Chartered Accountants Act, 1949.

(N.C. Kumbhat of M/s N.C. Kumbhat & Co. vs. N. Banerjee - Page 505 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 6th to 8th December, 2001)

A Chartered Accountant had accepted position of Tax Auditor without communicating with the previous auditor. Held that the Respondent was guilty of professional misconduct falling within the meaning of ~~**Clause**~~ **Item** (8) of Part I of the First Schedule to the Chartered

Accountants Act, 1949.

(S.K. Sharma vs. Rajendra Bajaj – Page 1 of Vol.IX-2B-21(4) of Disciplinary Cases – Council's decision dated 2nd to 4th July, 2002)

A Chartered Accountant accepted statutory audit of a private limited Company without first ascertaining from the Company whether the requirements of Section 225 of the Companies Act, 1956 in respect of such appointment, have been duly complied with. He also accepted the audit of the Company without making any communication with the previous auditor and completed and signed the audit report. Held that he was inter alia guilty of professional misconduct under the ~~**Clauses**~~ **Items** (8) and (9).

(M.K. Banerjee of M/s M. Banerjee & Company vs. Bhaskar Maitra - Page 83 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 11th to 14th September, 2002)

Where a Chartered Accountant accepted a position as auditor of a school without first communicating in writing with the previous auditor while the Respondent claim to have sent the letter, no letter was received by the complainant. In spite of repeated efforts of postal authorities the Respondent did not accept the Registered A.D. letters from the complainant. Held that he was guilty of professional misconduct under the ~~**Clause**~~ **Item**.

(D.R. Soni vs. H.L. Joshi - Page101 Vol.IX-2B-21(4) of Disciplinary Cases – Council's decision dated 11th to 14th September 2002)

Where a Chartered Accountant accepted the audit without communicating with the previous auditor. Held that he was guilty of professional misconduct within the meaning of ~~**Clause**~~ **Item** (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(Tara Mantri vs. Ramesh D. Agrawal – Page 365 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 11th to 13th November, 2002)

Where a Chartered Accountant accepted the audit of a Government Agency without first communicating with the previous auditor. Held that he was guilty of professional misconduct within the meaning of ~~**Clause**~~ **Item** (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(J.Patnaik vs. V. Brahmananda Sahu – Page 580 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 11th to 13th November, 2002)

While the audit was pending, the complainant came to know that the Respondent had signed the accounts of the Company for the two years. The Respondent never communicated with that complainant. The complainant had never resigned from the Auditorship of the Company. No notice for the complainant's removal was sent by the Company. The provision of the Section 225 of the Companies Act, 1956 were not complied with properly by the Company and all this was

ignored by the Respondent. Held that the Respondent was guilty of professional misconduct within the meaning of ~~**Clauses**~~ **Items** (8) & (9) of the Part I of the First Schedule of the Chartered Accountants Act, 1949.

(J.P. Gupta vs. Charanjit Malhotra - Page 113 Vol.IX-2A-21(4)of Disciplinary Cases – Council's decision dated 11th to 13th November, 2002)

The Respondent accepted the position of auditor of private limited Company without first communicating with the previous auditor. The Respondent had also accepted the appointment as auditor without first ascertaining from the Company as to whether the requirement of Section 224 & 225 of the Companies Act, 1956 in respect of such appointment have been duly complied with. Held that he was guilty of professional misconduct under the ~~**Clause**~~ **Items** (8) & (9) of the Part I of the First Schedule of the Chartered Accountants Act, 1949.

(R.L.P. Sinha of M/s R.L.P. Sinha & Associates vs. A.K. Manglik - Page126 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 11th to 13th November, 2002)

Even while another C.A. Firm was doing audit of a Company and raised audit queries, the Respondent on being approached by the Company accepted the position of statutory auditor. The Respondent communicated with the previous auditor after already signing the balance sheet. He did not bother to examine whether the provisions of Section 224 and 225 have been duly complied with. Held that he was guilty of professional misconduct under ~~Clause~~ **Items** (8) & (9) of the First Schedule of the Chartered Accountants Act, 1949.

(S.P. Khemka vs. T.G. Ramanathan – Page 387 Vol IX -2A -21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December, 2002)

Where the Respondent omitted to communicate with the previous auditor before accepting the audit of private limited Company and also without first ascertaining whether requirements of Sections 224, 225 & 226 of the Companies Act, 1956 were complied with. Held that he was guilty of professional misconduct under ~~**Clause**~~ **Items** (8) & (9) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(V.K. Wadhwa vs. G.P. Makkar – Page451 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December, 2002)

Where a Chartered Accountant accepted the tax audit u/s 44AB of the Income-Tax Act without first communicating with the previous auditor. The complainant wrote a letter to the Respondent to bring the aforesaid default to his notice but did not received any reply from the Respondent. The Respondent had telephonically talked to the complainant and said that the client explained him that the previous auditor had gone out of station and therefore he wanted him to audit

his firm's account. The Respondent accepted the said explanation of the client without communicating with the complainant in writing. Held that he was guilty of professional misconduct under ~~**Clause**~~ **Item** (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(H.M. Kataria vs. R.K. Malpani – Page467 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December, 2002)

Where the Respondent conducted the tax audit without first communicating with the previous auditor. Held that he was guilty of professional misconduct under ~~**Clause**~~ **Item** (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(Shri Prakash Agarwal vs. Sanjay Kumar Gupta – Page482 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December 2002)

The Complainant was the statutory auditor/tax auditor of five Companies/firms and part audit was done for two entities. The Complaint sent four letters to the management for commencement of remaining period/remaining firms. The complainant was then informed by the management that the audit statement had been already issued by the Respondent firm. Neither the firms/ Companies had sent any prior information/board/AGM resolution regarding the change of auditor nor the Respondent had sent any intimation regarding the acceptance of audit. Held that he was guilty of professional misconduct under ~~**Clause**~~ **Items** (8) and (9) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(Sunil Kashyap of M/s P.C. Bafna & Co. vs. Deepak Batra – Page435 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December 2002)

Where a Chartered Accountant accepted the audit of a Government Agency without first communicating with the Previous Auditor. Held that he was guilty of professional misconduct under the ~~**Clause**~~ **Item**.

(J. Patnaik vs. G.R. Mekap – Page 511 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December, 2002)

Where a Chartered Accountant accepted the audit of a Government Agency without first communicating with the Previous Auditor. Held that he was guilty of professional misconduct under ~~**Clause**~~ **Item** (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(J. Patnaik vs. Brahmananda Sahu – Page 580 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December, 2002)

Where a Chartered Accountant accepted and conducted the audit of a Company without first communicating with the Previous Auditor. Held that he was guilty of professional misconduct under ~~**Clause**~~ **Item** (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(S.L. Damania vs. S.P. Kapadia – Page 527 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December, 2002)

Where a Chartered Accountant, even before informing the complainant who was the auditor of the Company and doing the audit, signed the balance sheet and informed the complainant after signing the balance sheet. Held that he was inter alia guilty of professional misconduct under the ~~Clause~~ **Item**.

(Ashok Kumar Pathak of M/s A.K. Pathak & Associates vs. Yogesh Bansal of M/s Y.K.B. Associates – Page 564 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December 2002)

A Chartered Accountant had accepted the tax audit assignment without any written communication to the previous auditor and at the behest of two directors, and one employee of the Company, despite the knowledge and information that the Complainant had already completed it. The Respondent not even cared to know the reasons for change of tax auditors by the Company. He despite full knowledge and information that the Complainant's legitimate professional fee was not paid by the said Company acted in collusion with the Directors and employee of the Company. Held that he was guilty of professional misconduct under the ~~Clause~~ **Item**.

(Suresh S. Thakkar vs. Virendra S. Nayyar – Page 759 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September 2003)

Where a Chartered Accountant accepted the tax audit of 5 firms without first communicating with the previous auditor. Held that the Chartered Accountant is guilty of professional misconduct within the meaning of the ~~Clause~~ **Item**.

(G.K. Khandelwal of M/s G.K. Khandelwal & Associates vs. Atul Neema of M/s Atul Neema & Company, Ujjain – Page 649 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September 2003)

Where a Chartered Accountant accepted the tax audit of two mills without first communicating with the previous auditor. When the matter was taken up by the complainant with the Respondent, the latter replied that he had started the audit work without communicating with the former only in the interest of completing the work in time. Held that he was guilty of professional misconduct under the ~~Clause~~ **Item**.

(M. Gopalasamy vs. N. Raja – Page 834 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September, 2003)

The Complainant was appointed statutory auditor of a private limited Company but the Company did not get their accounts audited by the Complainant. Later the Company produced a Balance Sheet and Profit

and Loss Account before the complainant for statutory audit and report prepared by the Respondent's firm in the capacity as an internal auditor without any books of account, which the complainant refused to do. The Respondent was appointed as internal auditor, then as branch auditor and finally as statutory auditor without any knowledge of the complainant. The Respondent signed the unaudited financial statement as the statutory auditor and the same was filed with the Registrar of Companies under section 220 of the Companies Act, 1956. Held that the Chartered Accountant is guilty of professional misconduct within the meaning of ~~**Clauses**~~ **Items (**8) & (9) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Phool Chand Gupta vs. Parshu Ram Bhagat – Page 671 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September, 2003)

Where a Chartered Accountant accepted the audit of a firm without first communicating with the previous auditor. Held that the Chartered Accountant is guilty of professional misconduct within the meaning of the ~~**Clause**~~ **Item**.

(S.K. Seth of M/s S.K. Seth & Co. vs. K.C. Sapra of M/s K.C. Sapra & Co. – Page 855 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September, 2003)

Where a Chartered Accountant accepted the position as auditor of two private limited Companies without first communicating with the previous auditor. Held that the Chartered Accountant is guilty of professional misconduct under the ~~**Clause**~~ **Item**.

(Ashok Kumar Agarwal vs. Mohan Rungta – Page 89 Vol.IX-2B-21(4) of Disciplinary Cases – Council's decision dated 2nd to 4th February, 2004)

The Complainant was the tax auditor of a firm for three financial years under Section 44 AB of the Income Tax Act, 1961. On reminding the auditee firm for getting the accounts audited for subsequent years, the auditee firm informed the Complainant that the work had been entrusted to another Chartered Accountant and he had also completed the audit. Thus, the Respondent firm had not only accepted the said tax audit but also completed the same without first communicating with the Complainant. Held that the Chartered Accountant is guilty of professional misconduct under the ~~**Clause**~~ **Item**.

(S.M. Momaya of M/s S.M. Momaya & Co. vs. Ashok Sharma of M/s Ashok K. & Co. – Page 199 Vol.IX-2B-21(4) of Disciplinary Cases – Council's decision dated 15th to 17th April, 2004)

Communication sent through Registered Post without acknowledgement due-

A member accepted the position of a statutory auditor and sent the communication to the previous auditor through Registered Post without Acknowledgement Due. The Council held the member guilty of professional misconduct under ~~**Clause**~~ **Item** (8) of Part I of First

Schedule to the Chartered Accountants Act, 1949.

(Ashok K. Aggarwal vs. Yogesh Thakur - Page 89 Vol X-2A-21(4) of Disciplinary Cases – Council's decision dated 29th August, 2005)

Communication sent through some other mode-

Member carried out the tax audit of a firm and sent the communication through a letter and not by Registered Post Acknowledgement Due (RPAD). The Council held the member guilty of professional misconduct under ~~**Clause**~~ **Item** (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(S. S. Ajmera Vs. S. R. Ghatge of M/s S. R. Ghatge & Co. - Page 417 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 7th July, 2005)

Member sent the communication through 'Certificate of Posting'. The Council held the member guilty of professional misconduct under ~~**Clause**~~ **Item** (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(Vinod Kumar Gupta vs. P. Mehrotra - Page 194 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 29TH August, 2005)

Member sent the communication by ordinary post. The Council held the member guilty of professional misconduct under ~~**Clause**~~ **Item** (8) of Part I of the First Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Mahendra R. Shah vs. Ms. Deepali Dattatraya Dalal - Page 443 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 6th October, 2005)

The Council held a member guilty of professional misconduct under ~~**Clause**~~ **Item** (8) of Part I of First Schedule to the Chartered Accountants Act, 1949, for not making proper communication to the previous auditor.

(M/s Sudhir Kumar Jain & Co. vs M/s Sadani & Singhi - Page 505 Vol X-2A-21(4) of Disciplinary Cases – Council's decision dated 5th January, 2006)

The Council held the member guilty under ~~**Clause**~~ **Item** (8) of Part I of First Schedule to the Chartered Accountants Act, 1949, for accepting Tax Audit of a Company without communicating with the previous auditors.

(P. K. Saha of M/s P. K. Saha & Associates vs. Amit Roy of M/s Amit & Associates - Page 291 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 29th August, 2005)

A member accepted the position of tax auditor without communicating with the previous auditor when the previous auditor was acting as tax auditor without having appointment letter for the same. The Council held him guilty of professional misconduct under ~~**Clause**~~ **Item** (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949 but

not under Notification No. 1 CA (7)/46/99 dated 28th October, 1999 as payment of fees outstanding towards internal audit does not fall the requirement of the notification.

(J.R. Shah of M/S. J.R. Shah & Co. vs. Rajiv B. Pethkar of M/S. Rajiv Pethkar & Associates - Page 380 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 29th August, 2005)

The Complainant's firm (previous auditor) was appointed as auditors of a company at its Annual General Meeting and re-appointed for the subsequent year. In absence of any resignation from previous auditor or notice for removal and the change of auditors, the incoming auditor accepted the appointment without first communicating. The incoming auditor did not verify the compliance of Section 224 and 225 of the Companies Act, 1956. The Council held the incoming auditor guilty of professional misconduct under ~~**Clauses**~~ **Items** (8) and (9) of Part I of First Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Rajeev Mittal of M/S. Mittal Rajeev & Associates vs. Rajeev Shah of M/S. Bihani & Shah - Page 454 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 6th Octoberl, 2005)

Where a member accepted the appointment as auditors of a company without first communicating; and ascertaining the compliance of requirements of Sections 224 & 225 of the Companies Act, 1956, the Council held the member guilty of professional misconduct under ~~**clauses**~~ **items** (8) and (9) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Ajit Kumar Sur of M/s Agrawal Sur & Associates Vs. Shailendra Hurkat of M/s Shailendra Hurkat & Co. - Page 484 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 5th January, 2006)

The Complainant-firm was the statutory auditors of a company since its incorporation and audited and certified the Company's Accounts up to 1994. They completed the routine audit of the Company's Accounts for the year ending 31st March, 1995 and the trial balance along with the schedules and draft accounts was handed over to the Company for approval of the Board of Directors. Later, the incoming auditor took up the audit and certified the accounts for the same year, without communicating and ascertaining the compliance of provisions of Section 225 of Companies Act, 1956. The Council held the incoming auditor guilty of professional misconduct under ~~**Clauses**~~ **Items**–(8) and (9) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Vinod Somani Vs. M.L. Agarwal - Page 511 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 2nd August, 2006)

The Complainant conducted the Statutory Audit of a Company and issued the Auditor's Report. Subsequently, the Company conducted its AGM and requested the complainant to conduct statutory audit for the

subsequent year. But, the Respondent-firm accepted and conducted the statutory audit, without first communicating with the previous auditor in writing and also without ascertaining whether the requirements of Section 224 and 225 of the Companies Act, 1956 have been complied with, and signed the accounts and audit report (through its partner) without knowledge of the Complainant. The Council held the incoming auditor guilty of professional misconduct under ~~**Clauses**~~ **Items** (8) and (9) of Part I of the First Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Sanjay Kalra of M/S. S. Kalra & Associates vs. B.M. Goel of M/s. Kapoor Bhushan & Co. - Page 525 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 22nd June, 2006)

A member accepted the position as auditor without first communicating with the Complainant in writing and without first ascertaining whether the requirements of Section 225 of Companies Act, 1956 in respect of which appointment have been duly complied with. The Council held the member guilty of professional misconduct under ~~**Clauses**~~ **Items** (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(Mahadeb Saha of M/s M. Saha & Co. Vs. A. K. Daga of M/s A. K. Daga & Associates) Page 436 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 7th July, 2005)

Where complainant audited the accounts of six Companies and seven Trusts up to the year ended 31st March, 2001 and was re-appointed as auditors of these Companies in their respective Annual General Meetings and also as auditors of these Trusts. The Complainant never tendered any resignation. Later, the Respondent (incoming auditor) informed the Complainant by letter, of their appointment as auditors of the above Companies and Trusts, to which the Complainant endorsed by mentioning their objection and gave the same to the bearer who brought the letter. The provisions of Section 225 of the Companies Act, 1956 were not complied with and the previous auditor's fee was also outstanding. The Council held that the incoming auditor guilty of professional misconduct under ~~**Clauses**~~ **Items** (8) and (9) of Part I of the First Schedule and also guilty under Notification No. 1-CA(7)/46/99 dated 28th October, 1999 issued under Clause (ii) of Part II of the Second Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Prakash Chand Surana of M/s. Prakash Surana & Associates Vs. Pratap Singh Surana of M/s. Pratap Singh Surana & Co. - Page 466 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 6th October, 2005)

A Member accepted the position as auditor without first communicating with the previous auditor. He accepted the appointment even before the undisputed fees payable to the Complainant was paid. The compliance with Section 224 and 225 of the Companies Act, 1956 were

not complied with by the Incoming Auditor.

The Council held the incoming auditor:

(a) guilty of professional misconduct falling within the meaning of ~~Clauses~~ **Items** (8) and (9) of Part I of First Schedule to the Chartered Accountants Act, 1949 and also

(b) guilty within the meaning of Notification No.1-CA(7)/46/99 dated 28th October, 1999 under ~~Clause~~ **Item** (ii) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

(*D.G. Chandak vs. S.D. Chauhan of M/s. S.D. Chauhan & Co., Mumbai - Page 492 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 5th January, 2006)*

A member omitted to communicate with the previous auditor before accepting and conducting the audit and also without first ascertaining whether the requirements of Sections 224 and 225 of the Companies Act, 1956 were complied with. Also, he accepted the appointment before the undisputed fees payable to the previous auditor was duly paid and thus violated the Notification No.1-CA (7)/46/99 dated 28th October, 1999.

The Council held him guilty of:

(a) professional misconduct under ~~Clauses~~ Items (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(b) professional misconduct falling within the notification no.1-CA(7)/46/99 dated 28th October, 1999 under ~~Clause~~ **Item** (ii) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

(Prafull R. Gandhi of M/s. P.R. Gandhi & Co Vs. Padam Chand Jain of M/s. Padam Chand Jain & Associates - Page 212 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 29TH August, 2005)

A member accepted Tax Audit, without communicating with the previous auditor. Also, he was negligent while auditing as he was required to check as to how and by what mode the fees had been finally paid to the previous auditor, which was earlier appearing under the list of sundry creditors. He further failed to check the facts and look into the documentary details before signing the report. The Council held him guilty of:

(a) professional misconduct under ~~Clause~~ **Item** (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(b) professional misconduct under ~~Clause~~ **Item** (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Bhushan Khot of M/s. Bhushan Khot & Co. vs. Mahesh M. Bhatt - Page 424 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 7th July, 2005)

Where the Complainant's firm was the statutory auditor of a company

and was re-appointed in Annual General Meeting for the subsequent year, another Chartered Accountant accepted the statutory audit while the Complainant's firm was already re-appointed in AGM, without first communicating with the previous auditor i.e. the Complainant, in writing. Also, the compliance of provisions of Section 224 and 225 of the Companies Act, 1956 was not ascertained before accepting the auditorship of the company. Further, he was also negligent in conduct of professional duties. The Council held him guilty of:

(a) professional misconduct falling within the meaning of ~~**Clauses**~~ **Items** (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(b) professional misconduct falling within the meaning of ~~**Clause**~~ **Item** (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(R.S. Ajmeri of M/s R. Ajmeri Associates vs. Shiv Hari Garg - Page 331 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 7th July, 2005)

A Member without communicating with the previous auditor and without ascertaining that the undisputed fees payable to the previous auditor was duly paid, was held by the Council, as guilty of:

(a) professional misconduct under ~~**Clause**~~ **Item** (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 and

(b) under Notification No.1-CA(7)/46/99 dated 28th October, 1999 issued under ~~**Clause**~~ **Item** (ii) of Part II of the Second Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Jugal Kishore Soni of M/s J. K. Soni & Associates vs. Abhijit Matilal - Page 323 Vol.X-2A-21(4) of Disciplinary Cases – Council's decision dated 7th July, 2006)

A Chartered Accountant accepted appointment as auditor of Company without communicating with Complainant (previous auditor) in writing. Respondent was held guilty under ~~**Clause**~~ **Item** (8) of Part I of First Schedule.

(D. C. Surana of M/s D. C. Surana & Associates v. Ashok L. Gosar of M/s Gosar Associates (25-CA(224)/2002) - to be published later under Disciplinary Cases Volume X-2B-21(4). Council decision of 273rd Meeting held in October, 2007)

A Chartered Accountant accepted tax audit of firm without communicating with the complainant, who was the previous auditor in writing. The Respondent accepted the aforesaid assignment inspite of audit fee remaining outstanding. It was held that the Chartered Accountant is guilty under ~~**clause**~~ **item** (8) of Part I of First Schedule and not under Notification No. 1–CA (7) 46/99 read with Section 21 & 22 of The Chartered Accountants Act, 1949.

(Har Narayan Rathi v. Deepak Mehta (25-CA(107)/2004). - to be published later under Disciplinary Cases Volume X-2B-21(4). Council decision of 277th Meeting held in March – April 2008)

A Chartered Accountant carried out two audits under Section 44AB of the Income Tax Act, 1961 without communicating with Complainant (previous auditor) in writing. Held guilty under ~~**Clause**~~ **Item** (8) of Part I of First Schedule.

(Suresh K. Agarwal v. Ghan Shyam. Verma (25-CA(37)/2002). - To be published later under Disciplinary Cases Volume X-2B-21(4). Council decision of 277th Meeting held in March–April 2008)

A Chartered Accountant accepted audit of a firm without first communicating with the Complainant (previous auditor). Respondent was held guilty under ~~**clause**~~ **item** (8) of Part I of First Schedule.

(Ms. Minakshi Tantia v. Anil Kumar Mandawewala (25-CA(200)/ 2002) - to be published later under Disciplinary Cases Volume X-2B-21(4). Council decision of 278th Meeting held in May, 2008).

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

~~**Clause**~~ **Item (9):** *accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 of the Companies Act, 1956 (1 of 1956), in respect of such appointment have been duly complied with;*

The Companies Act, 1956 provides for the requirements which an auditor appointed in respect of a Company should satisfy himself about, before he accepts the appointment. The relevant provisions are contained in Sections 224 and 225 of the said Act and the Council has notified that the provisions to be complied with under ~~**Clause**~~ **Item** (9) are those contained in Sections 224 and 225 of the Act. Section 224 contains several provisions in the matter of appointment of auditors in different circumstances and situations whereas Section 225 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:-

1. ~~**Clause**~~ **Item** (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 224 and 225 of the Companies Act,

1956, in respect of such appointment have been duly complied with. Under this ~~**clause**~~ **item** 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. A question arises as to what is the duty of the incoming auditor under this ~~**clause**~~ **item** and what steps he should take in order to ascertain whether the Company has complied with the provisions of Sections 224 and 225 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**~~ **item** (9) are duly complied with.

3. It may be clarified that though ~~clause~~ **item** (9) refers to compliance with Sections 224 and 225 of the Companies Act, it is also necessary to ascertain that the provisions of Section 224A are duly complied with by the Company. This Section deals with special provisions relating to appointment of auditors by certain Companies and they have necessarily to be considered by the incoming auditor before he accepts his assignment.

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

(i) When the auditor appointed is the first auditor of the Company.

(ii) When the auditor is appointed in place of an existing auditor who has resigned or has been removed or has ceased to hold office for any other reason.

(iii) When the auditor or auditors appointed by the Company were holding this office jointly with others and one or more of such joint auditors are not reappointed.

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

5. The procedure to be followed by a Company for appointment of an auditor is laid down in Section 224 of the Companies Act, 1956. The relevant provisions of the Section are summarised in the ensuing sub-paras.

5.1 The first auditor can be appointed by the Board of Directors within one month 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.

5.2 If the Board of Directors do not make such appointment, the Company, can make the appointment of first auditor at any General Meeting.

5.3 The first auditor appointed by the Board of Directors can be removed at any General Meeting and any other auditor can be appointed at such meeting if any member gives due notice of such resolution and such

notice, is sent to all the members of the Company at least fourteen days before the date of the meeting. The notice of such a resolution will have to be dealt with as provided in Sections 225(2) and 225(3). In this connection, the procedure discussed in paras 7.4 to 7.7 below will have to be followed before any resolution for removal of the first auditor is passed at the General Meeting. For the removal of the first auditor of a Company approval of the Central Government as mentioned in para 5.14 below is not necessary.

5.4 Subsequent appointment of the auditor is to be made at each Annual General Meeting of the Company.

5.5 Before making appointment or reappointment of an auditor, the Company has to obtain a written certificate from the auditor proposed to be appointed that such appointment or reappointment will be in accordance with the limits in respect of maximum number of audits which he can accept under the provisions of Section 224 (1-B).

5.6 The auditor so appointed will hold his office from the conclusion of the meeting at which he is appointed to the conclusion of the next Annual General Meeting.

5.7 The Company has to give intimation of the appointment to the auditor within seven days of his appointment.

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

5.9 The members of the Company can pass a 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. Where a notice has been given of an intended resolution to appoint some other auditor(s) in the place of a retiring auditor but such a resolution cannot be proceeded with in view of the fact that the person or persons proposed to be appointed has incurred an incapacity or disqualification or has died, the retiring auditor shall not be reappointed. For this purpose the procedure laid down in Section 225 is to be complied with.

5.10 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.

5.11 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.

5.12 The Board of Directors, except for the situation covered by 5.13 below, can fill any casual vacancy in the office of the auditor. Until this appointment is made the remaining auditor, in case there are joint auditors, can function as auditor of the Company.

5.13 If the casual vacancy is caused by the resignation of an auditor, such vacancy can only be filled by the Company in any General Meeting. The

auditor appointed to fill any casual vacancy shall hold office until the conclusion of the next Annual General Meeting.

5.14 The Company can remove the auditor before the expiry of his term of office by a resolution passed at any General Meeting and after obtaining previous approval of the Central Government.

6. Section 224A of the Companies Act lays down the procedure for appointment of auditor by a Company in which 25% or more of the subscribed capital is held, whether singly or in combination, by the following institutions:-

(i) A public financial institution.

(ii) Any financial or other institution established under a State Act in which the State Government holds 51% or more of the subscribed share capital.

(iii) Government Company, Central Government or any State Government.

(iv) A nationalised Bank or an Insurance Company carrying on general insurance business.

The procedure to be followed by such a Company, in brief, is as under:

6.1 The appointment or reappointment of auditor at each Annual General Meeting shall be made by a special resolution.

6.2 If the Company fails to make such appointment or reappointment of auditor, the Central Government will have to make the appointment of auditor as provided in Section 224(3).

6.3 The provisions relating to appointment of first auditor, filling of casual vacancy, removal of auditor etc. which are contained in Section 224 will apply to the Company specified in Section 224A.

7. Section 225 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 for giving special notice as contained in Section 225(1) does not apply to the removal of the first auditor appointed by the Board of Directors, because separate provision as stated in para 5.3 above is made for this purpose. The procedure to be followed by the Company, is as under:

7.1 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 and specify the resolution which he proposes to move at the Annual General Meeting for this purpose.

7.2 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.

7.3 The special notice should be given at least 14 days before the date of the General Meeting when the question of appoint- ment or

reappointment of the auditor is to be considered.

7.4 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.

7.5 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 190(2) read with Sections 172(2) and 53(1) to 53(4) of the Companies Act. According to these provisions, the notice should be sent by post or if that is not practicable then it should be given either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the Articles of Association of the Company.

7.6 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 225(3) of the Companies Act.

7.7 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 189 of the Companies Act.

8. Under ~~Clause~~ **Item** (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949, the incoming auditor has to ascertain whether the Company has complied with the provisions of the above sections. The word "ascertain" means "to find out for certain". This would mean that the incoming auditor should find out for certain as to whether the Company has complied with the provisions of Sections 224, 224A and 225 of the Companies Act. 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.

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

9.1 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 one month of the date of registration of the Company.

9.2 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.

9.3 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.

9.4 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.

9.5 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 proper 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.

9.6 If the provisions of Section 224A apply to the Company, the incoming auditor should verify as to whether a special resolution as required under the said Section has been duly passed.

9.7 Where the auditor other than the retiring auditor is proposed to be appointed, the incoming auditor should ascertain whether the provisions of Section 225 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.

9.8 For the purpose of ascertaining whether the Company has complied with the provisions of Section 225 of the Companies Act the incoming auditor should verify the records of the Company in respect of the following matters:-

(i) Whether a member of the Company has given special notice of the resolution as required under Section 225(1) at least 14 days before the date of the general meeting. A true copy of this notice should be obtained by the incoming auditor.

(ii) Whether this special notice has been sent to all the members, of the Company as required under Section 190(2) at least 7 days before the date of the General Meeting.

(iii) Whether this special notice has been sent to the retiring auditor forthwith as required under Section 225(2).

(iv) Whether the representation received from the retiring auditor has been sent to the members of the Company as required under Section 225(3).

(v) 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.

9.9 (A) As regards the mode of sending the notice of the resolution to the

members of the Company as provided in Sections 224 & 225, it should be noted that there is no provision that the notice should necessarily be sent by registered post. The notice can be sent by the Company in accordance with the provisions contained in Section 53. The relevant provisions of this section can be briefly summarised as under:

(i) The notice can be sent by ordinary post by preparing and posting the letter after putting proper address of the person concerned.

(ii) If the member or the person concerned has given specific direction to the Company that the notice should be sent to him under certificate of posting or by registered post, with or without acknowledgement due, and has deposited with the Company the sum sufficient to defray the expenses for this purpose, the notice should be sent in such specified manner.

(iii) When there are joint holders of shares in a Company, the notice is to be sent to the joint holder whose name appears first in the register of members.

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

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

(D) As regards the mode of sending the notice of the resolution to the retiring auditor as provided in Sections 224 & 225, 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."

(E) Accordingly, it is necessary for the incoming auditor to satisfy himself that the notice provided for in Sections 224 & 225 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 224/225. Acknowledgement received from the outgoing auditor would be one of the forms in which such satisfaction can be obtained.

9.10 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.

10. 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 224(1) the retiring auditor holds office till the conclusion of the 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.

10.1 If any annual general meeting is adjourned without appointing an auditor, no special notice for removal or replacement of the retiring auditor received after the adjournment can be taken note of and acted upon by the Company, since in terms of Section 190(1) of the Companies Act, special notice should be given to the Company at least fourteen clear days before the meeting in which the subject matter of the notice is to be considered. The meeting contemplated in Section 190(1) undoubtedly is the original meeting.

11. If the incoming auditor is satisfied that the Company has complied with the provisions of Sections 224, 224A and 225 of the Companies Act, he should first communicate with the outgoing auditor in writing as provided in ~~Clause~~ **Item** (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 before accepting the audit assignment.

In order to examine various ethical issues and safeguard the independence of the Auditors, the Council has set up 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:

1. 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.

2. 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.

3. The Ethical Standards Board, on a review of the communications referred to in paras (1) and (2), 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.

4. 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 - E'**

Some decisions of the Council/High Courts on this **item** ~~clause~~ are given below:-

Failure to ascertain the requirements of Companies Act re: appointment of auditors.

Where a Board of Directors appointed a Chartered Accountant as auditor of a Company, the Company having failed to appoint one at its annual ordinary general meeting and he wrote to the previous auditor of his appointment and finished the audit on the same date-Held, the vacancy was not a casual vacancy and as the Chartered Accountant was under misapprehension as to the true legal position, he was warned.

(U.C. Majumdar vs. J.N. Saikia - Page 292 of Vol. I of the Disciplinary Cases and page 93 of August, 1954 issue of the Institute's Journal - Judgement delivered on 20th May, 1954).

Where a Chartered Accountant applied in response to an advertisement in a newspaper for appointment as auditor and was appointed by the Directors and failed to communicate with the

previous auditor and ascertain from the Company whether the requirements of the Companies Act as regards the appointment of the auditors were duly complied with. - Held the Respondent, was guilty on both the counts under ~~clauses~~ **items** (8) and (9).

(B.N. Mohan vs. K.C.J. Satyawadi - Page 11 of Vol. II of the Disciplinary Cases and page 494 of May, 1955 issue of the Institute's Journal-Judgement delivered on 10th March, 1955).

A Chartered Accountant accepted the appointment as statutory auditor of the Company on the basis of resolution of Board of Directors. There was no compliance with the requirement of Section 224 of the Companies Act, 1956 which in the present case required the appointment by the Central Government as the Company did not make appointment in the general meeting. Held, that the Chartered Accountant was guilty of professional misconduct under the Act.

(M.K. Biswas in Re: - Page 979 of Vol.IV of the Disciplinary Cases - decided on 11th September, 1962).

Acting as Auditor inspite of disqualification under law as to the indebtedness to the Company

A Chartered Accountant who was indebted to the Company towards a loan for a sum exceeding Rs. 1000/- taken for the purchase of a car, in the ordinary course of financing business of the Company against the hire purchase agreement and thus was disqualified under Section 226(3) of the Companies Act, 1956 to be appointed as auditor of the Company, acted as the auditor of the Company. Held on borrowing loan, he would be deemed to have vacated his office as auditor but inspite of that he acted as the auditor of the Company. The Chartered Accountant was guilty of professional misconduct under the ~~clause~~ **item**. The word 'indebted' occurring in Section 226(3) means the obligation to pay.

(Ram Parshad Handa & Hari Krishan Khosla vs. B.K. Choudhury - Page 1013 of Vol. IV of the Disciplinary Cases - decided on 14th September, 1968).

A Chartered Accountant accepted the appointment as auditor of the Company without ascertaining from the Company about the compliance with the requirements of Sections 224 and 225 of the Companies Act, 1956. He had not taken care to see whether a vacancy existed against which he was appointed, whether the notice of the extraordinary general meeting at which he was appointed was given to the previous auditor. - Held he was guilty of professional misconduct under the ~~clause~~ **item**.

(M. Abdul Rahim vs. L.R.Kamath - Page 264 of Vol. V of the Disciplinary Cases - decided on 13th and 14th September, 1974).

A Chartered Accountant accepted the appointment as auditor of the Company without first ascertaining whether the requirement of the Companies Act, 1956 in respect of such appointment have been

complied with. The Central Government agreed to the removal of previous auditor and the appointment of the Chartered Accountant as auditor in his place subject to the approval of the shareholders in the general meeting. However, the Chartered Accountant accepted the audit on the basis of the resolution of the Board of Directors and before the General Meeting ratified of the resolution of the Board of Directors. - Held he was guilty of professional misconduct under the ~~clause~~ **item**.

(D.L.Sukhadia in Re: - Page 279 of Vol. V of the Disciplinary cases - decided on 22nd & 23rd December, 1976).

A Chartered Accountant accepted the appointment as auditor without first ascertaining from the Company whether the provisions of Section 225 of the Companies Act, 1956 in respect of such an appointment have been duly complied with. Special notice received from one of the shareholders, though sent to outgoing auditor, was not sent to the members which is one of the important requirements of Section 225. - Held Chartered Accountant was guilty of professional misconduct under the ~~clause~~ **item**.

(M.R. Gulati vs. S.C. Chirania - Page 317 of Vol. V of the Disciplinary Cases - decided on 26th, 27th and 28th October, 1978).

A member had accepted appointment as auditor of a Company without ascertaining from the Company whether the requirements of Sections 224 and 225 of the Companies Act had been complied with. However, he realised this defect only after acceptance. It was held that the member had not taken care to see if he had been properly appointed as he had:

(i) accepted the appointment the very next day

(ii) satisfied himself on the basis of "No objection certificate" from the previous auditor but without going through the Directors report, Minutes Book or any other documents.

It was observed that if he had taken care to go through this exercise before accepting the appointment, he could have satisfied himself whether or not the provisions of Sections 224 and 225 had been complied with. The member was found guilty in terms of this ~~Clause~~ **Item**.

(Y.S. Muzumdar & Co. vs. H.S. Sardeshpande - Page 116 of Vol. VI(2) of Disciplinary Cases - Decided on 11th, 12th, 13th February, 1988).

A member had been appointed the first auditor of a Company within 30 days of the incorporation as required by Section 224(5) of the Companies Act. Later another member was appointed as the joint auditor nearly after 8 months of the incorporation of the Company, by a resolution of the Board of Directors. It was found that the appointment of the second member was not valid in terms of Section 224(5) of the Companies Act. It was also found that the second member did not ascertain whether there was compliance with the

provisions of Sections 224(5) and 225 of the Companies Act. The second member was therefore found guilty in terms of this ~~Clause~~ **Item**. It was also found that Respondent had not communicated with the complainant as required by ~~Clause~~ **Item** (8) and in so far as he had not done so, he was guilty.

(C.L. Tomson vs. K.A. Chandrasekhara Menon - Page 357 of Vol. VI(2) of Disciplinary Cases - Decided on 18th, 19th and 20th December, 1989)

A member who was appointed as auditor of a Company failed to ascertain first from the Company whether the requirements of Sections 224 and 225 of the Companies Act, 1956, have been duly complied with. He also, did not communicate with previous auditor before accepting the auditor. Therefore, the member was found guilty in terms of ~~Clauses~~ **Items** (8) and (9).

(B.B. Shah vs. N.K. Nagarkar - Page 380 of Vol. VI(2) of Disciplinary Cases - Decided on 18th, 19th and 20th December, 1989)

Where a Chartered Accountant had accepted the appointment as auditor of a Company without ascertaining from the Company whether the provisions of Sections 224 & 225 of the Companies Act were complied with in respect of his appointment and he had accepted the position as auditor of the Company without communicating with the previous auditors in writing and without waiting for a reasonable time for a reply from the said auditors whether they had no professional objection in his accepting the appointment. Held by the Council and the High Court that the member was guilty under ~~clauses~~ **items** (8) & (9) of Part I of the First Schedule.

(P.P. Sangani in Re: - Page 356 of Vol.VII(2) of Disciplinary Cases – Council's decision at 7th to 9th March, 1991 - Judgement dated 10th August, 1994)

A Chartered Accountant had accepted the appointment as auditor of a private limited Company without communicating with the previous auditor. He accepted the audit and surprisingly completed the audit on the same day and signed the balance sheet on the very next day. He did not ensure that the client Company had complied with the provisions of Section 225, or 224(6) of the Companies Act, 1956, in changing its auditor. He was held guilty under ~~Clauses~~ **Items** (8) & (9)

(S.I. Majumdar vs. Vinod Rana - Page 484 of Vol VII(2) of Disciplinary Cases – Council's decision dated 5th to 6th December 1996).

A Chartered Accountant accepted the position as auditor of a private limited Company for a year which was previously and continuously held by the Complainant without communicating with him in writing. He had accepted the appointment as auditor of the above Company without ascertaining whether the requirements of Sections 224 and 225 of the Companies Act, 1956 had been complied with. It was also charged against him that while accepting the said appointment, he had

been grossly negligent in the conduct of his professional duties. The Council found that this charge had been misconstrued by the Complainant. This clause would apply only where it is found that the auditor has been negligent in the conduct of his professional duties while discharging his obligations as an auditor and the same would not be applicable in the matter of failure to communicate with the previous auditor or failure to ascertain compliance with Sections 224 and 225 of the Companies Act, 1956 which are covered by different Clauses of the Schedule to the Act. The Complainant had not brought out any material to establish the charge of gross negligence. Therefore, he was held guilty under ~~Clauses~~ **Items** (8) and (9). The charge of gross negligence in the conduct of professional duties was not established.

(V.K. Gupta vs. Rajiv Savara - Page 517 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 5th to 6th December, 1996).

A Chartered Accountant had accepted the appointment as auditor of a Company without first ascertaining whether the requirements of Section 225 of the Companies Act, 1956 had been duly complied with. Neither the notice for original annual general meeting nor the notice for adjourned annual general meeting was received by the Complainant and even the purported special notice under Section 190(1) for removal/ replacement of the Complainant's firm was received by the Company after the original Annual General Meeting was adjourned without appointing an auditor.

As per Code of Conduct, adjourned meeting is in continuation of the original meeting. The Company cannot act on the special notice received by it in between the period of original meeting and the adjourned meeting. The Company had not received special notice before 14 days of the original meeting. It was held that he had not properly verified the procedure to be followed under Sections 224 and 225 of the Companies Act, 1956 and hence was guilty under ~~Clause~~ **Item** (9).

(V.K. Dhingra vs. Satish Tandon - Page 541 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 5th to 6th December, 1996).

The Respondent by letter dated 19th January, 1987 had informed the Complainant that at the adjourned General Meeting of a Company held on 28th February, 1986, he had been appointed as statutory auditor of the Company for the year ended 31st December, 1985. The Complainant had received the notice for holding the Annual General Meeting of the said Company which was fixed for 28th September, 1985. The meeting was adjourned and the adjourned Annual General Meeting was held on 28th February, 1986. The Complainant had received the notice for the adjourned Annual General Meeting also. In both the notices, there was no mention of any proposed change in the auditors of the Company for the year ended 31st December, 1985. In response to the Respondent's letter dated 19th January, 1987, the

Complainant informed the Respondent about his continuance as Statutory auditor because neither he had resigned nor the Company had issued any notice for the intended change. The Respondent was held guilty of violation of ~~Clauses~~ **Items** (8) & (9). The Council felt that in view of the facts and circumstances of the case, and the repentant attitude of the Respondent, there was insufficient justification for imposing any penalty on him.

(T. Ravindra vs. K.F. Jetsey - Page 762 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 8th to 10th December, 1997).

Where a Chartered Accountant accepted the appointment as auditor without first communicating with the previous auditor and without first ascertaining from the Company whether the requirement of Sections 224 & 225 of the Companies Act, 1956 had been duly complied with. Held that he was guilty under ~~Clauses~~ **Items** (8) & (9).

(Lalit K. Gupta of M/s Lalit K. Gupta & Co. vs. Ajay Bansal – Page 145 of Vol.VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001)

Where a Chartered Accountant accepted audit of three Companies without first communicating in writing with the previous auditor. He also accepted the audit without ascertaining whether the provisions of Section 225 of the Companies Act, 1956 had been complied with. Held that he was guilty of professional misconduct under ~~Clauses~~ **Items** (8) & (9).

(J.R. Kakadiya vs. M.S. Chokshi – Page 179 of Vol. VIII (2) of Disciplinary Cases – Decision of the Council dated 1st to 3rd August, 2001)

Where a Chartered Accountant accepted the position as auditor without first ascertaining from the Company as to whether the provisions of Section 224 (7) of the Companies Act were complied with and without first communicating with the previous auditor of the Company. Held that he was inter alia guilty of professional misconduct under ~~Clauses~~ **Items** (8) & (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(M/s Jha & Associates vs. S. Dhar - Page 466 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 6th to 8th December, 2001)

A Chartered Accountant accepted statutory audit of a private limited Company without first ascertaining from the Company whether the requirements of Section 225 of the Companies Act, 1956 in respect of such appointment, have been duly complied with. He also accepted the audit of the Company without making any communication with the previous auditor and completed and signed the audit report. Held that he was inter alia guilty of professional misconduct under the ~~Clauses~~ **Items** (8) and (9).

(M.K. Banerjee of M/s M. Banerjee & Company vs. Bhaskar Maitra -

Page 83 of Vol. IX-2A – 21(4) of Disciplinary Cases – Council's decision dated 11th September, 2002)

While the audit was pending, the complainant came to know that the Respondent had signed the accounts of the Company for the two years. The Respondent never communicated with that complainant. The complainant had never resigned from the Auditorship of the Company. No notice for the complainant's removal was sent by the Company. The provision of the Section 225 of the Companies Act, 1956 were not complied with properly by the Company and all this was ignored by the Respondent. Held that the Respondent was guilty of professional misconduct within the meaning of ~~Clauses~~ **Items** (8) & (9) of the Part I of the First Schedule of the Chartered Accountants Act, 1949.

(J.P. Gupta vs. Charanjit Malhotra - Page 113 of Vol. IX-2A – 21(4) of Disciplinary Cases – Council's decision dated 11th to 13th November, 2002)

The Respondent accepted the position of auditor of private limited Company without first communicating with the previous auditor. The Respondent had also accepted the appointment as auditor without first ascertaining from the Company as to whether the requirement of Section 224 & 225 of the Companies Act, 1956 in respect of such appointment have been duly complied with. Held that he was guilty of professional misconduct under the ~~Clause~~ **Item** (8) & (9) of the Part I of the First Schedule of the Chartered Accountants Act, 1949.

(R.L.P. Sinha of M/s R.L.P. Sinha & Associates vs. A.K. Manglik - Page 126 of Vol. IX-2A – 21(4) of of Disciplinary Cases – Council's decision dated 11th to 13th November, 2002)

Even while another C.A. Firm was doing audit of a Company and raised audit queries, the Respondent on being approached by the Company accepted the position of statutory auditor. The Respondent communicated with the previous auditor after already signing the balance sheet. He did not bother to examine whether the provisions of Section 224 and 225 have been duly complied with. Held that he was inter alia guilty of professional misconduct under ~~Clause~~ **Items** (8) & (9) of the First Schedule of the Chartered Accountants Act, 1949.

(S.P. Khemka vs. T.G. Ramanathan – Page 387 of Vol. IX-2A – 21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December, 2002)

Where the Respondent omitted to communicate with the previous auditor before accepting the audit of private limited Company and also without first ascertaining whether requirements of Section 224, 225 & 226 of the Companies Act, 1956 were complied with. Held that he was guilty of professional misconduct under ~~Clause~~ **Items** (8) & (9) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(V.K. Wadhwa vs. G.P. Makkar – Page 451 of Vol. IX-2A – 21(4) of

Disciplinary Cases – Council's decision dated 26th to 28th December, 2002)

The Complainant was the statutory auditor/tax auditor of five Companies/firms and part audit was done for two entities. The Complainant sent four letters to the management for commencement of remaining period/remaining firms. The complainant was then informed by the management that the audit statement had been already issued by the Respondent firms. Neither the firms/Companies had sent any prior information/board/ AGM resolution regarding the change of auditor nor the Respondent had sent any intimation regarding the acceptance of audit. Held that he was guilty of professional misconduct under ~~Clause~~ **Items** (8) and (9) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(Sunil Kashyap of M/s P.C. Bafna & Co. vs. Deepak Batra – Page 435 of Vol. IX-2A – 21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December 2002)

The Complainant was appointed statutory auditor of a private limited Company but the Company did not get their accounts audited by the Complainant. Later the Company produced a Balance Sheet and Profit and Loss Account before the complainant for statutory audit and report prepared by the Respondent's firm in the capacity as an internal auditor without any books of account, which the complainant refused to do. The Respondent was appointed as internal auditor, then as branch auditor and finally as statutory auditor without any knowledge of the complainant. The Respondent signed the unaudited financial statement as the statutory auditor and the same was filed with the Registrar of Companies under section 220 of the Companies Act, 1956. Held that the Chartered Accountant is guilty of professional misconduct within the meaning of ~~Clauses~~ **Items** (8) & (9) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Phool Chand Gupta vs. Parshu Ram Bhagat – Page 671 of Vol. IX-2A – 21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September, 2003)

A member accepted the audit without ascertaining the compliance of Section 225 of the Companies Act, 1956. The Previous auditor did not receive any communication from the said company regarding convening of Extra Ordinary General Meeting and his removal as statutory auditor. Also, by accepting the audit before the undisputed fees payable to the previous auditor was duly paid, the member violated the Notification No.1-CA (7)/46/99 dated 28th October, 1999. The Council held him guilty of:

(a) professional misconduct under ~~Clause~~ **Item** (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949,

(b) guilty of professional misconduct under ~~Clause~~ **Item** (ii) of Part II

of the Second Schedule to the Chartered Accountants Act, 1949.

(Dilip J. Kitawat vs. Sunil P. Shah - Page 361 of Vol. X-2A – 21(4) of Disciplinary Cases – Council's decision dated 26th May, 2005)

The Complainant's firm was the statutory auditor of a company and was re-appointed in Annual General Meeting for the subsequent year. A member accepted the statutory audit of a Company while the Complainant's firm was already re-appointed in AGM, without first communicating with the previous auditor i.e. the Complainant, in writing. Also, the compliance of provisions of Section 224 and 225 of the Companies Act, 1956 was not ascertained before accepting the auditorship of the company.

Also, he accepted the position as auditor previously held by the complainant by under cutting thereby resulting in contravention of ~~clause~~ **item** (12) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 (now repealed vide CA Amendment Act, 2006). Further, he was also negligent in conduct of professional duties. The Council held him guilty of:

(a) professional misconduct falling within the meaning of ~~Clauses~~ **Items** (8), (9) and (12) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(b) professional misconduct falling within the meaning of ~~Clause~~ **Item** (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(R.S. Ajmeri of M/s R. Ajmeri Associates vs. Shiv Hari Garg - Page 331 of Vol. X-2A – 21(4) of Disciplinary Cases – Council's decision dated 7th July, 2005)

A member omitted to communicate with the previous auditor before accepting and conducting the audit and also without first ascertaining whether the requirements of Sections 224 and 225 of the Companies Act, 1956 were complied with. Also, he accepted the appointment before the undisputed fees payable to the previous auditor was duly paid and thus violated the Notification No.1-CA (7)/46/99 dated 28th October, 1999.

The Council held him guilty of:

(a) professional misconduct under ~~Clauses~~ **Items** (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(b) professional misconduct falling within the notification no.1-CA(7)/46/99 dated 28th October, 1999 under ~~Clause~~ **Item** (ii) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

(Prafull R. Gandhi of M/s. P.R. Gandhi & Co Vs. Padam Chand Jain of M/s. Padam Chand Jain & Associates - Page 212 of Vol. X-2A – 21(4) of Disciplinary Cases – Council's decision dated 29th August, 2005)

Wherein the complainant's firm was appointed as auditors of a company at its Annual General Meeting and re-appointed for the subsequent year, in absence of any resignation from previous auditor or notice for removal and the change of auditors, the incoming auditor accepted the appointment without first communicating. The incoming auditor did not verify the compliance of Section 224 and 225 of the Companies Act, 1956. The Council held the incoming auditor guilty of professional misconduct under ~~Clauses~~ **Items** (8) and (9) of Part I of First Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Rajeev Mittal of M/s. Mittal Rajeev & Associates vs. Rajeev Shah of M/s. Bihani & Shah - Page 454 of Vol. X-2A–21(4) of Disciplinary Cases – Council's decision dated 6th October, 2005)

The Complainant audited the accounts of six Companies and seven Trusts up to the year ended 31st March, 2001 and was re-appointed as auditors of these Companies in their respective Annual General Meetings and also as auditors of these Trusts. The Complainant never tendered any resignation. Later, the Respondent (incoming auditor) informed the Complainant by letter, of their appointment as auditors of the above Companies and Trusts, to which the Complainant endorsed by mentioning their objection and gave the same to the bearer who brought the letter. The provisions of Section 225 of the Companies Act, 1956 were not complied with and the previous auditor's fee was also outstanding. The Council held that the incoming auditor guilty of professional misconduct under ~~Clauses~~ **Items** (8) and (9) of Part I of the First Schedule and also guilty under Notification No. 1-CA(7)/46/99 dated 28th October, 1999 issued under ~~Clause~~ **Item** (ii) of Part II of the Second Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Prakash Chand Surana of M/s. Prakash Surana & Associates Vs. Pratap Singh Surana of M/s. Pratap Singh Surana & Co. - Page 466 of Vol. X-2A – 21(4) of Disciplinary Cases – Council's decision dated 6th October, 2005)

Where a member accepted the appointment as auditors of a company without first communicating; and ascertaining the compliance of requirements of Sections 224 & 225 of the Companies Act, 1956, the Council held the member guilty of professional misconduct under ~~clauses~~ **items** (8) and (9) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Ajit Kumar Sur of M/s Agrawal Sur & Associates Vs. Shailendra Hurkat of M/s Shailendra Hurkat & Co. - Page 484 of Vol. X-2A – 21(4) of Disciplinary Cases – Council's decision dated 5th January, 2006)

Member accepted the position as auditor without first communicating with the previous auditor. He accepted the appointment even before the undisputed fees payable to the Complainant was paid.The compliance with Section 224 and 225 of the Companies Act, 1956 were

not complied with by the Incoming Auditor.

The Council held the incoming auditor:

(a) guilty of professional misconduct falling within the meaning of ~~Clauses~~ **Items** (8) and (9) of Part I of First Schedule to the Chartered Accountants Act, 1949 and also

(b) guilty within the meaning of Notification No.1-CA(7)/46/99 dated 28th October, 1999 under ~~Clause~~ **Item** (ii) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

(D.G. Chandak vs. S.D. Chauhan of M/s. S.D. Chauhan & Co., Mumbai - Page 492 of Vol. X-2A – 21(4) of Disciplinary Cases – Council's decision dated 5th January, 2006)

The Complainant conducted the Statutory Audit of a Company and issued the Auditor's Report. Subsequently, the Company conducted its AGM and requested the complainant to conduct statutory audit for the subsequent year. But, the Respondent-firm accepted and conducted the statutory audit, without first communicating with the previous auditor in writing and also without ascertaining whether the requirements of Section 224 and 225 of the Companies Act, 1956 have been complied with, and signed the accounts and audit report (through its partner) without knowledge of the Complainant. The Council held the incoming auditor guilty of professional misconduct under ~~Clauses~~ **Items** (8) and (9) of Part I of the First Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Sanjay Kalra of M/s. S. Kalra & Associates vs. B.M. Goel of M/s. Kapoor Bhushan & Co. - Page 525 of Vol. X-2A – 21(4) of Disciplinary Cases – Council's decision dated 22nd June, 2006)

The Complainant-firm was the statutory auditors of a company since its incorporation and audited and certified the Company's Accounts up to 1994. They completed the routine audit of the Company's Accounts for the year ending 31st March, 1995 and the trial balance along with the schedules and draft accounts was handed over to the Company for approval of the Board of Directors. Later, the incoming auditor took up the audit and certified the accounts for the same year, without communicating and ascertaining the compliance of provisions of Section 225 of Companies Act, 1956. The Council held the incoming auditor guilty of professional misconduct under ~~Clauses~~ **Items** (8) and (9) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Vinod Somani Vs. M.L. Agarwal - Page 511 of Vol. X-2A – 21(4) of Disciplinary Cases – Council's decision dated 2nd August, 2006)

The Chartered Accountant was alleged to have accepted position of auditor of Company, whereas the Complainant (previous auditor) had not resigned nor had been removed. The Respondent accepted the statutory audit of Company without first communicating with the Complainant who was the previous auditor of the Company. The Respondent did not ensure the compliance of requirement of Section

224/225 of the Companies Act, 1956 before accepting appointment as auditor of the Company. Held the Chartered Accountant is guilty under ~~Clauses~~ **Items** (8) & (9) of Part I of First Schedule.

(T. S. Kakkar & Co. v. Vipul N. Chauhan of M/s D. Kothary & Co. - to be published later under Disciplinary Cases Volume X-2B–21(4). Council decision of 277th Meeting held in March – April 2008)

A Chartered Accountants firm accepted the appointment of seven companies and completed the audit of accounts, without ascertaining whether the requirements of Section 224 of the Companies Act, 1956 in respect of such appointment have been duly complied with. No communication made with previous auditor in writing. Extensive canvassing was done. Respondent held guilty under ~~clauses~~ **items** (8) & (9) of Part I of First Schedule.

(Brijesh C. Parikh of M/s Brijesh C. Parikh Co. v. Anil A. Shah & Co. (25-CA(57)/2000). - to be published later under Disciplinary Cases Volume X-2B–21(4). Council decision of 278th Meeting held in May, 2008)

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

~~Clause~~ Item (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;*

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.

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.

The Council of the Institute has however framed Regulation 192 which exempts members from the operation of this ~~Clause~~ **Item** 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.*~~

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;

(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.

The decisions of the High Court on this ~~clause~~ **item** is given below:

Where a Chartered Accountant had charged fees at certain percentage of the expected relief - Held, he was guilty of the charges.

(R.B. Basu vs. P.K. Mukherji - Page 137 of Vol.III of the Disciplinary Cases and pages 184-194 of October, 1956 issue of the Institute's Journal - Judgement delivered on 17th July, 1956).

Where the fees of a chartered accountant was agreed to be charged and paid at 1% on the total amount which the client Company was to save towards its tax liability irrespective of the result of the assessment which ultimately was made by the concerned authorities , it was held that such fees is neither based on the percentage of the profits of the Company nor is contingent upon the finding or result of the case , hence the case will not fall within the scope of Section 22 read with Clause 10 of the First Schedule of the Act. The other issue raised in this case was misconduct under Clause (10) vis –a vis provisions under the Law of Contract. It was held that the rule contained in Clause 10 is for a specific purpose i.e. to maintain the purity of the profession of the Chartered Accountants. Infraction of provision contained in this Clause would make a Chartered Accountant liable for disciplinary proceeding by the Council for professional misconduct, but it cannot be construed to mean that charging of fees by Chartered Accountant on percentage basis is forbidden by law for the purpose of Section 23 of the Contract Act.." (High Court of Himachal Pradesh in H.P. State Forest Corporation vs S. Butail and Company (2005)

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

~~Clause~~ Item (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;*

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

The Council, on a very careful consideration of the matter, has formulated 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-'F'**).

~~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.

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

As regards the question of permitting 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 Simplicitor" means an ordinary/simple

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

In this regard the following observation by the Appellate Authority is noteworthy :

"The intention of the legislature is reflected from Clause 11 to Part I of First Schedule to the Act itself. While the proviso permits a Chartered Accountant to be a Director of a company without permission of the Council, it specifically provides that such a Director should not be a Managing Director or a whole-time Director. A Managing Director or a whole-time Director is the one who, on behalf of the company, discharges all day-to-day functions of the company and is authorized by the Board of Directors to act on behalf of the company. Section 269 of Companies Act, 1956 provides for mandatory appointment of a Managing Director or whole-time Director in case of such companies which have a specified paid-up-share-capital. Thus, the Legislature envisaged two kinds of directors; those who were involved in the business of the company and those who were not involved in day-to-day business affairs of the company but were on Board of the company in order to ensure that the company moves in right direction. The Board of Directors collectively have to take decisions for the benefit of the company to be implemented by the Managing Director or whole time Director or other executives of the company. We, therefore, consider that a Director who is not involved in day to day business of the company but who participates in the Board meetings and even receives remuneration for such participation and takes part in policy decisions, financial decisions but does not execute the decisions, is a Director not doing the business of the Company but is a Director simplicitor. Such a Director merely by virtue of signing a balance sheet or by discharging other statutory obligations as a Director without actually participating in the business of company would not be said to be involved in the business of the company. However, a person being a Director of the Company if operates the accounts of the company and executes the business of the company or participates in other activities of the company apart from attending Board

Meetings and signing the statutory documents as required to be signed by a Director, then such a Director has to be considered a Director involved in the business of the Company…….

It is settled law that what cannot be done directly, cannot be done indirectly. If a CA cannot indulge in business directly he cannot indulge in business indirectly through a company. The sole purpose of prohibiting a CA from indulging in business activities simultaneously with carrying on his profession of CA shall stand defeated if it is considered that a CA can form a company, can become director of a company and can do all activities as a director without being designated as a Managing Director or whole-time Director. If it is held that a director having authority to operate the accounts, writing letters to Sales Tax Authorities, entering into JVA on behalf of the company was not actively involved in the business of the company, that would be travesty of justice. In that eventuality, any CA can indulge safely into the business by generating and by creating several companies with a paid-up-capital and be a director of such companies and continue to do the business himself without designating anyone as a Managing director or a whole-time director. A line has to be drawn between a director simplicitor and a director actively involved in the business activities of a company and we consider that a Director who attends Board Meetings for taking policy decisions, advising a company on the issue of compliance of laws and even signs only those statutory documents which he is duty bound to sign as a director and charges fee for such work, would not be a director involved in the business of the company but would be a director performing statutory duties but not a Director who has authority to operate accounts of the company; authority to act on behalf of the company as a signatory for JVA or such other agreements resulting into promotion of the business of the company and corresponds with different persons on behalf of the company, would be a director involved in the business affairs of the company, even if he was not a whole time director or managing director."

(Ashish S. Kulkarni vs. Mahen J. Dholam (DD/46/08/BOD/3/2008) – of the Disciplinary Cases, Volume I, BOD, Part I, Guilty)

(b) Promoter/Promoter-Director

There is no bar for a member to be a promotor/signatory to the

Memorandum and Articles of Association of any Company. There is also no bar for such a promoter/signatory to be a Director Simplicitor of that Company irrespective of whether the 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.

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 Council at its 299th Meeting held in 2010 has decided that it is permissible for Chartered Accountant in practice to accept an assignment of investigation given by an Insurance Company , as the work of investigation is akin to audit.

The decisions of the Council/High Courts on this ~~clause~~ **item** are given below.

A Chartered Accountant engaged himself in carrying on a business known as Shivaji Engineering Works. Held he was guilty of professional misconduct under the ~~clause~~ **item**.

(D.S. Sadri vs. B.M. Pithawalla - Page 300 of Vol.V of the Disciplinary Cases - decided on 14th, 15th, 16th & 17th September, 1977).

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

(K.S. Dugar in Re: - Page 1 of Vol. VI(2) of the Disciplinary Cases - decided on 2nd, 3rd and 4th April 1980).

A member in practice was authorised by a resolution of the Board of directors of a Company held on 4.9.81 to look after the day to day affairs of the Company and other Directors were requested to give maximum co-operation to him. Also the member held more than 51% of the shares of the said Company. Later on 8.5.82, he applied to the Council for permission to hold the office of the Executive Chairman of the said Company. It was held on the basis of facts and circumstances of the case that during the period 4.9.81 to 8.5.82 the member had engaged himself in "other occupation" without the permission of the Council and was found guilty in terms of this ~~Clause~~ **Item**.

(M.K. Abrol and S.S. Bawa vs. V.P. Vijh - Page 256 of Vol. VI(2) of Disciplinary Cases - Decided on 11th, 12th and 13th February, 1988)

A member having a certificate of practice and having 2 Articled Clerks with him was simultaneously working as a Financial Controller of a Company without the permission of the Council. He was held to be guilty in terms of this ~~Clause~~ **Item** in so far as he was engaged in other occupation without the permission of the Council.

(S.K. Kaul vs. S.C. Mangal - Page 132 of Vol. VI(2) of Disciplinary Cases - Decided on 9th and 10th August, 1988)

A member as a Karta of his Hindu Undivided Family entered into partnership business for a short period with non-Chartered Accountants for engaging in business other than the profession of Chartered Accountants, without prior permission of the Council. Therefore, he was found guilty in terms of ~~clauses~~ **items** (4) and (11).

(R.D. Bhatt vs. K.B. Parikh - Page 191 of Vol. VI(2) of Disciplinary Cases - Decided on 15th, 16th and 17th December, 1988)

The Bombay High Court in WP No. 4906 of 1985 decided on 9th February, 1989 has held that the prohibition to enter into any partnership with any person other than a Chartered Accountant under ~~Clause~~ **Item** (4) of Part I of the First Schedule is absolute but not so under ~~Clause~~ **Item** (11). According to the Court, ~~Clause~~ **Item** (11) enables the Chartered Accountant to engage in any business or any occupation other than the profession of Chartered Accountancy provided the Council grants permission to engage in such business or occupation. According to the Court, it is obvious that the Council desired to retain the power to permit a Chartered Accountant to engage in any business or occupation which may be incidental or would be useful for carrying on the profession of chartered accountancy. Regulation 166 reiterates what ~~Clause~~ **Item** (11) provides. In pursuance of Regulation 166, the Council of the Institute has resolved that permission would be granted to the Chartered Accountants engaged in any business or occupation other than the profession of chartered accountancy in the cases set out in the resolution (Appendix 9). ~~Clause~~ **Items** (4) and (11) contemplate two distinct and separate contingencies and ~~Clause~~ **Item** (4) cannot be so read as to make ~~Clause~~ **Item** (11) and the power retained by the Council to grant permission redundant.

(Nalin S. Sualy vs. Institute of Chartered Accountants of India - Bombay High Court WP No. 4906 of 1985 dated 9th February, 1989)

While dealing with the reasonableness of ~~Clause~~ **Item** (11), the Allahabad High Court in CWP No. 1823 of 1988 has decided on 10th July, 1990 that it is always open to place reasonable restriction or to regulate any professional activity. Such restrictions are not new; they are to be found in many fields where it is provided that a person practising any particular profession shall not be engaged in any other business. According to the Court, it may be necessary to have such

regulatory provision so that proper and undivided attention of the person practising a profession is available to those to whom they are supposed to render their services. Such professional services should be available to the needy with full and proper care and attention. The profession also requires to maintain certain standard of efficiency which it may not be possible to acquire if a person has his interest somewhere else.

(Iqbal Hamid vs. Institute of Chartered Accountants of India - Allahabad High Court - W.P. No. 1823 of 1988 dated 10th July, 1990)

Where a Chartered Accountant had not disclosed to the Institute at any time about his engagement as a proprietor of a non-Chartered Accountant's firm while holding certificate of practice and had not furnished particulars of his engagement as a Director of a Company despite various letters of the Institute which remained unreplied. Held that he was guilty under ~~clause~~ **item** (11) of Part I and ~~clauses~~ **items** (1) and (3) of Part III of the First Schedule.

(P.S. Rao in Re: - Page 110 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 9th to 11th April, 1992).

Where a Chartered Accountant was Karta of the HUF and was engaged in the business of a firm without permission of the Council. Held that he was guilty of professional misconduct under the ~~Clause~~ **Item**.

(V. Krishnamoorthy vs. T.T. Krishnaswami - Page 192 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 27th to 29th September, 1992).

Where a Chartered Accountant had already held employment with a Company without prior permission of the Institute as required under the Regulations. Held that he was guilty under the ~~clause~~ **item**.

(R.K. Jain in Re: - Page 252 of Vol.VII(2) of the Disciplinary Cases – Council's decision dated 10th to 12th June, 1993).

Where a Chartered Accountant had held a salaried employment as Assistant Manager (Finance & Accounts) in addition to the practice of chartered accountancy without obtaining permission of the Institute as required under Regulations. Held he was guilty held under the ~~clause~~ **item**.

(Anil Kumar in Re: - Page 330 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 16th to 18th January, 1994)

Where a Chartered Accountant had offered to help the Complainant in disposing of odd lot shareholding, sold the shares of the Complainant at much lower rates than the prevailing market rates, had sent to the Complainant contract notes etc. and the said Chartered Accountant was personally involved in the share transfers and broker's business besides his professional activities. Held that he was guilty under the ~~clause~~ **item**.

(Pradeep R. Ghatge vs. Ashvin Bajaria - Page 423 of Vol.VII(2) of

Disciplinary Cases – Council's decision dated 13th to 15th June, 1996)

Where a Chartered Accountant in practice had engaged himself in other occupation as an LIC agent without obtaining permission of the Council. Held that he was held guilty under the ~~clause~~ **item**.

(Chief Commissioner (Admn.) & Commissioner of Income-tax, Karnataka-I, Bangalore vs. H. Mohanlal Giriya - Page 443 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 13th to 15th June, 1996)

A Chartered Accountant in practice had held full-time salaried employment with a Company without obtaining prior permission of the Council, as required under Regulation 190A of the Chartered Accountants Regulations 1988. He was held guilty under the ~~Clause~~ **Item** for being engaged in employment without the permission of the Council.

(R.K. Verma in Re: - Page 650 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 16th to 18th January, 1997).

The charge against a Chartered Accountant, inter alia, was that he had more than 20% shareholdings in a finance and management consultancy private Company, and he could not enter into the business of brokering. It was held that he had to be considered to be a Managing Director or a whole-time Director under the provisions of Section 2(26) of the Companies Act, 1956, since he was entrusted with the whole or substantially the whole of the management of the affairs of the Company. Since he failed to obtain specific and prior approval of the Council for the above, he was held guilty under the ~~Clause~~ **Item**.

(J.P. Gupta vs. T.C. Garg - Page 670 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 21st to 23rd July, 1997).

A Chartered Accountant had entered into partnership in a firm with the husband of the Complainant and others and agreed to look after general administration, appointment of office staff, finance and legal matters of civil and taxation nature. He was held guilty of violation of Clause (11).

(Satwant Kaur vs. Rakshit Khosla - Page 696 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 21st to 23rd July, 1997).

The Complainant alleged that the Respondent had engaged in business and occupation other than the profession of Chartered Accountancy and carried on consultancy services under a name which though applied for by him was not approved by the Institute. Thus he was guilty under the ~~Clause~~ **Item**.

(Amalendu Gupta vs. R.N. Kapur - Page 726 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 8th to 10th December, 1997).

A Chartered Accountant had been in full-time employment in a Company besides holding Certificate of Practice without obtaining

Institute's permission and in the bank empanelment form, he had given declaration to the effect that he was not devoting any time to any occupation/vocation/business etc. other than the profession of Chartered Accountant. He was held guilty for violation of ~~Clause~~ **Item** (11) of Part I and ~~Clause~~ **Item** (1) of

(N.K. Gupta in Re: - Council's decision dated 1st to 4th July, 1998 - Page 1 of Volume VIII(2) of Disciplinary Cases).

The Respondent entered into a partnership with the Complainant for running the business of manufacturing readymade garments. He was held guilty for violation of ~~Clause~~ **Item** (11).

(D. Hemalatha vs. P.N. Malolan – Council's decision dated 15th to 17th December, 1999 – Page 87 of Volume VIII(2) of Disciplinary Cases).

Two members, while holding Certificate of Practice, had been in full time employment with an Insurance Company without obtaining the Institute's permission to be so engaged. They also did not disclose the particulars of their full time salaried employment at the time of furnishing particulars in the prescribed Form for registration of the articled clerks. They were held inter alia guilty for violation of ~~Clause~~ **Item** (11) of Part I and ~~Clause~~ **Item** (1) of Part III of the First Schedule.

(C.M. Mehrotra in Re: - Council's decision dated 11th to 13th October, 1999, Page 76 of Volume VIII(2) of Disciplinary Cases and A.P. Gupta in Re:- Council's decision dated 15th to 17th December, 1999, Page 134 of Volume VIII(2) of Disciplinary Cases).

Where a Chartered Accountant was a partner in a business firm without disclosing his interest and obtaining permission from the Council of the Institute. Held that he was inter alia guilty of professional misconduct under the ~~Clause~~ **Item**.

(R.K. Gupta of M/s Gupta Rajendra & Co. vs. M.G. Baig – Page 158 of Vol. VIII(2) of Disciplinary Cases decided by the Council on 1st to 3rd August, 2001)

Where a Chartered Accountant was in full time employment with a Company and had continued his services even after intimating the Institute that he had resigned from service. He had shown himself in full time practice while applying for bank empanelment for 3 years. Held that he was inter alia guilty of professional misconduct under ~~Clause~~ **Item** (11) and Regulation 190A of Chartered Accountant Regulations 1988.

(S.C. Srivastava in Re: – Page 194 of Volume VIII(2) of the Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001)

A Chartered Accountant while in employment with a Corporation conveyed acceptance as statutory auditor to the complainant and declared that he was a full time practicing Chartered Accountant and

not employed elsewhere. Held that the Chartered Accountant was inter alia guilty of professional misconduct under ~~Clause~~ **Item** (11) for not obtaining permission of the Council for engaging himself in full time employment with the Corporation while holding Certificate of Practice.

(The Senior Manager, Punjab National Bank vs. N.K. Chopra – Pages 271 of Volume VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001)

A Chartered Accountant had engaged himself as a partner in two business firms and Managing Director in two Companies and was also holding Certificate of Practice without obtaining permission of the Institute. Held that he was inter alia guilty of professional misconduct under ~~Clauses~~ **Item** (4) and (11).

(Harish Kumar in Re: – Pages 286 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001)

A Chartered Accountant who was enrolled as a fellow member of the Institute disclosed in the form "entry of record" that he was engaged as partner of "M/s X Group of Magazines". He was also working as a Director of "M/s. A & Co.". On enquiry, the Respondent informed the Institute that he was engaged as a partner of the said M/s. X Group of Magazines since 1978. The Respondent had never disclosed about this even while he was holding Certificate of Practice in all these years and nor did he seek permission from the Institute to engage himself as a partner in any other occupation. Held that the Chartered Accountant was guilty of professional misconduct under ~~Clause~~ **Item** (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(Rajkumar H. Advani in Re: - Pages 373 of Volume VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001. Also published in the December 2002 issue of Institute's journal at page 627)

The Souvenir published on the occasion of "Navaratrotsav" by 'Parel Paschim Vibhag Va Tata Mills Welfare Centre 1991' contained an advertisement with a caption "With best compliments from Abhiraj R. Ranawat B.Com., A.C.A. (Chartered Accountant) Share and Stock Sub-Broker. The said advertisement also contained office timing 8 A.M. to 10 A.M., telephone nos. of market and residence and addresses of office and market. Arising out of the above, the Respondent inter alia held guilty in not taking Institute's permission for engaging in other occupation i.e. share and stock sub-broker while holding certificate of practice in violation of ~~Clause~~ **Item** (11) of Part I of Chartered Accountants Act, 1949.

(A.R. Ranawat in Re: - Pages 414 of Vol. VIII(2) of Disciplinary Cases – Council's decision dated 26th to 28th August, 2001)

While holding Certificate of Practice the Chartered Accountant had been in full time employment. However, he did not obtain the Institute's permission to be so engaged as required under Regulation

190A of the Chartered Accountant Regulation 1988. Held that he was inter alia guilty of professional misconduct under ~~Clause~~ **Item** (11) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(N.K. Malhotra in Re: - Pages 443 of Volume VIII (2) of Disciplinary Cases – Council's decision dated 26th to 28th August, 2001)

Where a Chartered Accountant was holding Certificate of Practice and was also in salaried employment elsewhere without obtaining the permission of the Council. Held that he was inter alia guilty of professional misconduct under ~~Clause~~ **Item** (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(S.K. Ahuja in Re: - Pages 496 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 6th to 8th December, 2001)

A Chartered Accountant had helped private Financial Services Company through his friends in Mumbai to investment in equity and they had invested to the tune of Rs. 30 Lakhs for a limited company. The Financial Services Company which was a consultancy firm was run by his wife. Held that he was guilty of professional misconduct under ~~Clause~~ **Item** (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(M. Hariharan in Re: - Pages 1 of Vol. IX-2A–21(4) of Disciplinary Cases – Council's decision dated 2nd to 4th July, 2002)

Where a Chartered Accountant was doing the brokership of shares apart from holding Certificate of Practice without taking permission from the Council. Held that he was inter alia guilty of professional misconduct under ~~**clause**~~ **item** (11) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(A.C. Sharma & Mrs. Indu Sharma, Proprietor, M/s Sharma Share Trading Co. vs. Sandeep Abbot – Page 22 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 11th to 14th September 2002)

Where a Chartered Accountant entered into partnership for export of garments without obtaining permission from the Institute. Held that he was inter alia guilty of professional misconduct under ~~**clause**~~ **item** (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Mrs. Vimla Manchanda vs. Ashok Kumar Malik - Page 38 of Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 11th to 14th September, 2002)

The Respondent accepted the position of Director and of auditor of a Company for the year 1992 from May 1992 till March 1993. It was argued that the Respondent audited the accounts of the Company only after March 1993 when he was not the Director of the Company. However, the appointment of the auditor, having been made when he was director of the Company, the Respondent was disqualified under Section 226(3)(b) of the Companies Act and that he should not have

accepted the position as auditor being the Director of the Company. Held that the Respondent was guilty under the ~~Clause~~ **Item** for not having obtained the prior permission of the Council for engaging himself in other occupation, as director of the Company despite of the fact that he was interested in the Company as auditor and has also contravened the provisions of section 224-A read with section 226 of the Companies Act, 1956.

(A.V. Deshmukh vs. J.D. Sanghvi – Page 491 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December 2002)

The Respondent was in full time employment with a Company without obtaining permission of the Institute besides holding Certificate of Practice. Held that the Respondent was inter alia guilty under the ~~Clause~~ **Item**.

(Arvind Kumar in Re: – Page 553 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December 2002)

The Respondent, while in employment with a Company, passed Chartered Accountancy Examination and sought permission in the year 1987 to do practice, on a part time basis from the Complainant Company. While still in employment, he wrote a letter to the Institute that he had resigned, which was false and misleading. Held that the Respondent was inter alia guilty of professional misconduct under the ~~Clause~~ **Item**.

(Managing Director, A.P. Handicrafts Dev. Corpn. Ltd. vs. A. Bhimeswara Swamy – Page 590 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 7th to 8th & 24th to 25th April 2003)

Where a Chartered Accountant acted as karta of a Hindu Undivided Family (HUF) without taking prior permission of the Council. Held that he was inter alia guilty of professional misconduct under the ~~clause~~ **item**.

(B.L. Asawa, Chief Manager, Punjab National Bank, Delhi vs. P.K.Garg – Page 728 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 16th to 18th Sept. 2003)

Where a Chartered Accountant continued to remain as a Director of a Company when one of his partners was interested in that Company as an auditor. Held that he was guilty of professional misconduct by continuing to hold office as a Director of the Company,

(Registrar of Companies, West Bengal vs. K.C. Lunawat – Page 819 of Vol. IX-2A-21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September, 2003)

The Respondent was engaged in business of Share Dealer and Financial Advisor in which he was sole proprietor and was also practicing as CA from the same address. Held that the Chartered Accountant was inter alia guilty of professional misconduct within the

meaning of ~~Clause~~ **Item** (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Chatar Lal Mantri vs. Vinod Kumar Agarwal – Page 869 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September, 2003)

The Respondent who was a partner in a C.A. firm besides being in employment was also holding Certificate of Practice without taking prior permission of the Institute. Held that the Chartered Accountant was guilty of professional misconduct within the meaning of ~~Clause~~ **Item** (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Sudesh Pandit in Re: – Page 882 of Vol. IX – 2A – 21(4) of Disciplinary Cases–Council's decision dated 16th to 18th Sept. 2003)

Where a Chartered Accountant had been carrying on business on "Share Market" at the Calcutta Stock Exchange being a member of the said exchange and was also holding Certificate of Practice without taking prior permission of the Institute. Held that he was guilty of professional misconduct within the meaning of ~~Clause~~ **Item** (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(S.K. Sharma vs. V.K. Kandoi – Page 122 of Vol. IX – 2B – 21(4) of Disciplinary Cases – Council's decision dated 2nd to 4th February, 2004)

Where a Chartered Accountant was engaged in business other than the profession of Chartered Accountancy without taking prior permission of the Institute. Held that he was guilty of professional misconduct within the meaning of ~~Clause~~ **Item** (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Sri Nath Prasad vs. Vineet Aggarwal – Page 23 of Vol. IX – 2B – 21(4) of Disciplinary Cases – Council's decision dated 2nd to 4th February, 2004)

Where a Chartered Accountant was engaged in business of purchase and sale of imported glasses other than profession of Chartered Accountant without taking prior permission of the Institute. Held that he was inter alia guilty of professional misconduct within the meaning of ~~Clause~~ **Item** (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Chintamany Abhyankar in Re: – Page 53 of Vol. IX – 2B – 21(4) of Disciplinary Cases – Council's decision dated 2nd to 4th February, 2004)

A member, without surrendering her certificate of practice, and without obtaining prior permission from the Council of the ICAI, accepted the job of a full time lecturer and as HOD (18 hrs per week) in a College. The Council held that the member guilty of professional misconduct under ~~Clause~~ **Item** (11) of Part I of the First Schedule read with

Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Saraswati Gurunath Joshi vs. Himangi S. Prabhu - Page 555 of Vol. X – 2A – 21(4) as decided on 21st June, 2006, 260th Meeting of the Council)

A member while employed with the Complainant Company as Chief Accountant had not taken permission of the Institute to engage himself in employment while holding Certificate of Practice. The Council held him guilty of professional misconduct falling within the meaning of ~~Clause~~ **Item** (11) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(Abdul Aziz Mohd. Khan, Director of M/s Precision Dies and Tools Mfg. Co. vs. Rajesh Laddha - Page 537 of Vol. X – 2A – 21(4) as decided on 4th February, 2006, 257th Meeting Of The Council)

A Chartered Accountant's wife was made Chairperson of a Company and the Company and the respondent firm operated from same premises. The respondent as MD of Company, executed an agreement for appointment of the Complainant as a stockist and accepted deposit as security money. Respondent was held guilty under ~~clause~~ **item** (11) of Part I of First Schedule.

(Atul K. Gupta v. Swadesh C. Srivastava (25-CA(57)/99). - to be published later under Disciplinary Cases Volume X -2B–21(4). Council decision of 277th Meeting held in March – April 2008)

A Chartered Accountant was whole time Director of a Company and managing day to day affairs of Company along with another person. Respondent was having Certificate of Practice. In equity issue, the respondent along with another person siphoned out the money leaving the shareholders valueless and also, solicited clients by advertisements. Held, the Respondent is guilty under ~~Clause~~ **Item** (11) of Part I of First Schedule and is not guilty of remaining charges.

(Dr. Abhijit Sen, Alliance Credit & Investment Ltd. v. Parmanand Tiwari of M/s Tiwari & Co. (25–CA(75)/98) - to be published later under Disciplinary Cases Volume X -2B–21(4). Council decision of 278th Meeting held in May, 2008).

A Chartered Accountant firm was working as Recovery Agent for Housing Finance Company without taking any permission from the Council to engage in any work other than the profession of Chartered Accountancy. The Respondent had written a letter to the Complainant for recovery of money wherein he represented himself as an agent of LIC housing Finance Ltd. He intimidated the Complainant with harsh and coercive method of recovery. Held that the Respondent is guilty under ~~clauses~~ **items** (7) & (11) of Part I of First Schedule.

(Yogesh Kumar Sharma v. O. P. Maheshwari of M/s O. P. Maheshwari & Co. (25-CA(212)/2003) - to be published later under Disciplinary Cases Volume X-2B–21(4). Council decision of 281st Meeting held in October,

2008)

A chartered accountant while holding full time COP was also engaged in full time employment without obtaining the permission of the Council. He also trained articled clerks under him and stated in a form to be submitted to bank that his main occupation was profession. The court held him guilty under Item (11) of Part I and Item (1) of Part III of the First Schedule and Item (1) of Part II of the Second Schedule. In addition to the penalty of reprimand, the court also required him to do 'an act of penance', like doing social service by rendering pro-bono professional services to a charitable institute/ NGO by auditing their accounts without fee.

(The Council of the Institute of Chartered Accountants of India v. Shri S.N. Sachdeva (CHAT. A. REF. NO. 1 OF 2002 & CHAT. A. APPEAL NO. 1 OF 2003) - under Disciplinary Cases, Volume X, Part I)

A chartered accountant was involved in the arbitrage activities and worked as an arbitrageur for which he had not taken prior approval from the Council as contemplated under Item (11) of Part I of First Schedule. The Board of Discipline stated that the said act of the Respondent brought disrepute to the profession of the Chartered Accountancy and held him guilty of professional misconduct falling under Item (11) of Part I and Item (2) of Part IV of First Schedule.

(Harish L. Sampat In Re (DD/54/W/INF/08/BOD/39/09)- Under Disciplinary Cases Volume I -BOD –Part I- Guilty)

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

~~**Clause**~~ **Item (12):** *allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, any balance-sheet, profit and loss account, report or financial statements.*

The above ~~clause~~ **item** 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.

This ~~Clause~~ **Item** 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.'

The term 'financial statement' for the purposes of this ~~clause~~ **item** would cover an examination of the accounts or of financial statements given under a statutory enactment or otherwise.

A report, however, may cover a wider range of documents but in the context in which it is used in this ~~clause~~ **item**, 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~~ **item** obviously mean the financial statements and reports as ultimately finalised and submitted to the outside authorities.

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

(i) Issue of audit queries during the course of audit.

(ii) Asking for information or issue of questionnaire /**confirmation of third parties for Audit**.

(iii) Letter forwarding draft observations/financial statements.

(iv) Initialing and stamping of vouchers and of schedules prepared for the purpose of audit.

(v) Acknowledging and carrying on routine correspondence with clients.

(vi) Issue of memorandum of cash verification and other physical verification or recording the results thereof in the books of the clients.

(vii) Issuing acknowledgements for records produced.

(viii) Raising of bills and issuing acknowledgements for money receipts.

(ix) Attending to routine matters in tax practice, subject to provisions of S.288 of Income-tax Act.

(x) Any other matter incidental to the office administration and routine work involved in practice of accountancy.

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

However, the Council has decided that where a Chartered Accountant while signing a report or, a financial statement or any other document is statutorily required to disclose his name, the member should disclose his name while appending his signature on the report or document. Where

there is no such statutory requirement, the member may sign in the name of the firm.

PART II OF THE FIRST SCHEDULE

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

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

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

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

~~**Clause**~~ **Item (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;*

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.

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

PART III OF THE FIRST SCHEDULE

Professional Misconduct in Relation to Members of the Institute Generally

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

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

~~**Clause**~~ **Item (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;*

Where a Chartered Accountant had not disclosed to the Institute at any time about his engagement as a proprietor of a non-Chartered Accountants' firm while holding certificate of practice and had not furnished particulars of his engagement as a Director of a Company despite various letters of the Institute which remained unreplied. Held that he was guilty under ~~clause~~ **item** (11) of Part I and ~~clauses~~ **items** (1) and (3) of Part III of the First Schedule.

(P.S. Rao in Re:- Page 110 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 9th to 11th April, 1992).

Where a Chartered Accountant had continued to train an articled clerk though his name was removed from the membership of the Institute and he had failed to send any reply to the Institute asking him to send his explanation as to how he was training as his articled clerk when he was not a member of the Institute. Held that he was guilty under ~~clause~~ **item** (3) of Part III of the First Schedule.

(S.M. Vohra in Re:- Page 151 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 16th to 18th July, 1992).

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

~~**Clause**~~ **Item (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.*

The foregoing ~~clauses~~ **items** 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.

PART IV OF THE FIRST SCHEDULE

Other misconduct in relation to members of the Institute generally

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

~~Clause~~ Item (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;*

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.

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

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

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

This ~~Clause~~ **Item**, 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.

A chartered accountant misused his position as an insider to extract more money from the client, threatened and cheated the client, illegally held client's documents, used abusive language against the client and made false legal statements. The Board of Discipline while holding the Respondent guilty of 'Other Misconduct' under Item (2) of Part IV of First Schedule observed that the manner in which the emails were sent by the Respondent which were more in the nature of threatening one's client, the conduct of the Respondent is unbecoming of a Chartered Accountant and the same has brought disrepute to the profession of the Chartered Accountancy. [*Rajiv Agarwal vs. Naveen Chaudhary* (DD/161/09/BOD/44/2010) – Under Disciplinary Cases , Vol I , BOD, Part-I , Guilty]

DIVISION III

THE SECOND SCHEDULE

~~5.16 The Second Schedule~~

INTRODUCTION

The Second Schedule is divided into 3 parts and spells in detail the various acts and omissions entailing professional/other misconduct, which are dealt with punishment in accordance with Chapter-V of the Act.

Part I deals with professional misconduct in relation to chartered accountants in practice and consists of 10 items. Part II governs professional misconduct in relation to members of the Institute generally and comprises of 4 items. The last part, Part III, deals with other misconduct in relation to members of the Institute generally and consists of 1 item only.

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.

PART I OF THE SECOND SCHEDULE

Professional misconduct in relation to chartered accountants in practice:

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

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

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

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.

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 291 of the Companies Act, 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.

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'**. In this regard, reference may be made to Standard of Auditing (SA) 299 (Responsibility of Joint Auditors). This Standard deals with the professional responsibilities which the auditors undertake in accepting appointments as joint auditors, i.e. the auditors who conduct the audit jointly and report on the financial statements of the entity.**

However, the auditor may, at his discretion, in cases considered appropriate by him, make portions of or extracts from his working papers available to the client. The above clarification has been published in April, 2000 issue of the Journal, 'The Chartered Accountant' at page 89.

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

It is not possible to set out all the circumstances under which disclosure of information may be required by law. If under any legal compulsion and if it is not legally permissible to claim privilege under the Evidence Act, 1872 (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.

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, 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. The immunity from disclosure afforded by Section 126 of the Evidence Act, and the extent of such immunity are questions which involve niceties of law and expert legal advice should be sought in the

matter. The refusal of the member to disclose may be taken down, and he may be required to certify it on oath.

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

The decisions of the Court on this ~~**clause**~~ **item** are given below:

Disclosure of information Where a Chartered Accountant disclosed to the Income-tax Officer information acquired in the course of his professional engagement without the consent of his clients - Held, he was guilty under ~~**clause**~~ **item** (1).

(Jamnadas Harakchand and Others vs. P.C. Parekh - Page 492 of Vol. IV of the Disciplinary Cases and pages 26-44 of July, 1967 issue of the Institute's Journal - Judgement delivered on 12/16th January, 1967).

Where a Chartered Accountant had disclosed information acquired by him in the course of his professional engagement to persons other than his clients without the consent of his client and without requirement in any law. It was held that he was guilty of professional misconduct under ~~**clause**~~ **item** (1) of Part I of the Second Schedule to the Chartered Accountants Act**, 1949.**

(Bank of India vs. Ved Prakash - Page 458 of Vol.VI(1) of Disciplinary Cases - Judgement dated 13th July, 1989).

The Respondent was the auditor of a Branch of a Bank for the years ended 31st December, 1985 and 31st December, 1986. In the course of audit, he found certain irregularities/ violations on which he drew the attention of the Managing Director of the Bank by his letter dated 5th August, 1986. Since to his knowledge, no action was taken by the Managing Director, he wrote letters to the various Government authorities informing them various irregularities/violations as aforesaid. The Complainant alleged that the Respondent was guilty under this C~~**lause**~~ **Item**. Having regard to the opinion of the Disciplinary Committee that there was no malafide intention on the part of the Respondent in writing letters to various Government authorities in regard to the irregularities noted by him in course of his audit of the Bank as well as the disturbed mental condition of the Respondent during the relevant time, the Council thought it fit to recommend to the Kerala High Court that the proceedings against the Respondent may be filed. Under the circumstances of the case, the High Court decided to file the case.

(State Bank of Travancore vs. Mani S. Abraham - Page 247 of Vol. VII(1) of Disciplinary Cases - Judgement dated 17th January, 2000).

Where a Chartered Accountant discloses to the Registrar of Companies (ROC) information acquired during the course of his professional engagement without the consent of the Client and without there being any requirement in Law to disclose the same. The Court rejected the contention of the respondent that the voluntary disclosure made by

him to the ROC was in public interest and that the same was done with a view to bring home the circumstances under which he was wrongfully removed from the auditorship. The Court observed that:

"From the facts on record it is evident that the respondent was aggrieved by the action of the company in removing him from the auditorship and there were disputes regarding non-payment of his professional fees and in these circumstances the letter was written more out of vengeance rather than public interest. If the public interest was the paramount consideration, then the respondent would have made a report disclosing all such information to the shareholders/creditors. The fact that no such report was made and the fact that after his removal from the auditorship on 14.12.1982, the respondent chose to write a letter on 28.12.1982 to the ROC without there being such obligation, clearly shows that the plea of public interest raised is only a ruse and not a bonafide action on the part of the respondent. It cannot also be stated that the letter was written with a view to protect his own interest. No action was contemplated by the ROC against the respondent and hence there was no question of addressing a letter to protect his own interest. Therefore, addressing a letter to the ROC was neither in public interest nor with a view to protect his own interest."

Held that the respondent had committed gross professional misconduct under ~~Clause~~ **Item** 1 of Part I of the Second Schedule of the Chartered Accountants Act, 1949.

(Director, M/s Shree Industrial Rubber Works Pvt. Ltd. vs. S.R. Khanna - Page 437 of Vol. VIII–1–21(6) of Disciplinary Cases- Judgement dated 5th August, 2004)

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

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

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

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

In this regard, reference may also be made to SA 620 – Using the Work of an Auditor's Expert .

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

In the course of his work, where a joint auditor comes across matters 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. This should be done by the submission of a report or note prior to the finalisation 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, whether or not he has prepared a separate report on the work performed by him. On the other hand, all the joint auditors are jointly and severally responsible-

(a) in respect of the audit work which is not divided among the joint auditors and is carried out by all of them;

(b) in respect of decisions taken by all the joint auditors concerning the nature, timing or extent of the audit procedures to be performed by any of the joint auditors. It may, however, be clarified that all the joint auditors are responsible only in respect of the appropriateness of the decisions concerning the nature, timing or extent of the audit procedures agreed upon among them; proper execution of these audit procedures is the separate and specific responsibility of the joint auditor concerned;

(c) in respect of matters which are bought to the notice of the joint auditors by any one of them and on which there is an agreement among the joint auditors;

(d) for examining that the financial statements of the entity comply with the disclosure requirements of the relevant statute; and

(e) for ensuring that the audit report complies with the requirements of the relevant statute.

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

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

For detailed consideration of the subject, the members must refer to

Standard on Auditing (SA) 299, "Responsibility of Joint Auditors".

The decisions of the Court on this ~~clause~~ **item** are given below:

Where a Chartered Accountant issued certificates of consumption which did not reflects the correct factual position of the consumption of raw materials by the concerned units. Also the same certificates has been issued without examining and scrutinising thoroughly/properly the requisite records. Held that the respondent was guilty of professional misconduct under ~~clauses~~ **items** (2) and (7) of part I of second schedule read with section 21 & 22 of the Chartered Accountants Act, 1949.

(JDI, Bombay vs. B.K. Kurhade - Page 585 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 12th August, 2004)

Where a Chartered Accountant issued false certificates to several parties for past exports for monetary consideration without verifying any supporting records or documents. On the strength of these false certificates, certain unscrupulous importers were able to obtain import license, effect imports and clear these free of duty, perpetuating a fraud on Government revenue and depriving the Government of its legitimate revenue to the tune of several Crores of Rupees. On his statements to the Department he confessed the above fact and disclosed that he had issued these certificates for monetary consideration and without verification of supporting documents on record. Held that the respondent was guilty of professional misconduct within the meaning of ~~clauses~~ **items** (2), (7) & (8) of Part I of the second schedule of the Chartered Accountants Act, 1949 in terms of section 21 & 22 of the said Act.

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

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

~~Clause~~ Item (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;*

The Council has issued Standard on Assurance Engagements (SAE) 3400, "The Examination of Prospective Financial Information", which is effective in relation to reports on projections/forecasts, issued on or after April 1, 2007. Pursuant to the issuance of this Standard, the Guidance Note on Accountant's Report on Profit Forecasts and/or Financial Forecasts, issued in September, 1982 stands withdrawn. The guidance provided in this Standard is in line with the provisions of clause (3) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. As per the opinion of the Council while finalising the Guidance Note on

Accountant's Report on Profit Forecasts and/or Financial Forecasts at its 100th meeting held on 22nd through 24th July 1982, a chartered accountant can participate in the preparation of profit or financial forecasts and can review them, provided he indicates clearly in his report the sources of information, the basis of forecasts and also the major assumptions made in arriving at the forecasts and so long as he does not vouch for the accuracy of the forecasts. The Council has further opined that the same opinion would also apply to projections made on the basis of hypothetical assumptions about future events and management actions which are not necessarily expected to take place so long as the auditor does not vouch for the accuracy of the projection.

Further, the attention of the members is drawn to "Guidance Note on Reports in Company Prospectuses (Revised)" issued by the Council in October, 2006. This Guidance Note provides guidance on compliance with the provisions of the Companies Act, 1956 and the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 relating to the reports required to be issued by chartered accountants in prospectus/statement in lieu of prospectus issued by the companies for the offerings made in India.

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

~~Clause~~ Item (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;*

If the opinion 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~~ **item**, 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.

In this connection attention of members is also invited to **~~Chapter~~ Section IV of Chapter II of Division VI of this Code . ~~Council Guidelines No. 1-CA(7)/02/2008 dated 8TH August, 2008.~~** The said guidelines state that a member of the Institute shall not express his opinion on financial statements of any business or enterprise in which one or more persons, who are his "relatives" within the meaning of **AS-18 ~~Section 6 of the Companies Act, 1956~~**, have either by themselves or in conjunction with such members, a substantial interest in the said business or enterprise.

For the purpose of said guideline and aforesaid ~~clause~~ **item**, the expression "substantial interest" shall have meaning as is assigned

thereto, under Appendix (9) of the Chartered Accountants Regulations, 1988. (see **Appendix-'F'**).

The words "financial statements" used in this ~~clause~~ **item** 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.

~~**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.**~~

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 551(1) of the Companies Act, 1956. The audit in such circumstances should be done by a chartered Accountant other than the one who is the Liquidator of the Company.

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, e.g. Section 228(iv) of the Companies Act, 1956 and the Companies (Branch Audit Exemption) Rules, 1961 made thereunder. The Council has also decided that a Chartered Accountant should not by himself or in his firm name:-

(i) accept the auditorship of a college, if he is working as a part-time lecturer in the college.

(ii) 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:

Attention of the members is invited to the provisions of ~~Clause~~ **Item** (4) of Part I of the Second Schedule to the Chartered Accountants Act which provides that a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he expresses his opinion on financial statements of any business or any enterprise in which he, his firm or a partner in his firm has a substantial interest.

Many new areas of professional work have been added, e.g., Tax Audit, Concurrent Audit of Banks, Concurrent Audit of Borrowers of

Financial institutions, Audit of non-corporate borrowers of banks and financial institutions, audit of stock exchange, brokers etc. The Council wishes to emphasize that the aforesaid requirement of ~~Clause~~ **Item** (4) are equally applicable while performing all types of attest functions by the members. Some of the situations which may arise in the applicability of ~~Clause~~ **Item** (4) are discussed below for the guidance of members:-

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

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

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

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

   (ii) Where the partner or relative of a member has substantial interest

   The holding of substantial interest by the partner or relative of the member in the business or enterprise of which the audit is to be carried out and opinion is to be expressed on the financial statement, may also affect the independence of mind of the member, in the opinion of Council, in the performance of professional duties. Therefore, the member may, for the same reasons as not to compromise his independence, 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. Section 226 of the Companies Act specifically prohibits a member from auditing the accounts of a Company in which he is a director or in the employment of an officer or an employee of 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. Therefore, the Council's views are clarified in the following situations.

   (i) Where a member is a director

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

(ii) Where a partner or relative of the member is a director in the Company who has a substantial interest.

In such cases for the reason as not to compromise with the independence of mind, the member may desist from undertaking the audit of financial statements and/or expression of opinion thereon. **Reference may also be made in this regard to the provisions appearing in "Guidance Note on Independence of Auditors"**.

The meaning of the words "relative" and "substantial interest" shall be the same as are contained in the Resolution passed by the Council in pursuance to Regulation, 190A of Chartered Accountants Regulations, 1988 (see **Appendix-'F'**).

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.

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

A statutory auditor of a Company cannot also be its internal auditor, as it will not be possible for him to give independent and objective report issued under sub-Section 4A of Section 227 of the Companies Act read with the Companies (Auditor's Report) Order, 2003.

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 proprietory concerns, the member must ensure that a letter of appointment/engagement is given by the firm/sole proprietor before he accepts the appointment/ engagement.

The decisions of the Courts on this ~~clause~~ **item** are briefly given below:-

Where a Chartered Accountant conducted the audit of accounts of an evening college in Mangalore besides working in the same college as Lecturer/Vice-Principal. Held that he was guilty of professional misconduct under the ~~Clause~~ **Item**.

(H.R. Shetty in Re: – Page 402 of Vol. VIII–1–21(6) of Disciplinary Cases – Judgement delivered dated 17th December, 2003 and published in the April, 2004 issue of Institute's Journal at page 1122)

Where a Chartered Accountant was auditor of a private limited Company in Ambala City since its inception, while his wife held 65 per cent of the shares in the said Company, and was the Director of the Company. Held that the Respondent was inter alia guilty of professional misconduct under ~~Clause~~ **Item** (4) of Part I of the Second Schedule.

(Promila Jain vs. Hardesh Kant – Page 416 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered dated 6th May, 2004)

Where a Chartered Accountant accepted the audit of a company inspite of the fact that his wife was the Director of the company and also holding substantial interest in that Company. He had also not disclosed such interest in his report while expressing his opinion on the financial statements of such Company. Held that the respondent was guilty of professional misconduct within the meaning of ~~clause~~ **item** (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in terms of section 21 read with section 22 of the said Act.

(Bharat D. Bhatia vs. Vijay R. Ashar - Page 807 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 13th August, 2004)

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

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

It may be observed that this ~~Clause~~ **Item** 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 word materiality has been defined in Standard on Auditing (SA) 320, "Audit Materiality" as follows:

"Information is material, if its mis-statement (i.e., omission or erroneous statement) could influence the economic decisions of users taken on the basis of the financial information. Materiality depends on

the size and nature of the item, judged in the particular circumstances of its misstatement. Thus, materiality provides a threshold or cut-off point rather than being a primary qualitative characteristic which the information must have if it is to be useful."

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

The words financial statements used in this ~~clause~~ **item** 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.

The decisions of the Courts on this ~~clause~~ **item** are briefly given below:-

Where a Chartered Accountant failed to report to the shareholders of a Company about the non-creation of a sinking fund in accordance with the Debenture Trust Deed and did not make clear that the amounts shown as towards Sinking Fund were borrowed from the Managing Agents of the Company - Held, that the Chartered Accountant was in duty bound to see that the nature and subject matter of the charge over a security and the nature and mode of valuation of the Sinking Fund Investments were disclosed in the Balance Sheet in accordance with Form F and he was found guilty of misconduct.

(Davar & Sons Ltd. vs. M.S. Krishnaswamy - Page 120 of Vol.I of the Disciplinary Cases and pages 33-40 of June, 1952 issue of the Institute's bulletin - Judgement delivered on 3rd October, 1952).

Where a Chartered Accountant failed to examine how debts became bad and were written off - Held he was guilty under ~~Clause~~ **Item** (5).

(A.Doraiswamy Naidu vs. P.N. Raghavendra Rao - Page 468 of Vol. IV of the Disciplinary Cases and pages 463-465 of February 1966 issue of the Institute's Journal -Judgement delivered on 27th October, 1965).

Where a Chartered Accountant had falsely certified the circulation figures of a newspaper by stating that he had checked inter alia the newsprint sheets and machine room returns when they had not at all been maintained by the publisher. - Held he was guilty under ~~Clauses~~ **Items** (5) and (9).

(Audit Bureau of Circulations Ltd. vs. K.L. Agarwal - Page 616 of Vol.IV of the Disciplinary Cases and Page 438 of February, 1968 issue of the Institute's Journal - Judgement delivered on 24th July, 1967).

Where a Chartered Accountant had not disclosed the fact that a large amount of loan had been given out of the funds of an Employees Provident Fund to the Employer Company in contravention of the Rules of the Provident Fund and had failed to report on the default in clearing the cheques received in re-payment of the loan. Held by the High Court that he was not guilty of any non- disclosure to the individual subscribers of the Provident Fund because he owed no duty to disclose to them and he was well within his rights to have disclosed the irregularities to the Trustees themselves and to the Company which had appointed him.

Held by the Supreme Court on appeal that it was no defence for the Chartered Accountant to say that he had disclosed the irregularities to the Company as it was his duty to have made a disclosure thereof to the beneficiaries of the Provident Fund in the statement of accounts signed by him as the legal position of the Auditor in the present case was similar to that of the auditor appointed under the Companies Act. He was therefore guilty of professional misconduct under ~~Clause~~ **Item** (5).

(Kishori Lal Dutta vs. P.K. Mukherjee - Page 646 of Vol. IV of the Disciplinary Cases and page 573 of April, 1968 issue of the Institute's Journal -Judgement delivered on 26th February, 1968).

Where a Chartered Accountant had issued publishers certificates of circulations in disregard of the Complainants Rules which he had undertaken to comply with -Held he was guilty under ~~clauses~~ **items** (5), (6) & (9) of Part I of the Second Schedule.

(Audit Bureau of Circulations vs. V.I. Oommen - Page 51 of Vol.VII (1) of Disciplinary cases - judgement dated 6th October, 1995)

Where a Chartered Accountant had issued a false Certificate, certifying existence of assets created by company, on the basis of which a Financial Corporation released a sum of Rs.4.65 lakhs to the said Company. The Respondent, it was alleged, had certified that the Company had invested Rs.5,04,424/- whereas on inspection by officers of the Corporation, it was found that the investment by the Company was only to the extent of Rs.58,169/-. Held that the Respondent was guilty of professional misconduct under ~~Clause~~ **Items** (5), (6), (7) and (8) of Part I of the Second Schedule.

(Deputy General Manager, Rajasthan Financial Corporation, Pali vs. C.K. Vyas – Page 321 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered dated 29th November, 2003)

Where a chartered accountant failed to bring attention to the heavy cash transaction entered into by the assessee in his audit report submitted in Form 3CD in terms of section 44AB of the Income Tax Act, 1961 for the Assessment year 1988-89. Held that the respondent was guilty of professional misconduct within the meaning of ~~Clauses~~ **Items** (5), (6), (7) and (8) of part I of the second schedule to the Chartered Accountants Act, 1949 in terms of section 21 read with

section 22 of the said Act.

(V.C.Agarwal in Re. - Page 768 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 13th August, 2004)

Where a Chartered Accountant concealed material facts, which jeopardized a Bank's interest by introducing a non-existing firm to the Bank. Held that, he was guilty of professional misconduct within the meaning of ~~clause~~ **item** (5) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(B.L.Asawa, Chief manager, PNB, Delhi v. P.K. Garg; Pg- 116 of Vol. IX (1) of the Disciplinary Cases- Judgement of Hon'ble High Court dated 19th January, 2007).

A Chartered Accountant issued certificates certifying the utilization of funds by the Company for the amount granted and disbursed by a bank without verifying the records properly before issuing the aforesaid certificates. Also, the said certificate did not reflect the end use of the funds. He was grossly negligent in issuing the said certificate(s). The auditor knowingly certified the end use of money received by the auditee incorrectly and improperly which is undoubtedly an un-pardonable act on the part of the Respondent and thus was held guilty by the Council under ~~Clauses~~ **Items** (5), (6), (7) and (8) of Part I of the Second Schedule which was accepted by the High Court.

(Thampy Mathews,Dy. General Manager, IIBI Vs. R.K. Tayal, Delhi - Page 254 of Vol. IX–1–21(6) Decision of the Council on 25th June, 2004, 243rd Meeting of the Council and Judgement of High Court dated 23rd July, 2007).

A chartered accountant, who was the statutory auditor of a bank, created a sum of Rs. 1.5 crores of unaccounted black money, with the help of Manager and Chairman of the Bank, thus violating the Income Tax Rules and Regulations and he also failed to disclose the material fact known to him in the financial statements. The High Court of Madras, while holding him guilty of professional misconduct under Items (5) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, enunciated the following rules which may considered by a court while deciding the penalty to be imposed in a case of professional misconduct:

1) **Whether the Chartered Accountant acted for any motive of gain, pecuniary or otherwise, whether he actually derived any pecuniary benefit.**
2) **Whether the case was a case of mental or moral turpitude?**

3) **Whether in addition to failure to do his duty, partially or entire, there had also been failure to act honestly.**

4) **Whether the accountant was grossly negligent in his duty which could lead to serious consequences or whether he misconceived his duty but acted reasonably; whether it was a case of default for bare non-performance or part performance of his duty.**

5) **Whether there is an error of judgement and a claim of bona fide exercise of normal and reasonable care, particularly in cases outside his special province of accountancy. Whether it was a case of technical breach though he acted with due diligence or whether he acted malafide.**

6) **In a case of inefficiency, the grade of the same and whether it could lead to grave results.**

7) **Whether the accountant was aided and abated by the complainant himself.**

8) **Whether he had an unblemished record and his entire career would be completely blasted by imposing the penalty.**

9) **Whether a lenient view of the lapse can be taken because of the comparative young age and immaturity of the accountant**

(M.S.P. Raje & G. Rajasankar v. V. Gururamakrishnan [25-CA (46)/87] & [25-CA (60)/87]- under Disciplinary Cases, Volume X, Part I)

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

~~Clause~~ Item (6): *fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;*

This ~~clause~~ **item** 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~~ **Item** (5), in this connection, will equally apply to this ~~Clause~~ **Item**.

The decisions of the Courts on this ~~clause~~ **item** are briefly given below:

A Company did not provide for depreciation as required by Section 205 and Section 250 of the Companies Act, 1956 and although the Chartered Accountant was aware that the Company had under-

provided depreciation, he did not bring out this fact in his report. -Held the Chartered Accountant was guilty of professional misconduct under the ~~clause~~ **item**. He had failed to disclose a material fact known to him but disclosure of which was necessary to make the financial statement not misleading.

A Chartered accountant was charged under ~~Clauses~~ **Items** (5) and (6) for failure to report that there was a reduction of capital with corresponding reduction in the loans and advances on the assets side, which contravened Section 59 of the Travancore Companies Act and Form F prescribed under the Act. There was also a failure on his part to report on the non- disclosure of the forfeiture and cancellation of share. - Held the Respondents conduct was not proper.

(Registrar of Joint Stock Companies vs. S.S. Iyer - Page 94 of Vol. IV of the Disciplinary Cases and pages 405-408 of April, 1960 issue of the Institute's Journal - Judgement delivered on 25th January, 1960).

A Chartered Accountant failed to disclose a mis-statement or under-statement by the Company in the balance sheet of its liabilities, which amounted to a suppression of the correct state of affairs. He also failed to report a material mis-statement by the Company in not giving the previous years figures in the corresponding column of the balance sheet. Held he was guilty of professional misconduct under ~~Clauses~~ **Items** (6) and (7).

(Registrar of Companies, Bombay vs. V.P. Bagadthey - Page 210 of Vol. IV of the Disciplinary Cases and pages 80-82 of August, 1961 issue of the Institute's Journal - Judgement delivered on 24th March, 1961).

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

(Attorney General of Kenya vs. V.B. Joshi - Page 688 of Vol. IV of the Disciplinary Cases and page 681 of June, 1968 issue of the Institute's Journal - Judgement delivered on 19th February, 1968.).

Where a Chartered Accountant had issued publishers certificates of circulation in disregard of the Complainants Rules which he had undertaken to comply with -Held he was guilty under ~~clauses~~ **items** (5), (6) & (9) of Part I of the Second Schedule.

(Audit Bureau of Circulations vs. V.I. Oommen - Page 51 of Vol.VII (1)

of disciplinary cases - judgement dated 6th October, 1995)

Where a Chartered Accountant had issued a false Certificate, certifying existence of assets created by a company, on the basis of which a Financial Corporation released a sum of Rs.4.65 lakhs to the said Company. The Respondent, it was alleged, had certified that the Company had invested Rs.5,04,424/- whereas on inspection by officers of the Corporation, it was found that the investment by the Company was only to the extent of Rs.58,169/-. Held that the Respondent was guilty of professional misconduct under ~~Clause~~ **Items** (5), (6), (7) and (8) of Part I of the Second Schedule.

(Deputy General Manager, Rajasthan Financial Corporation, Pali vs. C.K. Vyas – Page 321 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered dated 29th November, 2003)

Where a chartered accountant failed to bring attention to the heavy cash transaction entered into by the assessee in his audit report submitted in Form 3CD in terms of section 44AB of the Income Tax Act, 1961 for the Assessment year 1988-89. Held that the respondent was guilty of professional misconduct within the meaning of ~~Clauses~~ **Items** (5), (6), (7) and (8) of part I of the second schedule to the Chartered Accountants Act, 1949 in terms of section 21 read with section 22 of the said Act.

(V.C.Agarwal in Re:- Page 768 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 13th August, 2004).

A Chartered Accountant issued certificates certifying the utilization of funds by the Company for the amount granted and disbursed by a bank without verifying the records properly before issuing the aforesaid certificates. Also, the said certificate did not reflect the end use of the funds. He was grossly negligent in issuing the said certificate(s). The auditor knowingly certified the end use of money received by the auditee incorrectly and improperly which is undoubtedly an un-pardonable act on the part of the Respondent and thus was held guilty by the Council under ~~Clauses~~ **Items** (5), (6), (7) and (8) of Part I of the Second Schedule which was accepted by the High Court.

(Thampy Mathews,Dy. General Manager, IIBI Vs. R.K. Tayal - Page 254 of Vol. IX – 1 – 21(6) Decision of the Council on 25th June, 2004, 243rd Meeting of the Council and Judgement of High Court dated 23rd July, 2007).

A Chartered Accountant wrote the books of account of the Complainant Association apart from conducting the audit. While preparing and auditing the accounts, he did not comply with the decision of the Complainant Association taken in its Annual General Body Meeting, thereby being grossly negligent in his conduct. He neither ensured nor qualified his report regarding non-provision of various liabilities in the accounts such as salaries and wages, electricity charges, water charges etc., which again shows that he was grossly negligent in the

discharge of his duties as Chartered Accountant and Auditor. None of the figures in the Balance Sheet and Income & Expenditure Account of the Complainant-Association for the year 1998-99 certified by him tallied with the balances in the unauthenticated Cash Book and Ledger. He further did not prove the accuracy of the accounts prepared and audited by him nor furnished details of various items appearing in the statements certified by him. The Council held him guilty under ~~Clauses~~ **Items** (6), (7), (8) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and also guilty of "Other Misconduct" under Section 22 read with Section 21 of the Chartered Accountants Act, 1949.

The High Court also accepted the decision of the Council.

(Hon. General Secretary, Rohit House Occupants Welfare Association, New Delhi vs. K.K. Gupta - Page 299 of Vol. IX – 1 – 21(6), Decision of the Council dated 22nd July, 2004, 244th Meeting of the Council and Judgement of High Court dated 25th September, 2007).

A chartered accountant prepared and signed two sets of balance sheets while conducting audit of an entity, one set of balance sheet for Income Tax Department and another for Central Bank of India, with a difference of three crores in the entry pertaining to sale of stocks. He was held guilty of professional misconduct under items (5), (6) and (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(Commissioner,Central Excise, Chandigarh vs. Rajesh Chadda, [25-CA(G-10)/2003]- under Disciplinary Cases, Volume X, Part I)

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

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

Though very simply worded, it is a vital ~~clause~~ **item** 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~~ the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation.~~ **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**. ~~A member should maintain updated~~

~~knowledge and skill well performing his professional works which is based on the knowledge of appropriate/applicable legislations of the industry in which the client operates its activity.~~ **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.**

The expression *'negligence'* covers a wide field and extends from the frontiers of fraud to collateral and minor negligence. The meaning and significance of this ~~clause~~ **item** is well contained in the following passage quoted from the judgement of the Karnataka High Court in a disciplinary case of *B. Shantaram Rao in Re page 168 Vol-V of Disciplinary cases in 1977*.

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

What constitutes professional misconduct

Professional misconduct on the part of a person practising one of the technical professions cannot fairly or reasonably be found merely on a finding of a bare non-performance of a duty or some default in performing it. The charge is not one of inefficiency but of misconduct. Imputation of certain mental condition is always involved. The test must always be whether in addition to the failure to do the duty, there has also been a failure to act honestly and reasonably.

(S. Ganesan vs. A.K. Joscelyne - Page 39 of Vol. III of the Disciplinary Cases and pages 43-56 of July, 1956 issue of the Institute's Journal - Judgement delivered on 19th April, 1956).

The misconduct implies failure to act honestly and reasonably either according to the ordinary and natural standard or according to the standard of a particular profession.

(Registrar of Companies, Bihar vs. M.N. Basu - Page 323 of Vol. IV of the Disciplinary Cases and pages 523-526 of June, 1963 issue of the Institute's Journal-Judgement delivered on 7th December, 1962).

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.

The decisions on this ~~clause~~ **item** are briefly mentioned below:

Where a Chartered Accountant signed two Balance Sheets on two different dates for the same financial year, the first one without qualification and the later one with a qualification, but admitted having signed only one Balance Sheet, i.e., the later one in the criminal proceedings against him, the Council found that the second Balance Sheet was a fabrication and that the statement before the Magistrate was false. - Held the first charge, viz., fabrication, failed in the absence of evidence and the second charge, viz., false statement, also failed as the falsity of the statement in the witness box could not give rise to any disciplinary proceedings against him as his conduct or action must be qua his profession or in the course of carrying on that profession. The High Court, however, found him guilty in respect of the first Balance Sheet for certifying it knowing fully well, that it did not represent the correct state of affairs of the Company and also for signing the Balance Sheet under an earlier date, while his report, on his own admission, was on a later date.

(Govind Piraji Uplap vs. G.M. Oka - Page 20 of Vol. 1 of the Disciplinary Cases and pages 37-40 of July, 1952 issue of the Institute's Journal-Judgement delivered on 18th March, 1952).

Where a Chartered Accountant furnished a certificate under Section 27 of the Insurance Act that there was no charge on the securities held as investments by way of loan or overdraft while, as a fact, one of the securities had been sold and the proceeds thereof utilised for the discharge of a loan. -Held he was guilty of misconduct.

(G.M. Oka in Re. - Page 35 of Vol. 1 of the Disciplinary Cases and pages 40-42 of July, 1952 issue of the Institute's Journal-Judgement delivered on 19th March, 1952).

Where a Chartered accountant failed to indicate the mode of valuation of investments in shares as required by the Companies Act and also to draw attention to the inclusion of uniforms in the depreciation account.

- Held that he was guilty under ~~Clause~~ **Item** (7).

(M.C.Poddar vs. P.S. Sodhbans - Page 259 of Vol. I of the Disciplinary Cases and page 554 of May, 1954 issue of the Institute's Journal - Judgement delivered on Ist April, 1954).

Where a Chartered Accountant, in a bank audit reported to the shareholders that he had not verified the cash on hand and that he had also signed the balance sheet in anticipation of the receipt of confirmation letters from the banks in respect of the cash said to be lying with them and failed to report on the weakness of the banks financial position. -Held that he was guilty of the first and third charges falling under ~~Clause~~ **Item** (7). Verification of cash was an essential duty of an auditor which he failed to discharge and in signing the report in anticipation of receiving the confirmation letters from banks, he had failed to perform his duties with the requisite skill and diligence.

(S.N.Das Gupta in Re:- Page 57 of Vol.II of the Disciplinary Cases and pages 80-92 of September, 1955 issue of the Institute's Journal - Judgement delivered on Ist August, 1955).

Where a Chartered Accountant was appointed auditor of a Co-operative Society, it was alleged that he took active part in the Management of the Society and issued false certificates regarding the verification of cash on hand. - Held that there was nothing unprofessional in helping the administration of the Society by rendering occasional services. As regards the issue of the false certificate, he was found guilty of misconduct.

(Paradise Co-operative Housing Society Ltd., Bombay vs. R. Viraswami - Page 1 of Vol. III of the Disciplinary Cases and pages 87-88 of August, 1956 issue of the Institute's Journal - Judgement delivered on 24th November, 1955).

Where a Chartered Accountant certified the circulation of a newspaper based on the statistical record but stated in his certificate that he had given it after examination of the books of account without verifying that the books of account and the statistical records agreed and also without taking into account the return of copies unsold. - Held that he was guilty of gross negligence.

(V.K. Madhava Rao in Re:- Page 21 of Vol.III of the Disciplinary Cases and pages 88-92 of August, 1956 issue of the Institute's Journal - Judgement delivered in 17th April, 1956).

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

(Controller of Insurance vs. H.C. Das - Page 240 of Vol.III of the Disciplinary Cases and page 422-429 of March, 1957 issue of the Institute's Journal - Judgement delivered on 4th January, 1957).

Where a Chartered Accountant, appointed as auditor of the Madras branch of a limited Company at Bombay, was charged with failure to report to the Bombay Office that some entries in the bank pass book have not been passed through the cash book of the branch. - Held he was guilty of gross negligence. The High Court observed that a small fee paid to the Respondent should not come in the way of his doing his duty without fear or favour, although it involved unpleasant consequences, namely, he might not be appointed again.

(The Fairdeal Corporation Ltd. Bombay vs. K.Gopalakrishna Rao - Page 361 of Vol. III of the Disciplinary Cases and pages 196-203 of Oct. 1957 issue of the Institute's Journal - Judgement delivered on 23rd August, 1957).

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

(B.V. Warerkar in Re:- Page 448 of Vol.III of the Disciplinary Cases and pages 470-472 of January, 1958 issue of the Institute's Journal - Judgement delivered on 9th December, 1957).

A certificate issued by a Chartered Accountant to a proprietor of a firm in respect of the turnover of betelnuts to enable the firm, which was not dealing in betel nuts, to obtain import licence without checking the books and documents himself, but relying on his articled clerk for its correctness. - Held he was guilty of gross negligence.

(Sunderlal Fatehpuria in Re:- Page 591 of Vol.III of the Disciplinary Cases and page 224 of January, 1959 issue of the Institute's Journal - Judgement delivered on 14th November, 1958).

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

(Deptt. of Economic Affairs vs. D.B.Kulkarni - Page 185 of Vol.IV of the Disciplinary Cases and pages 410-412 of April, 1960 issue of the

Institute's Journal - Judgement delivered on 1st March, 1960).

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

(Superintendent of Police Madras vs. M.Rajamany - Page 232 of Vol. IV of the Disciplinary Cases and page 27-29 of July, 1961 issue of the Institute's Journal - Judgement delivered on 5th May, 1961).

On the basis of the investigation report on the affairs of a Company by an Inspector appointed by the Government, the auditor of the Company was charged with failure of duty in not carrying out a complete audit, verify the assets and liabilities in the Balance Sheet and report on the objectionable vouchers. - Held that he was guilty of gross negligence. The case was one of inefficiency, as there was no suggestion of any moral turpitude. He should not have taken into account the Social position of those in management while discharging his duties as an auditor.

(Registrar of Companies, Kerala State vs. P. Arunajatai - Page 262 of Vol. IV of the Disciplinary Cases and pages 102-104 of September, 1962 issue of the Institute's Journal - Judgement delivered on 26th June, 1962).

Where a Chartered Accountant failed to report on the over- payment of remuneration to the managing agents of a Company, which contravened Section 18(2) and Section 87CC, of the Indian Companies Act, 1913 and was, therefore, not in accordance with law. - Held he was guilty under ~~Clauses~~ **Items** (5), (7) and (9).

(B.K.Ray in Re:- Page 300 of Vol.IV of the Disciplinary Cases and pages 521-523 of June, 1963 of the Institute's Journal -Judgement delivered on 30th November, 1962).

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

(The Chief Controller of Exports vs. G.P.Acharya - Page 311 of Vol.IV of the Disciplinary Cases and pages 189-194 of September, 1963 issue of the Institute's Journal - Judgement delivered on 30th November,

1962).

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

(Hitkarini Mahavidyalaya, Jabalpur vs. P.C. Madan - Page 341 of Vol. IV of the Disciplinary Cases and pages 29-31 of July, 1963 issue of the Institute's Journal - Judgement delivered on 11th April, 1963).

On the basis of the investigation report on the affairs of a Company by an inspector appointed by the Government, the auditor of that Company was charged with failure of duty in not carrying out a complete audit, verify the assets and liabilities in the balance sheet and report on the objectionable vouchers. -Held, he was guilty under ~~Clause~~ **Item** (7)

(Registrar of Companies, Kerala State vs. T.S. Vaidyanath Iyer - Page 349 of Vol.IV of the Disciplinary Cases and pages 187-189 of September, 1963 issue of the Institute's Journal - Judgement delivered on 22nd, July 1963).

Gross Negligence and failure to obtain sufficient information to warrant the expression of an opinion.

The Disciplinary Committee having found that the main charges as set out in the information letter were not substantiated if proceeded with two new charges and found the Respondent guilty under ~~clauses~~ **items** (7) and (8) and for failure (a) to invite attention to omission in the balance sheet about information relating to the maximum amount due from the directors and from the Companies under the same management and (b) to carry out the statutory duty to obtain sufficient information before making his report inspite of it having been brought to his notice by his assistants that there was difference in the Trial Balance prepared by the Company. Held in a matter like this brought out during the proceedings in examination of the Respondent without it having been made the subject matter of a clear and specific charge to the knowledge of the Respondent with an opportunity to meet the same and to disprove the same, cannot be, either according to the provisions of the statute or having regard to the principals of natural justice, the basis for an adverse finding against the Respondent.

(V.K. Verma in Re:- Page 425 of Vol.IV of the Disciplinary Cases and pages 465-471 of February, 1966 issue of the Institute's Journal - Judgement delivered on 21st September, 1964).

Where a Chartered Accountant had been extremely negligent and careless in not attaching due importance expected of a professional man to the factor of delay in the matter of preparation of the Profit and Loss Account and the Balance Sheet of his client. - held he was guilty of misconduct.

(Sterling Electrical Traders Corporation Pvt. Ltd. vs. S.L. Batra - Page 590 of Vol. IV of the Disciplinary Cases and pages 810-820 of June, 1967 issue of the Institute's Journal - Judgement delivered on 2nd March, 1967).

Where a Chartered Accountant gave clean reports on the balance sheets whereas the reports on the special audit conducted subsequently revealed certain irregularities which amounted to failure to examine the pass book and to verify the cash balance. - Held - he was guilty under ~~Clause~~ **Item** (7).

(Director of Accounts, Gujarat State, Ahmedabad vs. K.D. Patel - Page 636 of Vol. IV of the Disciplinary Cases and page 572 of April, 1968 issue of the Institute's Journal - Judgement delivered on 16th February, 1968).

Where a Chartered Accountant failed to make a reference in the Income Certificates prescribed by the ABC to the report which he had separately submitted to the newspaper concerned which did represent the correct state of affairs in all respects but which was not sent by the newspaper to the Bureau - Held, he was guilty under ~~Clauses~~ **Items** (7) and (9).

(Audit Bureau of Circulations Ltd. vs. A.D. Shinde - Page 725 of Vol. IV of the Disciplinary Cases and page 627 of May, 1968 issue of the Institute's Journal - Judgement delivered on 26th February, 1968).

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

(D.C. Sopariwala in Re:- Page 783 of Vol. IV of the Disciplinary Cases and pages 502-504 of March, 1969 issue of the Institute's Journal - Judgement delivered on 27th November, 1968).

Where a Chartered Accountant had not completed his work relating to the audit of the accounts of a Company and had not submitted his audit report in due time to enable the Company to comply with the statutory requirements in this regard. Held, he was guilty of professional misconduct under ~~Clause~~ **Item** (7).

(Qaroon Trading & Finance Pvt. Ltd. vs. Laxmi Narain Saxena and Jitendra Mohan Chadha - Page 828 of Vol. IV of the Disciplinary Cases and pages 47-49 of July, 1969 issue of the Institute's Journal - Judgement delivered on 12th February, 1969).

Where a Chartered Accountant had certified the circulation claim of a periodical which was practically not published. - Held he was guilty by

the Council under ~~Clause~~ **Item** (7). However on being reported that the member was dead the High Court dismissed the reference being infructuous.

(Registrar of Newspapers for India vs. V. Ramaratnam - Page 877 of Vol. IV of the Disciplinary Cases - Judgement delivered on 9th September, 1970)

Where a Chartered Accountant failed to exercise sufficient care and diligence in the discharge of his professional responsibilities in not checking the cash memos and not verifying the alterations in the trial balance with the original books in respect of one Company and in not checking the journal entries and the final figures of the balance sheet with the general ledger in respect of another Company. - Held, he was guilty under ~~Clause~~ **Item** (7).

(Messrs. O.M. Agency Private Ltd. & Messrs. Oriental Mercantile Distributors Private Ltd. vs. M. Surendra Sastry - Page 891 of Vol. IV of the Disciplinary Cases and pages 452-455 of November, 1971 issue of the Institute's Journal - Judgement delivered on 21st April, 1971).

Where a Chartered Accountant issued two different certificates of circulation of a daily for one and the same period showing different figures in respect of the number of copies printed and circulated, - Held, he was guilty under ~~Clauses~~ **Items** (7) and (8).

(Registrar of Newspapers for India vs. P.K. Mukherji - Page 937 of Vol. IV of the Disciplinary Cases and pages 615-617 of January, 1972 issue of the Institute's Journal - Judgement delivered on 20th August, 1971).

A Chartered Accountant was found guilty of professional misconduct under ~~Clauses~~ **Items** (5), (6), (7) & (9) of Part I of the Second Schedule on the following grounds:

(1) that he failed to point out the contravention of Note (C) to Schedule VI of the Companies Act, that is, the requirement in the case of a subsidiary Company that the number of shares held by the holding Company as well as by the ultimate holding Company and its subsidiaries must be separately stated;

(2) that he failed to point out the contravention of Part I Form of Balance Sheet Schedule VI, that is share capital issued in pursuance of a contract without payment being received in cash and shares allotted as fully paid up by way of bonus shares should have been shown separately;

(3) that he failed to point out, in his report, that the Company, of which he was the auditor, was a public limited Company or deemed to be a public limited Company by virtue of Section 43A of the Companies Act;

(4) that he failed to comment in his report on the debit balance in the current account with managing agents, in accordance with Section 369 of the Companies Act;

(5) that he failed to report the non-maintenance of the contract register required to be maintained under Section 360(3); and

(6) that he failed to report the money value of the contract for the supply of service with the associates of managing agents as required under Schedule VI Part I.

(Registrar of Companies, West Bengal vs. V.V. Bapat - Page 8 of Vol. V of Disciplinary Cases and Page 281 of December, 1974 issue of the Institute's Journal - Judgement delivered on 21st August, 1974).

A Chartered Accountant had failed to detect a fraud committed by the accountant of a canteen which could have been detected if he had checked the castings of the cash books and also checked the contra entries of the bank and cash columns of the cash book. - Held, he was guilty of professional misconduct under ~~Clauses~~ **Items** (7), (8) and (9).

(Air Commodore Dilbagh Singh vs. C.G. Apte - Page 107 of Vol. V of the Disciplinary Cases and page 224 of September, 1976 issue of the Institute's Journal - Judgement delivered on 5th July, 1976).

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

(B.L. Choudhury vs. M.K.Deb - Page 121 of Vol. V of the Disciplinary Cases and pages 196-198 of March, 1977 issue of the Institute's Newsletter - Judgement delivered on 3rd November, 1976)

A Chartered Accountant, without examination of stock register of the firm and without examining other relevant matters connected with the certificate, issued wrong consumption certificate in respect of raw material and components on the basis of which, licence of higher value, for which the unit was not entitled, was issued by the Deputy Controller of Imports and Exports - Held, the Chartered Accountant was guilty of gross negligence under the ~~Clause~~ **Item** (7).

(T.S. Vaidyanatha Iyer in Re:- Page 153 of Vol. V of the Disciplinary Cases and pages 211-212 of April, 1977 issue of the Institute's Newsletter - Judgement delivered on 27th January, 1977).

A Chartered Accountant adopted arbitrary valuation of closing stock and no verification at all was done by him. Further he accepted the capitalisation of a large sum of expenditure which was in the nature of revenue. He had merely adopted an adhoc basis in deciding upon capitalisation of expenditure and failed to apply his mind and bring to

bear on the subject the due diligence and care expected of a member of the profession. - Held, the Chartered Accountant was guilty of gross negligence in the performance of his duties.

(B. Shantharam Rao in Re:- Page 168 of Vol. V of the Disciplinary Cases and pages 241-243 of May, 1977 issue of the Institute's Newsletter - Judgement delivered on 13th/18th February, 1977).

A member was found guilty under this ~~Clause~~ **Item** (7) in the following circumstances:-

(1) That he had indicated in his audit report that there was inadequate provision for depreciation but had not disclosed in his audit report the extent of arrears of depreciation.

(2) He had not dealt with in his audit report, the facts of arrears of depreciation and the dividend recommended in the context of the provisions of Section 205 of the Companies Act.

(3) He had not dealt with in the audit report, the implications of the provisions of the Companies (Temporary Restrictions on dividends) Act, of 1974 which was then in force at the time.

(4) The above omissions represented significant defects of substance and the member has failed to act in the discharging of his duties reasonably though his honesty was not in question.

(Registrar of Companies, West Bengal vs. R.K. Gangopadhyay - Page 202 of the Vol.VI(1) of Disciplinary Cases - judgement dated 7th January, 1981).

The Chartered Accountant relied upon the internal control without satisfying himself about the propriety and surrendered to the pressure of management and certified the accounts without examining and getting necessary clarification. - Held that he was guilty of misconduct.

(B.L. Purohit vs. J.N. Chandak, decided on 10th December, 1980 Page 175 of Vol.VI of the Disciplinary Cases. The Institute's Journal March, 1981 pages 703-11).

A member had issued certificates in regard to consumption of materials and book value of production in connection with an application for import which was later found to be false. He was found guilty of gross negligence by the Council which finding was confirmed by High Court with the following observations:-

(a) The member was unable to produce any working papers or any evidence of the work done by him.

(b) Evidence showed that he had not himself examined the records. Even if he had examined the records, he could not confirm the accuracy of the figures.

(c) He had not examined the Exchange Control copy of the licence without the examination of which the certificates could not have been issued.

(d) There need not be element of dishonesty on the part of a member in case of gross negligence.

(C.S. Hariharan page 265 Vol.-VI-1-21(6) and S.B. Pathak in Re. page 272 Vol.-VI-21(6))

A member in practice, while auditing the accounts of a hospital committed the following mistakes:-

(a) Repayment of loan of Rs.2,940/- to the Trustees had not been entered in the Receipts and Payment Accounts though shown in the Cash Book and Ledger. This was explained as an inadvertent omission.

(b) Professional fee of Rs.450/- paid to an Advocate was found to be bogus and no voucher was available. The member had not verified the vouchers and no explanation was given by the member.

(c) Stock of medicines as on 31.3.73 and 31.3.74 was shown as identical figures and no verification of the stock of medicine or stock register or other records had been made.

(d) The cash balance in cash book was different from that shown by the balance-sheet. The cash balance was not admittedly verified during audit nor any written confirmation regarding cash had been obtained.

(e) The figures of the amount of grant as shown by the books and the Income and Expenditure statement differed and the explanation given by the member was found neither true nor reasonable.

(f) The High Court held that the member was guilty of gross negligence in so far as he has not exercised due care and caution which is expected of a Chartered Accountant.

(P.D.J. Solomon vs. L.A. Patnaik - Page 334 of Vol.VI(1) of Disciplinary cases - judgement dated 23rd January, 1984).

Where the Respondent had issued the consumption certificate of a firm against the SSI application submitted by the above firm which did not maintain stock, consumption and production records and the amount certified by the Chartered Accountant in the licencing application was fictitious. -Held that the Respondent was guilty of gross negligence.

(The Joint Chief Controller of Imports and Exports, Calcutta vs. Barun Ray - Page 525 of Vol.VI(1) of Disciplinary cases - Judgement dated 15th November, 1989).

Where a Chartered Accountant had issued a false consumption certificate to a non-existent firm for submission before the Chief Controller of Imports and Exports, on the basis of which an import licence of a higher value was issued to the firm. -Held that the member was guilty of gross negligence.

(Tapas Chakrabarti in Re:- Page 539 of Vol.VI(1) of Disciplinary cases -

judgement dated 7th February, 1990)

Where a Chartered Accountant had issued two sets of certificates for the export of marine products, the first one stating that the exports were effected in one year and the second one stating that some products were exported in 3 different years, he had not properly checked the yearwise figures of exports while issuing the two different sets of certificates. -Held that he was guilty of gross negligence.

(Govind Kanodia in Re:- Page 553 of Vol.VI(1) of Disciplinary cases - judgement dated 7th February, 1990).

Where a Chartered Accountant was charged with gross negligence and breach of trust in the course of his professional services rendered to the Complainant in computation of accounts and income-tax matters. -Held that he was guilty under ~~Clause~~ **Item** (7).

(S. Sarkar vs. K.K. Mullick - Page 593 of Vol.VI(1) of Disciplinary cases - judgement dated 12th April, 1990)

Where a Chartered Accountant had certified the sale value of a production of a firm which was fictitious and the certificate given by the Chartered Accountant was without proper verification and on the basis of false documents/account books etc. -Held that the Chartered Accountant was guilty under this ~~Clause~~ **Item**.

(Jt. Chief Controller of Imports & Exports vs. Ananda Murthy, FCA - Page 606 of Vol.VI(1) of Disciplinary cases - judgement dated 7th June, 1990)

Where the Chartered Accountant had issued a fictitious certificate of purchase turnover of books to a firm. -Held that the member was guilty under ~~Clause~~ **Item** (7).

(The Joint Chief Controller of Imports & Exports vs. B.K. Nagraj - Page 645 of Vol.VI(1) of Disciplinary cases - judgement dated 10th January, 1991).

Where the Complainant had sanctioned an additional loan to a Company on the basis of a proforma balance sheet duly certified by a Chartered Accountant while the audited balance sheet of the Company for the same period duly certified by the statutory auditors revealed a completely different picture. Held that the Chartered Accountant was guilty under ~~clauses~~ **items** (7) & (8).

(Assam Financial Corporation vs. S.K. Beria – Page 17 of Vol.VII (1) of Disciplinary Cases - Judgement dated 10th July, 1992)

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

facts of the case and various judicial pronouncements in detail, the High Court was of the opinion that it was not a fit case where the alleged misconduct on the Respondent demanded imposition of any punishment.

(The Regional Director, Ministry of Industry, Department of Consumer Affairs, Calcutta vs. Inderjit Roy – Page 218 of Vol. VII(1) of the Disciplinary Cases - Judgement dated 19th March, 1999)

The Respondent had certified a profit and loss account wherein the total expenditure was shown at Rs. 3,19,163.55 but the correct amount of total expenditure worked out to Rs. 2,19,163.55 only. Accordingly, the total expenditure had been over-stated by rupees one lakh and instead of a profit, a loss of Rs. 153.38 appeared in the said profit and loss account. The correct position was that there was a net profit of Rs. 99,846.62 (Rs. 1 lakh minus 153.38). The Council took into consideration two reports of the Disciplinary Committee viz. majority report and dissenting report by one member. Agreeing with the majority report, the Council was satisfied that on the facts of the case, the aforesaid difference was a very material difference. The Council also noted the admitted position that no reconciliation of capital account was made by the Respondent which could have enabled him to discover the error. The Respondent had taken the plea that he did not conduct the audit and his certificate only stated that the said profit and loss account was prepared from the books of account. The Council was of the view that when a Chartered Accountant prepares a profit and loss account from the books of account and signs the certificate to that effect, he is expected to verify the accuracy of the figures appearing in the profit and loss account with reference to the relevant books of account and he cannot escape the responsibility in this behalf by pleading that he did not conduct the audit. The Council also found that though the Chartered Accountant was entitled to place reliance upon the work of his assistants, he had a professional duty and responsibility for the certificate signed by him and he must take reasonable steps to satisfy himself that the work has been carried out in a proper and efficient manner. Considering the facts of the case, the Council found that the mistake of Rs. 1 lakh in total figure of Rs. 3,19,163.55 was not only material but also very substantial. He was held guilty under this ~~clause~~ **item**.

(Commissioner of Agricultural Income-tax vs. T.S. Ranganathan – Page 266 of Vol. VII(1) of Disciplinary Cases - Judgement dated 9th February, 2000)

The Respondent had certified an application by a Company in accordance with the requirements of Import and Export Policy, certifying the F.O.B. value of exports at Rs.4,44,77,996/- instead of the correct figure of Rs.4,14,69,925/-. It was held that the Respondent had not exercised due care and skill which he should have done while discharging his professional duties and should have indicated the correct figure. He was held guilty under this clause.

(B.L. Khanna in Re:- Page 372 of Vol. VII(1) of Disciplinary Cases – Council's decision dated 8th, 9th & 10th April, 1987 - Judgement dated 5th September, 2000).

The Respondent was entrusted with the work of incorporation of a Company. He was also entrusted with the work of filing the return for registration of the charge in Form No.8 with Registrar of Companies. After making enquiries, he made available a certificate of incorporation issued by the Registrar of Companies. But on enquiry from the Office of the Registrar of Companies, it was learnt that the name of the said Company, was not borne on the Register of Companies and Form No. 8 was not traceable in the Registrars office. He was, inter alia, held guilty under this ~~clause~~ **item**.

(Deepak Pahwa vs. A.K. Gupta - Page 346 of Vol. VII(1) of Disciplinary Cases - Council's decision dated 6th December, 1995 - Judgement dated 4th September, 2000).

The Respondent failed to appear before the ITO in response to the notice under Section 143(2) and 142(1) of the Income Tax Act for A.Y. 1988-89 on behalf of the client despite adjournments granted/postponements of dates of hearing made by the Department, resulting in the assessment being made ex parte under Section 144 of Income Tax Act, 1961. The Respondent failed to appear before the CIT (Appeals) before whom an appeal against the said ex parte order of ITO had been filed, resulting in the dismissal of the appeal. The Respondent confirmed to the Complainant by informing her that stay of demand applied for had been granted whereas the fact was that the Complainant was served with a demand notice for payment, failing which recovery proceedings would be initiated. An appeal to be filed before the Tribunal against the order of CIT (Appeals) was got signed from the complainant. Later on, it was found and admitted by the Respondent that no such appeal was filed. Even the amount paid as appeal fee was not refunded. Respondent had not done the needful in spite of repeated requests for collecting income-tax records for the subsequent years and an explanation of the basis of the return filed by him for the assessment year 1988-89. In spite of receiving amount from the Complainant, the Respondent did not pay the income tax to the Income Tax Department, for the assessment year 1989-90. The Complainant who received the notice for payment from the Income Tax Department, handed over the notice to the Respondent, but despite his repeated assurances, no receipts had been shown or whether the amounts were deposited with the Income Tax Department and even if paid, the dates were not intimated. False assurances, gross negligence and lapses on the part of the Respondent had resulted in the attachment of the Complainant's property and bank account, a heavy demand of additional tax, which might be further increased due to the levy of penalties so heavy as to beyond her capacity to pay even after liquidating her total assets. Thus, the Respondent had been grossly negligent in the conduct of his professional duties. Held that the

Respondent was guilty of professional misconduct within the meaning of Sections 21 and 22 of the Chartered Accountants Act, 1949 read with ~~Clause~~ **Item** (7) of Part I of the Second Schedule.

(Smt. Sushma Shourie vs. Mahesh Taneja – Page 39 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered on 21st December 2001 and published in the March, 2002 issue of Institute's Journal at pages 1126 to 1128)

The Respondent had failed to report various violations of the Companies Act, 1956 (Sections 58 A, 205, 210(4), 301, 372) in his report on the audit of the accounts of the Company. Held that the Respondent was guilty of professional misconduct under ~~Clause~~ **Item** (7) of Part I of the Second Schedule.

(Registrar of Companies, Bangalore, Karnataka vs. S.R. Bhandary – Page 351 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered dated 17th December, 2003)

Where a Chartered Accountant had issued a false Certificate, certifying existence of assets created by a company, on the basis of which a Financial Corporation released a sum of Rs.4.65 lakhs to the said Company. The Respondent, it was alleged, had certified that the Company had invested Rs.5,04,424/- whereas on inspection by officers of the Corporation, it was found that the investment by the Company was only to the extent of Rs.58,169/-. Held that the Respondent was guilty of professional misconduct under ~~Clause~~ **Items** (5), (6), (7) and (8) of Part I of the Second Schedule.

(Deputy General Manager, Rajasthan Financial Corporation, Pali vs. C.K. Vyas – Page 321 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered dated 29th November, 2003)

The Respondent had been making glaring manipulations in the Balance Sheet and P & L account of the Company such as, (i) He has signed the balance Sheet for the year ended on 31-3-1993 without the same being authenticated by the Directors of the Company under Section 215 of the Companies Act, 1956. (ii) the Balance Sheet as at 29.11.1993 and 30.11.1993 prepared and certified by the Respondent shows glaring inconsistencies unmatched by the books of account (iii) As per the Balance Sheet ended on 31.3.1993 and 29.11.1993 Term Loans amounting to Rs. 50,000/- which although were not paid off by the Company but in the subsequent Balance Sheet this figure was not shown by the Respondent. Held that the Respondent was inter alia guilty of professional misconduct under ~~Clauses~~ **Items** (7) and (8) of Part I of the Second Schedule.

(Promila Jain vs. Hardesh Kant – Page 416 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered dated 6th May, 2004)

Where the chartered accountant failed to take the normal and reasonable care for carrying out the audit and accounts of a trust and particularly failed to carry out the verification of fixed deposit receipts

(FDRs). Held that he was guilty of professional misconduct under ~~clauses~~ **Items** (7) & (8) of part I of Second Schedule of the said Act.

(M.D. Loya in Re. - Page 751 of Volume VIII (1) of Disciplinary Cases- Judgement dated 13th August, 2004)

A Chartered Accountant was appointed by a Institution to carry out the audit of their funds for the year 1980-81 and 1981-82. During his tenure, the respondent did not bring to the notice of the Institution any lacuna or discrepancy in the system of accounting and certified the accounts of the Institution as correct. Subsequently it was revealed that there was a loss of funds to the tune of approximately Rs.3.5 Lacs by way of encashment of FDRs before maturity which was not reflected in the cash book. Held that he was guilty of professional misconduct under ~~clause~~ **item** (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Secretary, Institution of Military Engineers, Pune vs. M.J. Pethe- Page 646 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 12th August, 2004)

A Chartered Accountant issued certificate for consumption of raw materials and production for the year 1985-86 & 1986-87 in respect of Five Units without verifying the records thoroughly. It resulted in issuance of certificates containing incorrect facts of consumption of raw material as well as production figures of the final products. Held that he was guilty of professional misconduct within the meaning of ~~Clauses~~ **Items** (7) & (8) of part I of Second Schedule of Chartered Accountants Act, 1949.

(JDI, Aurangabad vs. E.H. Lakkadghat - Page 609 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 10th August, 2004)

A Chartered Accountant issued certificate for consumption of raw materials and production for the years 1986-87 in respect of 4 units without taking reasonable care and caution in verifying and checking the relevant records before issuance of the said certificates. It was resulted in issuance of certificates where there was no co-relation between cost of raw material and value of finished products. Held that he was guilty of professional misconduct within the meaning of ~~Clauses~~ **Items** (7) & (8) of part I of Second Schedule read with section 21 and 22 of Chartered Accountants Act, 1949.

(JDI, Aurangabad vs. Ramesh R. Kapadia - Page 671 of Vol. VIII – 1 – 21(6) To be published in Volume of Disciplinary Cases- Judgement dated 12th August, 2004)

Where a Chartered Accountant issued certificates of consumption which did not reflect the correct factual position of the consumption of raw materials by the concerned units. Also the same certificates has been issued without examining and scrutinising thoroughly/properly the requisite records. Held that the respondent was guilty of

professional misconduct under ~~clauses~~ **items** (2) and (7) of part I of second schedule read with section 21 & 22 of the Chartered Accountants Act, 1949.

(JDI, Bombay vs. B.K. Kurhade - Page 585 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 12th August, 2004)

Where a Chartered Accountant issued false certificates to several parties for past exports for monetary consideration, without verifying any supporting records or documents. On the strength of these false certificates, certain unscrupulous importers were able to obtain import license, effect imports and clear these free of duty, perpetuating a fraud on Government revenue and depriving the Government of its legitimate revenue to the tune of several crores of rupees. On his statements to the Department he confessed the above fact and disclosed that he had issued these certificates on the instance of another Chartered Accountant. In his statement recorded under section 108 of the Custom Act, 1962, the other Chartered Accountant had also confessed his role in this affairs as well as the fact that he also got a share in this deal of issuing false certificates. Held that the respondent was guilty of professional misconduct within the meaning of ~~clause~~ **item** (7) of part I of the second schedule of the Chartered Accountants Act, 1949.

(Additional Collector of Customs, Mumbai vs. P.V. Mehta - Page 786 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 13th August, 2004)

Where a chartered accountant failed to bring attention to the heavy cash transaction entered into by the assessee in his audit report submitted in Form 3CD in terms of section 44AB of the Income Tax Act, 1961 for the Assessment year 1988-89. Held that the respondent was guilty of professional misconduct within the meaning of ~~Clauses~~ **Items** (5) to (8) of part I of the second schedule to the Chartered Accountants Act, 1949 in terms of section 21 read with section 22 of the said Act.

(V.C.Agarwal in Re. - Page 768 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 13th August, 2004)

Where a Chartered Accountant issued false certificates to several parties for past exports for monetary consideration without verifying any supporting records or documents. On the strength of these false certificates, certain unscrupulous importers were able to obtain import license, effect imports and clear these free of duty, perpetuating a fraud on Government revenue and depriving the Government of its legitimate revenue to the tune of several Crores of Rupees. On his statements to the Department he confessed the above fact and disclosed that he had issued these certificates for monetary consideration and without verification of supporting documents on record. Held that the respondent was guilty of professional misconduct within the meaning of ~~clauses~~ **items** (2), (7) & (8) of Part I of the

second schedule of the Chartered Accountants Act, 1949 in terms of section 21 & 22 of the said Act.

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

A member accepted Tax Audit, without communicating with the previous auditor. Also, he was negligent while auditing as he was required to check as to how and by what mode the fees had been finally paid to the previous auditor, which was earlier appearing under the list of sundry creditors. He further failed to check the facts and look into the documentary details before signing the report. The Council held him guilty of:

(a) professional misconduct under ~~Clause~~ **Item** (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(b) professional misconduct under ~~Clause~~ **Item** (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Bhushan Khot of M/s. Bhushan Khot & Co. vs. Mahesh M. Bhatt - Page 424 of Vol. X – 2A – 21(4) as decided by 252nd Council on 7th July, 2005).

The Complainant's firm was the statutory auditor of a company and was re-appointed in Annual General Meeting for the subsequent year. A Chartered Accountant accepted the statutory audit of a Company while the Complainant's firm was already re-appointed in AGM, without first communicating with the previous auditor i.e. the Complainant, in writing. Also, the compliance of provisions of Section 224 and 225 of the Companies Act, 1956 was not ascertained before accepting the auditorship of the company.

Also, he accepted the position as auditor previously held by the complainant by under cutting thereby resulting in contravention of ~~clause~~ **item** (12) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 (now deleted vide CA Amendment Act, 2006). Further, he was also negligent in conduct of professional duties.

The Council held him guilty of:

(a) professional misconduct falling within the meaning of ~~Clauses~~ **Items** (8), (9) and (12) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(b) professional misconduct falling within the meaning of ~~Clause~~ **Item** (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(R.S. Ajmeri of M/s R. Ajmeri Associates vs. Shiv Hari Garg - Page 331 of Vol. X – 2A – 21(4) of Disciplinary Cases - Judgement dated 7th July, 2005).

A Chartered Accountant was held guilty under ~~Clause~~ **Item** (7) of Part

I of the Second Schedule and "other misconduct as being a tax consultant and a tax auditor he failed to appear before the Income Tax Authorities for his client even after having instructions from his client. In spite of being fully paid for his professional services and provided all the books of account and other documents, he failed to satisfy the Income Tax Officer because of his negligence and careless attitude. There were several anomalies in the books of account. The opening and closing balances as per the bank statements and pass-books were not re-produced correctly in the cash book.

(R.C.Dutta Vs. Kailash C.Mishra - Page 143 of Vol. IX – 1 – 21(6) Council's decision dated 5th January, 2005, 247th Meeting of the Council and Judgement of High Court dated 1st March, 2007).

A Chartered Accountant was held guilty by the Council under ~~Clause~~ **Item** (7) of Part I of the Second Schedule when there were some serious irregularities and discrepancies found in the books of account and balance sheet. The High Court also confirmed the decision of the Council.

(Hony. Secretary Delhi Prashasan Adhikari Cooperative Group Housing Society Ltd.Delhi. vs. Rajesh Rastogi of M/s Kaul Associates, Delhi – Page 160 of Vol. IX – 1 – 21(6) Council's decision dated 3rd February, 2003 (231st Meeting of the Council) and Judgement of High Court dated 26th March, 2007).

A Chartered Accountant issued certificates certifying the utilization of funds by the Company for the amount granted and disbursed by a bank without verifying the records properly before issuing the aforesaid certificates. Also, the said certificate did not reflect the end use of the funds. He was grossly negligent in issuing the said certificate(s). The auditor knowingly certified the end use of money received by the auditee incorrectly and improperly which is undoubtedly an un-pardonable act on the part of the Respondent and thus was held guilty by the Council under ~~Clauses~~ **Items** (5), (6), (7) and (8) of Part I of the Second Schedule which was accepted by the High Court.

(Thampy Mathews,Dy. General Manager, IIBI Vs. R.K. Tayal, Delhi – Page 254 Vol. IX – 1 – 21(6) Decision of the Council on 25th June, 2004, 243rd Meeting of the Counciland Judgement of High Court dated 23rd July, 2007).

A Chartered Accountant wrote the books of account of the Complainant Association apart from conducting the audit. While preparing and auditing the accounts, he did not comply with the decision of the Complainant Association taken in its Annual General Body Meeting, thereby being grossly negligent in his conduct. He neither ensured nor qualified his report regarding non-provision of various liabilities in the accounts such as salaries and wages, electricity charges, water charges etc., which again shows that he was grossly negligent in the

discharge of his duties as Chartered Accountant and Auditor. None of the figures in the Balance Sheet and Income & Expenditure Account of the Complainant-Association for the year 1998-99 certified by him tallied with the balances in the unauthenticated Cash Book and Ledger. He further did not prove the accuracy of the accounts prepared and audited by him nor furnished details of various items appearing in the statements certified by him. The Council held him guilty under ~~Clauses~~ **Items** (6), (7), (8) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and also guilty of "Other Misconduct" under Section 22 read with Section 21 of the Chartered Accountants Act, 1949.

The High Court also accepted the decision of the Council.

(Hon. General Secretary, Rohit House Occupants Welfare Association, New Delhi vs. K.K. Gupta, New Delhi – Page 299 of Vol. IX–1–21(6) Decision of the Council dated 22nd July, 2004, 244th Meeting of the Council and Judgement of High Court dated 25th September, 2007).

Where a Chartered Accountant firm failed to complete the audit of a Bank without any justification and being grossly negligent. Held that, Respondent firm was guilty of professional misconduct within the meaning of ~~clause~~ **item** (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(R.K. Goswami, Administrator, Delhi Nagrik Sehkari Bank Ltd. vs. M/s. Dayal Singh & Co. – Pg.288 of Vol. IX (1) of the Disciplinary Cases-Judgement of Hon'ble High Court dated 7th August, 2008.)

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

~~**Clause**~~ **Item (8):** *fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;*

It is expected of a Chartered Accountant to express his opinion on the truth and fairness of statements of accounts after examining their authenticity with reference to information 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 report.

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

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

On the other hand he should say that -

"As we have been unable to verify the existence and value of the investments of the Company, we are unable to state whether the Balance Sheet shows a true and fair view.....etc."

Standard on Auditing (SA) 700, "The Auditor's Report on Financial Statements" establishes standards on the form and content of the auditor's report issued as a result of an audit performed by an auditor of the financial statements of an entity. It requires that the auditor's report should contain a clear written expression of opinion on the financial statements taken as a whole. As per SA 700;

(1) An unqualified opinion should be expressed when the auditor concludes that the financial statements give a true and fair view in accordance with the financial reporting framework used for the preparation and presentation of the financial statements. An unqualified opinion indicates, implicitly, that any changes in the accounting principles or in the method of their application, and the effects thereof, have been properly determined and disclosed in the financial statements. An unqualified opinion also indicates that:

(a) the financial statements have been prepared using the generally accepted accounting principles, which have been consistently applied;

(b) the financial statements comply with relevant statutory requirements and regulations; and

(c) there is adequate disclosure of all material matters relevant to the proper presentation of the financial information, subject to statutory requirements, where applicable.

(2) An auditor's report is considered to be modified when it includes:

(a) Matters That Do Not Affect the Auditor's Opinion (emphasis of matter) and

(b) Matters That Do Affect the Auditor's Opinion (qualified opinion, disclaimer of opinion, adverse opinion)

Uniformity in the form and content of each type of modified report will enhance the user's understanding of such reports. Accordingly, this SA includes suggested wordings to express an unqualified opinion as well as examples of modifying phrases for use when issuing modified reports.

(3) In certain circumstances, an auditor's report may be modified by adding an emphasis of matter paragraph to highlight a matter affecting the financial statements which is included in a note to the financial statements that more extensively discusses the matter. The addition of such an emphasis of matter paragraph does not affect the auditor's opinion. The paragraph would preferably be included preceding the opinion paragraph and would ordinarily refer to the fact that the auditor's

opinion is not qualified in this respect.

(4) An auditor may not be able to express an unqualified opinion when either of the following circumstances exists and, in the auditor's judgment, the effect of the matter is or may be material to the financial statements: (a) there is a limitation on the scope of the auditor's work, which could lead to a qualified opinion or a disclaimer of opinion; or (b) there is a disagreement with management regarding the acceptability of the accounting policies selected, the method of their application or the adequacy of financial statement disclosures, which could lead to a qualified opinion or an adverse opinion

- — A qualified opinion should be expressed when the auditor concludes that an unqualified opinion cannot be expressed but that the effect of any disagreement with management is not so material and pervasive as to require an adverse opinion, or limitation on scope is not so material and pervasive as to require a disclaimer of opinion. A qualified opinion should be expressed as being 'subject to' or 'except for' the effects of the matter to which the qualification relates.
- — An adverse opinion should be expressed when the effect of a disagreement is so material and pervasive to the financial statements that the auditor concludes that a qualification of the report is not adequate to disclose the misleading or incomplete nature of the financial statements.
- — A disclaimer of opinion should be expressed when the possible effect of a limitation on scope is so material and pervasive that the auditor has not been able to obtain sufficient appropriate audit evidence and is, accordingly, unable to express an opinion on the financial statements.

(5) Whenever the auditor expresses an opinion that is other than unqualified, a clear description of all the substantive reasons should be included in the report and, unless impracticable, a quantification of the possible effect(s), individually and in aggregate, on the financial statements should be mentioned in the auditor's report. In circumstances where it is not practicable to quantify the effect of modifications made in the audit report accurately, the auditor may do so on the basis of estimates made by the management after carrying out such audit tests as are possible and clearly indicate the fact that the figures are based on management estimates. Ordinarily, this information would be set out in a separate paragraph preceding the opinion or disclaimer of opinion and may include a reference to a more extensive discussion, if any, in a note to the financial statements.

For detailed consideration of the subject, including illustrative formats of auditor's report in different circumstances, the members may refer to Standard on Auditing (SA) 700, "The Auditor's Report on Financial Statements".

Standard on Auditing (SA) 705 (Modifications to the Opinion in

the Independent Auditor's Report) deals with the auditor's responsibility to issue an appropriate 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.

Standard on Auditing (SA) 706 (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.

Standard on Auditing (SA) 710 (Comparative Information – Corresponding Figures and Comparative Financial Statements) deals with the auditor's responsibilities regarding comparative information in an audit of financial statements .

The decisions of the Courts on this ~~clause~~ **item** are briefly presented below:-

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

(J.C. Chandiok in Re:- Page 367 of Vol. IV of the Disciplinary Cases and pages 681-683 of June, 1964 issue of the Institute's Journal - Judgement delivered on 31st January, 1964).

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

was guilty under ~~Clause~~ **Item** (8).

(Registrar of Newspapers for India vs. K. Rajinder Singh - Page 920 of Vol. IV of the Disciplinary Cases and pages 77-82 of July, 1971 issue of the Institute's Journal - Judgement delivered on 7th May, 1971).

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

(T.S. Vaidyanatha Iyer in Re:- Page 153 of Vol.V of the Disciplinary cases and pages 211-212 of April, 1977, issue of the Institute's Newsletter - Judgement delivered on 27th January, 1977).

Clean certification of circulation was issued by a Chartered Accountant without any qualification and thereby expressing the opinion that he had conducted the audit in the manner prescribed by the ABC regulations undertaken by him. The interpolation of entries in the books and the absence of documents to support the receipt of monies from the agent should have raised the suspicion and he should have asked for further information in that regard. The Chartered Accountant was required to verify the stocks and whether the agent had accounted for all the sale proceedings. He was wrong in accepting the entries in the books without asking for further information. - The Chartered Accountant was required not merely to verify the arithmetical accuracy of the accounts but he ought to have enquired into its substantial accuracy with all the skill, care and caution. If the Chartered Accountant had conscientiously audited the accounts and in accordance with the instruction of the ABC regulations, he could have probed into the matter to the bottom to find out whether the purported sale with agents was genuine or it was only a make believe arrangement. Held the Chartered Accountant was guilty of misconduct under ~~Clause~~ **Item** (8).

(Audit Bureau of Circulations Ltd. vs. S. Narayanan - Page 181 of Vol.V of the Disciplinary Cases and Pages 2-5 of July, 1977 issue of the Institute's Newsletter - Judgement delivered on 14th April, 1977)

Where the Complainant had sanctioned an additional loan to a Company on the basis of a proforma balance sheet duly certified by a Chartered Accountant while the audited balance sheet of the Company for the same period duly certified by the statutory auditors revealed a completely different picture. Held that the Chartered Accountant was guilty under ~~clauses~~ **items** (7) & (8).

(Assam Financial Corporation vs. S.K. Beria - Page 17 of Vol.VII (1) of Disciplinary Cases - Judgement dated 10th July, 1992)

Where a Chartered Accountant had issued a false Certificate, certifying existence of assets created by a Company on the basis of which Rajasthan Financial Corporation, Pali, released a sum of Rs.4.65 lakhs to the said Company. The Respondent, it was alleged, had certified that the Company had invested Rs.5,04,424/- whereas on inspection by officers of the Corporation, it was found that the investment by the Company was only to the extent of Rs.58,169/-. Held that the Respondent was guilty of professional misconduct under ~~Clause~~ **Items** (5), (6), (7) and (8) of Part I of the Second Schedule.

(Deputy General Manager, Rajasthan Financial Corporation, Pali vs. C.K. Vyas – Page 321 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered dated 29th November, 2003)

The Respondent had been making glaring manipulations in the Balance Sheet and P & L account of the Company such as, (i) He has signed the balance Sheet for the year ended on 31-3-1993 without the same being authenticated by the Directors of the Company under Section 215 of the Companies Act, 1956. (ii) the Balance Sheet as at 29.11.1993 and 30.11.1993 prepared and certified by the Respondent shows glaring inconsistencies unmatched by the books of account (iii) As per the Balance Sheet ended on 31.3.1993 and 29.11.1993 Term Loans amounting to Rs.50,000/- which although were not paid off by the Company but in the subsequent Balance Sheet this figure was not shown by the Respondent. Held that the Respondent was inter alia guilty of professional misconduct under ~~Clauses~~ **Items** (7) and (8) of Part I of the Second Schedule.

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Where the chartered accountant failed to take the normal and reasonable care for carrying out the audit and accounts of a trust and particularly failed to carry out the verification of fixed deposit receipts (FDRs). Held that he was guilty of professional misconduct under ~~clauses~~ **items** (7) & (8) of part I of Second Schedule of the said Act.

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A Chartered Accountant issued certificate for consumption of raw materials and production for the year 1985-86 & 1986-87 in respect of Five Units without verifying the records thoroughly. It resulted in issuance of certificates containing incorrect facts of consumption of raw material as well as production figures of the final products. Held that he was guilty of professional misconduct within the meaning of ~~Clauses~~ **Items** (7) & (8) of part I of Second Schedule of Chartered Accountants Act, 1949.

(JDI, Aurangabad vs. E.H. Lakkadghat - Page 609 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 10th August, 2004)

A Chartered Accountant issued certificate for consumption of raw

materials and production for the years 1986-87 in respect of 4 units without taking reasonable care and caution in verifying and checking the relevant records before issuance of the said certificates. It was resulted in issuance of certificates where there was no co-relation between cost of raw material and value of finished products. Held that he was guilty of professional misconduct within the meaning of ~~Clauses~~ **Items** (7) & (8) of part I of Second Schedule read with section 21 and 22 of Chartered Accountants Act, 1949.

(JDI, Aurangabad vs. Ramesh R. Kapadia - Page 671 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 12th August, 2004)

Where a chartered accountant failed to bring attention to the heavy cash transaction entered into by the assessee in his audit report submitted in Form 3CD in terms of section 44AB of the Income Tax Act, 1961 for the Assessment year 1988-89. Held that the respondent was guilty of professional misconduct within the meaning of ~~Clauses~~ **Items** (5), (6), (7) and (8) of part I of the second schedule to the Chartered Accountants Act, 1949 in terms of section 21 read with section 22 of the said Act.

(V.C.Agarwal in Re. - Page 768 of Vol. VIII–1–21(6) of Disciplinary Cases- Judgement dated 13th August, 2004)

Where a Chartered Accountant issued false certificates to several parties for past exports for monetary consideration without verifying any supporting records or documents. On the strength of these false certificates, certain unscrupulous importers were able to obtain import license, effect imports and clear these free of duty, perpetuating a fraud on Government revenue and depriving the Government of its legitimate revenue to the tune of several Crores of Rupees. On his statements to the Department he confessed the above fact and disclosed that he had issued these certificates for monetary consideration and without verification of supporting documents on record. Held that the respondent was guilty of professional misconduct within the meaning of ~~clauses~~ **items** (2), (7) & (8) of Part I of the second schedule of the Chartered Accountants Act, 1949 in terms of section 21 & 22 of the said Act.

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

A Chartered Accountant issued certificates certifying the utilization of funds by the Company for the amount granted and disbursed by a bank without verifying the records properly before issuing the aforesaid certificates. Also, the said certificate did not reflect the end use of the funds. He was grossly negligent in issuing the said certificate(s). The auditor knowingly certified the end use of money received by the auditee incorrectly and improperly which is undoubtedly an un-pardonable act on the part of the Respondent and thus was held guilty by the Council under ~~Clauses~~ **Items** (5), (6), (7)

and (8) of Part I of the Second Schedule which was accepted by the High Court.

(Thampy Mathews, Dy. General Manager, IIBI Vs. R.K. Tayal, Delhi - Page 254 of Vol. IX – 1 – 21(6) Decision of the Council on 25th June, 2004, 243rd Meeting of the Counciland Judgement of High Court dated 23rd July, 2007).

A Chartered Accountant wrote the books of account of the Complainant Association apart from conducting the audit. While preparing and auditing the accounts, he did not comply with the decision of the Complainant Association taken in its Annual General Body Meeting, thereby being grossly negligent in his conduct. He neither ensured nor qualified his report regarding non-provision of various liabilities in the accounts such as salaries and wages, electricity charges, water charges etc., which again shows that he was grossly negligent in the discharge of his duties as Chartered Accountant and Auditor. None of the figures in the Balance Sheet and Income & Expenditure Account of the Complainant-Association for the year 1998-99 certified by him tallied with the balances in the unauthenticated Cash Book and Ledger. He further did not prove the accuracy of the accounts prepared and audited by him nor furnished details of various items appearing in the statements certified by him. The Council held him guilty under ~~Clauses~~ **Items** (6), (7), (8) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and also guilty of "Other Misconduct" under Section 22 read with Section 21 of the Chartered Accountants Act, 1949.

The High Court also confirmed the decision of the Council.

(Hon. General Secretary, Rohit House Occupants Welfare Association, New Delhi vs. K.K. Gupta, New Delhi– Page 299 of Vol. IX – 1 – 21(6) Decision of the Council dated 22nd July, 2004, 244th Meeting of the Council and Judgement of High Court dated 25th September, 2007)

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

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

This ~~clause~~ **item** 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 Quality Control and Engagement Standards, Statements, General

Clarifications, Guidance Notes and Technical Guides, Practice Manuals, Studies and Other Papers.

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.

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 AASB issued under the authority of the Council of the Institute. The Revised Preface is effective from April 1, 2008. As per the Revised Preface, the scope and authority of the various pronouncements of the Auditing and Assurance Standard Board (AASB) issued under the authority of the Council of the Institute is as under:

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

(2) 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, the overall objective of the auditor is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to report on the financial statements in accordance with the auditor's findings. However, owing to the inherent limitations of an audit, there is an unavoidable risk that some material misstatements of the financial statements will not be detected, even though the audit is properly planned and performed in accordance with the SAs. In all cases, when this overall objective has not been or cannot be achieved, the SAs require the auditor to modify the auditor's opinion accordingly or withdraw from the engagement as may be appropriate, depending upon the facts and circumstances of each case. The auditor applies each Standard on Auditing (SA) relevant to the audit. An SA is relevant when the SA is in effect and the circumstances addressed by the SA exist.

(3) 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.

(4) 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.

(5) 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.

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~~ **item**, a member would be well advised to indicate clearly the reasons why he was unable to perform the audit in accordance with generally accepted procedures and standards.

It is not possible to exhaustively deal with instances or accepted

procedure of audit applicable to special cases. Two instances of an audit requiring a special procedure are given below:-

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

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

The authority attached to various documents issued by the Institute is summarized as under:-

~~**4.1**~~ 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 Committee[2], 'Accounting Standards' and 'Statements on Standard Auditing Practices'[3] are also being issued.

4.2 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.

~~**4.3**~~ 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.

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[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 'Quality Control and Engagement Standards'.

4.4 A list of Statements issued by the Institute and in force as on 1.10.2008 is given below.

(i) Statement on the Companies (Auditor's Report) Order, 2003 (Revised 2005)

(ii) Statement on Reporting under section 227(1A) of the Companies Act, 1956

(iii) Statement on the Amendments to Schedule VI to the Companies Act, 1956.

(iv) Statement on Peer Review.

(v) Statement on Continuing Professional Education.

4.5 '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 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. In respect of the following Guidance Notes, however, the Council had specifically stated that they should be considered as mandatory on members while discharging their attest function.

(i) Guidance Note on Treatment of interest on Deferred Payments read along with the pronouncement of the Council, published in The Chartered Accountant, March, 1984, p.591

(ii) Provision for Depreciation in respect of Extra or Multiple Shift Allowance, published in The Chartered Accountant May 1984, p.765.

4.6 The 'Accounting Standards' and 'Statements on Standard Auditing Practices'[4] issued by the Accounting Standards Board and the Auditing Practices Committee[5], 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.

4.7 There can be situations in which certain matters are covered both by a 'Statement' and by an 'Accounting Standard'/'Statement on Standard

[4] Refer footnote 3.
[5] Refer footnote 2.

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.

ACCOUNTING STANDARDS AND QUALITY CONTROL AND ENGAGEMENT STANDARDS

~~**4.8**~~ The 'Accounting Standards' and 'Quality Control and Engagement 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.

~~**4.9**~~ There can be situations in which certain matters are covered both by a Statement and by an Accounting Standard/Quality Control and Engagement Standard. In such a situation, the Statement shall prevail till the time the relevant 'Accounting Standard'/'Quality Control and Engagement Standard' becomes mandatory. Once an 'Accounting Standard'/'Quality Control and Engagement Standard' becomes mandatory, the concerned 'Statement' or the relevant part thereof automatically stands withdrawn.

In a situation where certain matters are covered both by an Accounting Standard and a Guidance Note, issued by the Institute of Chartered Accountants of India, the Guidance Note or the relevant portion thereof will be considered as superseded from the date of the relevant Accounting Standard coming into effect, unless otherwise specified in the Accounting Standard.

~~**4.10**~~ 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 effect, unless otherwise specified in the new Accounting Standard.

~~**4.11**~~ 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. Quality Control and Engagement Standards

~~**4.12 The main function of the Auditing and Assurance Standards**~~

[6] ibid
[7] ibid
[8] ibid

~~**Board (AASB) is to review the existing 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.**~~

~~**4.13**~~ The Council of the Institute of the Chartered Accountants of India, at its 267th meeting, held on March 12-14, 2007, approved the Revised Classification and Numbering Pattern of the Auditing and Assurance Standards. The Council, at the aforesaid meeting, had also approved the revised Preface, which replaces the existing Preface to the Statements on Standard Auditing Practices (issued in 1983). This Preface to the Standards on Quality Control, Auditing, Review, Other Assurance and Related Services has been issued to facilitate understanding of the scope and authority of the pronouncements of the AASB issued under the authority of the Council of the Institute. 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. The revised Preface paves way for total revamp of the existing structure of the Auditing and Assurance Standards (AASs) issued by the Institute on the lines of the International Standards issued by the International Auditing and Assurance Standards Board (IAASB). The new Standards to be issued by the AASB henceforth would be collectively known as Engagement Standards and would comprise of Standards on Auditing (SAs), Standards on Review Engagements (SREs), Standards on Assurance Engagements (SAEs) and Standards on Related Services (SRSs). The revised Preface necessitated the need to adopt a new numbering pattern for the Engagement Standards. Whereas hitherto the auditing standards were being allotted sequential numbers as and when they were issued, as per the revised Classification and Numbering Pattern of the Auditing and Assurance Standard, these standards would be categorised on the basis of the specific aspect of audit that they deal with and accordingly allotted the number. The members may refer to "Handbook of Auditing Pronouncements – Compendium of Standards and Statements" for the details of Quality Control and Engagement Standards.

B. Accounting Standards

~~4.14~~ Accounting Standards are formulated by the Accounting Standards Board and issued under the authority of the Council of the Institute. As per the Preface to the Statements of Accounting Standards (revised 2004), Accounting Standards are designed to apply to the general purpose financial statements and other financial reporting, which are subject to the attest function of the members of the Institute. Accounting Standards apply 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 notified by the Council in this behalf.

~~4.15~~ The Companies Act, 1956, 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, 1956, 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.

~~4.16~~ Besides the requirement regarding 'true and fair' view under the Companies Act, 1956, as discussed in para 1.13 above, Section 211 of the Act requires the companies to prepare the profit and loss account and balance sheet in accordance with the accounting standards. In this regard, sub-Sections (3A), (3B) and (3C) have been inserted in Section 211 of the principal Act, which read as follows:

> *"(3A) Every profit and loss account and balance sheet of the company shall comply with the accounting standards.*

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[*] It may be noted that the notified Companies (Accounting Standards) Rules, 2006 do not mention the words 'Commercial, industrial or business activities', meaning thereby that the notified Accounting Standards are applicable to all the companies, whether engaged purely in commercial, industrial or business activities or not.

(3B) Where the profit and loss account and the balance sheet of the company do not comply with the accounting standards, such companies shall disclose in its profit and loss account and balance sheet, the following, namely:

(a) the deviation from the accounting standards;
(b) the reasons for such deviation; and
(c) the financial effect, if any, arising due to such deviation.

(3C) For the purposes of this section, the expression "accounting standards" means the standards of accounting recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949), as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards established under sub-section (1) of Section 210A:

***Provided** that the standards of accounting specified by the Institute of Chartered Accountants of India shall be deemed to be the Accounting Standards until the accounting standards are prescribed by the Central Government under this sub-section."*

In accordance with above mentioned Section 211(3C), 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 identical with the Accounting Standards, read with the Accounting Standards Interpretations, 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 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).

The decisions of the Court on this ~~clause~~ **item** are briefly summarised below:-

Where a Chartered Accountant did not conduct sample checking of the bank accounts in relation to the accounts of the Company and did not carry out vouching with respect to the transactions reflected in the accounts of the Company and depended upon his assistant who was a Chartered Accountant and experienced clerk who were entrusted with the auditing work. - Held he was guilty under ~~Clauses~~ **Items** (7) (8) and (9).

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

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

(Audit Bureau of Circulations Ltd. vs. M.L. Nanda - Page 736 of Vol.IV of the Disciplinary Cases and page 628 of May, 1968 issue of the Institute's Journal - Judgement delivered on 26th February, 1968).

Where a Chartered Accountant failed to verify the actual disbursement of the amount by examining the various items of purchases and insisting for the bills to be produced in respect of the various items before issuing his certificate as mere payment would not constitute utilisation of the amount for the purpose for which it was meant. - Held he was guilty under ~~Clauses~~ **Items** (7), (8) and (9).

(Punjab State Govt. vs. K.N. Chandla - Page 946 of Vol. IV of the Disciplinary Cases and pages 140-142 of August, 1972 issue of the Institute's Journal - Judgement delivered on 15th June, 1972).

Where a Chartered Accountant had issued publishers certificates of circulations in disregard of the Complainants Rules which he had undertaken to comply with -Held he was guilty under ~~clauses~~ **items** (5), (6) & (9) of Part I of the Second Schedule.

(Audit Bureau of Circulations vs. V.I. Oommen - Page 51 of Vol.VII (1) of disciplinary cases - judgement dated 6th October, 1995)

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

(Air Commodore Dilbagh Singh vs. E.S. Venkataraman - page 100 of Vol. V of the Disciplinary Cases and page 224 of September, 76 issue of Institute's Journal - Judgement delivered on 5th July, 1976)

A Chartered Accountant wrote the books of account of the Complainant Association apart from conducting the audit. While preparing and auditing the accounts, he did not comply with the decision of the Complainant Association taken in its Annual General Body Meeting, thereby being grossly negligent in his conduct. He neither ensured nor qualified his report regarding non-provision of various liabilities in the accounts such as salaries and wages, electricity charges, water charges etc., which again shows that he was grossly negligent in the discharge of his duties as Chartered Accountant and Auditor. None of the figures in the Balance Sheet and Income & Expenditure Account of the Complainant-Association for the year 1998-99 certified by him tallied with the balances in the unauthenticated Cash Book and Ledger. He further did not prove the accuracy of the accounts prepared and audited by him nor furnished details of various items appearing in the statements certified by him. The Council held him guilty under ~~Clauses~~ **Items** (6), (7), (8) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and also guilty of "Other Misconduct" under Section 22 read with Section 21 of the Chartered Accountants Act, 1949.

The High Court also accepted the decision of the Council.

(Hon. General Secretary, Rohit House Occupants Welfare Association, New Delhi vs. K.K. Gupta, New Delhi – Page 299 of Vol. IX – 1 – 21(6) Decision of the Council dated 22nd July, 2004, 244th Meeting of the Council and Judgement of High Court dated 25th September, 2007).

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

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

In the course of his engagement as a professional accountant, a member may be entrusted with moneys belonging to his client (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:-

(i) An advance received by a Chartered Accountant against services to be rendered does not fall under ~~Clause~~ **Item** (10) of Part I of the Second Schedule.

(ii) Moneys received for expenses to be incurred, for example, payment of prescribed statutory fees, purchase of stamp paper etc., which are intended to be spent within a reasonably short time need not be put in a separate bank account. For this purpose, the expression reasonably short time, would depend upon the circumstances of each case.

(iii) Moneys received for expenses to be incurred which are not intended to be spent within a reasonably short time as aforesaid, should be put in a separate bank account immediately.

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

The decisions of the Court on this ~~clause~~ **items** are briefly mentioned below.

What constitutes clients' money

The expression "moneys of his client" has to be understood as moneys placed in the hands of a Chartered Accountant in connection with the discharge of his duties qua Chartered Accountant and for the purposes connected therewith.

(National Insurance Co. Ltd. vs. B. Mukherjee - Page 288 of Vol.III of the Disciplinary Cases and pages 150-155 of the September, 1957 issue of the Institute's Journal-Judgement delivered on 4th July, 1957).

Failure to keep moneys of client in a separate banking account

Where a Chartered Accountant appointed as liquidator of a Company had wrongfully and without the knowledge and consent of the complainants disposed of a machine which was duly charged in their favour. The Council had found the Respondent guilty under ~~Clauses~~ **Items** (7) and (10)- Held by the High Court that they were not applicable. ~~Clause~~ **Item** (7) was gross negligence in the conduct of professional duties. The liquidator in this case was not an auditor of the Company in liquidation and was not therefore practising his professional duties. Similarly ~~clause~~ **item** (10) was failure to keep moneys of his client in a separate banking account. The Company in liquidation was not a client of the complainants either within the meaning of ~~clause~~ **item** (10). Referring to the Respondents failure to

keep moneys in a separate banking account, the High Court considered the evidence of the Respondent which did not give a clear picture in order to come to a final and definite conclusion. Setting aside the order of the Council, the Court reprimanded the Respondent.

(Sunderdas Thakersey & Bros. vs. P.K. Mukherji - Page 452 of Vol. IV of the Disciplinary Cases and pages 150-155 of September, 1965 issue of the Institute's Journal -Judgement delivered on 22nd April, 1965).

A Chartered Accountant was found guilty of professional misconduct under ~~Clauses~~**Items** (7) & (10) of Part I of the Second Schedule to the Act for having failed to account satisfactorily for the various amounts entrusted to him by the client and for failure to keep them in a separate bank account. A refund voucher issued in the name of the client by the Income Tax Department was credited by him to his account in the Bank.

(N.S. Chenoy vs. K.V. Subba Rao - Page 958 of Vol. IV of Disciplinary Cases and pages 207-214 of October, 1973 issued of the Institute's Journal - Judgement delivered on 6th April, 1973)

A Chartered Accountant was found guilty of not keeping the clients money in a separate account and not using it for the purpose for which it was given.

(Maj. R.S. Murgai (Rtd.) vs. (1) S.K. Gadh & (2) V.K. Bajaj, decided on 10-8-1981 - Page 222 of Vol. VI(1) of the Disciplinary cases).

A Chartered Accountant received large sums of money from his client for making investments and depositing income-tax on behalf of the client. He neither made investments nor deposited the income-tax nor deposited the money in a separate Bank account. The Council held him guilty under this ~~clause~~ **item** and also for other misconduct which was accepted by High Court.

(S. Seshadri vs. R. Srinivasan - Page 167 of Vol. VII(1) of Disciplinary Cases Council's decision dated 7th to 9th June, 1990 and High Court Judgement dated 20th January, 1998)

The Respondent was entrusted with the work of incorporation of a Company for which he was given a sum of Rs. 13,000/- and he was also entrusted the work of filing the returns for registration of the charges in Form 8. On enquiry from the Registrar of Companies, it was learnt that the particular name of the Company was not borne on the Register of Companies and Form 8 was not traceable in the Registrars office. He was held guilty for failure to keep the clients monies in a separate banking account and to utilise the same for the purpose for which the same was intended.

(Deepak Pahwa vs. A.K. Gupta – Page 331 of in Vol. VII(1) of Disciplinary Cases – Council's decision dated 6th December, 1995 - Judgement dated 4th September, 2000)

A member while working as a financial advisor misappropriated the funds of his client by way of converting a Savings Bank account in his

individual name to that of joint account with the client without his consent and fraudulently discharged 3 FDRs in the client's name. The Council held him guilty under ~~Clause~~ **Item** (10) of Part I of the Second Schedule and "Other Misconduct" under Section 22 read with Section 21, which was accepted by the High court.

(Tara Pada Banerjee, Dy. General Manager, Bank of Baroda Vs. B.K. Sarker - Page 15 of Vol. IX – 1 – 21(6), Council's decision dated 1st September, 2004 (245th Meeting Of The Council) and High Court Judgement dated 5th May, 2006)

Where a Chartered Accountant illegally withheld the books, vouchers, the records and funds of the complainant and also raised a loan of Rs. 17,500/- secretly from the Bank for personal purpose. Also that, in the audit of a Bank branch, he did not verify the securities for debts. Held that, he was guilty of professional misconduct within the meaning of ~~clause~~ **items** (7) and (10) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(A.N.Kapur -vs.- R.N. Budhiraja; Page- 374 of Vol. IX (1) of the Disciplinary Cases- Judgement of Hon'ble High Court dated 7th January, 2007; Council's decision dated 11th and 12th April, 2008).

A chartered accountant advised his client that he was liable to pay long term capital gains tax which was payable as advance amounting to Rs. 6,91,323 (Rupees Six Lakhs Ninety One Thousand Three Hundred Three only). On receipt of copy of Income Tax Return filed by the chartered accountant, the complainant was shocked to notice that only Rs. 91,323 (Rupees Ninety One Thousand Three Hundred Twenty Three only) was paid by the Respondent to the I.T. Department as long term capital gains tax. The chartered accountant used the money (Rs. 600000/-) of his client for a period of around 11 months. Though, he returned the amount to his client along with interest, yet it was established that the Respondent had in fact used the amount for his personal use. The chartered accountant was held guilty under Clause (10) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

(Late Shri T. N. Swaminathan vs. CA. V. Kannan, [DD/183/08/DC/52/09]- under Disciplinary Cases, Volume I, DC, Part I, Guilty)

PART-II OF THE SECOND SCHEDULE

Professional Misconduct in relation to Members of the Institute generally.

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

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

This ~~clause~~ **item** 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~~ **item**, as appearing in **Division** ~~**Chapter**~~ 6. 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.

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

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

The decisions of the Court under this ~~clause~~ **item** are mentioned

below.

Where a Chartered Accountant entered into an improper arrangement to permit his articled clerk to serve his articles under another Chartered Accountant in another place without disclosing those facts to the Institute and got the Articles registered knowing that the declaration of the attest or in the Deed was false. -Held he was guilty of misconduct.

(Lawrence Tellis vs. Dr. S.G. Mandre - Page 1 of Vol. I of the Disciplinary Cases and pages 25-28 of January, 1952 issue of Bulletin - Judgement delivered on 10th October, 1951).

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

(M. Rajamany in Re:- Page 51 of Vol. I of the Disciplinary Cases and pages 40-43 of June, 1952 issue of Bulletin - Judgement delivered on 4th April, 1952).

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

(J.K. Ghosh in Re:- Page 193 of Vol. I of the Disciplinary Cases - Judgement delivered on 3rd December, 1955).

Where a Chartered Accountant, who was entitled to take three articled clerks, had already taken three such clerks, represented to a person that he had still a vacancy and induced him to enter into articles. A formal deed was executed and the premium was paid. He subsequently cancelled the articles of the third articled clerk for irregular attendance without reference to the Institute. - Held that he had contravened the provisions of Regulation 58 and was guilty of grave misconduct.

(J.K. Ghosh in Re:- Page 106 of Vol.II of the Disciplinary Cases and pages 278-280 of January, 1956 issue of the Institute's Journal - Judgement delivered on 6th December, 1955).

Where a Chartered Accountant agreed to take a person as an articled clerk in a vacancy shortly to arise and received the premium for the purpose and made him believe, when he executed the deed of articles

that he was taking him in that vacancy, while, in fact, the vacancy had been filled up by the Chartered Accountant earlier by taking another audit clerk. The audit clerk came to know from the Institute that the deed of articles was not registered as that was forwarded with a request for entertaining an extra articled clerk. Held that the Chartered Accountant was guilty of serious misconduct for having contravened Regulation 58.

(A.K. Basu vs. P.K. Mukherji - Page 9 of Vol.III of the Disciplinary Cases and pages 40-43 of July, 1956 issue of the Institute's Journal Judgement delivered on 16th April, 1956).

Where a Chartered Accountant (i) issued false certificates to two articled clerks stating that he had refunded the entire premium, while a part of it was claimed as a set off against food and halting allowances given to them while they were working in out- stations, (ii) violated Regulation 62 by not refunding the premium within the time specified in the Regulation, and (iii) the refund of premium in installments in one case was not as specified in the certificate. - Held he was guilty of dishonest behaviour both as regards his clients and articled clerks.

(M.N. Bhargava in Re:- Page 512 of Vol.III of the Disciplinary Cases and pages 671-673 of June, 1958 issue of the Institute's Journal - Judgement delivered on 1st May, 1958).

Where a Chartered Accountant after signing the Articles of Agreement, failed to forward the Articles for registration as required by Regulation 64 and the statement of particulars in the prescribed Form as required by Regulation 64 inspite of repeated enquiries from the articled clerk and even failed to take notice of communications addressed to him in that behalf and having two other articled clerks along with the present one whose articles were not sent for registration took up a fourth articled Clerk without being entitled to do so. - Held he was guilty for breach of Regulation 46.

(Mohan Sehwani vs. Sunderlal Fatehpuria - Page 704 of Vol.IV of the Disciplinary Cases and page 629 of May, 1968 issue of the Institute's Journal - Judgement delivered on 23rd February, 1968).

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

(N.K. Ray Chowdhury in Re:- Page I of Vol.V of the Disciplinary Cases and pages 545-546 of April 1974 issue of the Institute's Journal - Judgement delivered on 30th November, 1973).

A Chartered Accountant issued a confidential and private circular to clients where, in addition to describing himself as Chartered Accountant he also described himself as Investment Consultant and

Public Accountant. By this circular he introduced himself to the public and private limited Companies which were accepting fixed deposits and loans through him. - Held he was guilty of professional misconduct under ~~Clause~~ **Item** (i) of Part II of the Second Schedule.

(B.M. Lala in Re:- Page 95 of Vol.V of the Disciplinary Cases and page 224 of September, 1976 issue of the Institute's Journal - Judgement delivered on 5th July, 1976).

A Chartered Accountant took loan from a firm in which the articled clerk and his father were both interested, against the provisions of the Chartered Accountants Regulations, 1988 which prohibit taking of loan or deposit etc. from the articled clerk. - Held the Chartered Accountant was guilty of professional misconduct under the ~~Clause~~ **Item**.

(M.K. Tripathi in Re:- Published at page 36 of Vol.VI(1) of Disciplinary Cases and in the May, 1980 issue of the Institute's Journal at page 1014 - Judgement delivered on 26th October, 1979).

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

(Radhey Mohan in Re:- Published at page 47 of Vol.VI(1) of Disciplinary Cases and in the March, 1980 issue of the Institute's Journal at pages 849-852 - Judgement delivered on 9th November, 1979).

A Chartered Accountant failed to pay the stipend to his articled clerk in accordance with Regulation 48 which requires that the payment should be made every month. The payment was made long after the matter was brought to the notice of the Institute. The Chartered Accountant pleaded that Regulation 48 did not prescribe the periodicity of payment but only the rate at which stipend had to be paid and further the payment was not made in view of a letter written by an Advocate who introduced the articled clerk to the effect that the payment should not be made directly to the articled clerk but to his father whenever he desired. To other articled clerks, the payments were made in lump sum. - Held the Chartered Accountant had contravened Regulation 48 by not making payments of stipend on a month to month basis.

(B.B. Rohatgi in Re:- Published at page 69 of Vol.VI(1) of Disciplinary Cases and in July 1980 issue of the Institute's Journal at pages 51-55 and 59 - Judgement delivered on 17th April, 1980)

Three articled clerks of a Chartered Accountant informed the Institute that the Chartered Accountant had failed to make the payments of

stipend to them every month in accordance with Regulation 48 - Held the Chartered Accountant was guilty of professional misconduct under the ~~Clause~~ **Item** as he contravened Regulation 48 by not making the payment every month. The Court rejected the two contentions put forward by the Chartered Accountant, viz., (1) that the declaration filed by the articled clerks could not be regarded as information in order to justify the commencement of disciplinary proceedings (2) that under Regulation 48 the payments had to be made at a monthly rate and not that the payments had to be made every month. The third contention that the payments could not be made every month or regularly because of financial stringency was also rejected particularly in view of the fact that the Chartered Accountant during the relevant period had purchased a plot of land and constructed a house at the cost of more than 1 lakh of rupees and he had in his employment throughout the relevant period a Chartered Accountant at a salary of Rs. 500/- per month.

(R.C. Gupta in Re:- Published at page 94 of Vol.VI(1) of Disciplinary Cases and pages 241-242 of the September, 1980 issue of the Institute's Journal - Judgement delivered on 21st July, 1980)

The Chartered Accountant received Rs.2000/- by way of Security from the Complainants father as a consideration for taking him as an articled clerk. Held that he was guilty under the provision.

(Virender Kumar vs. K.B. Madan - Published at page 108 of Vol.VI(1) of Disciplinary Cases - decided on 26th August, 1980)

The Respondents, inter alia, did not disclose the particulars of their full time salaried employment at the time of furnishing particulars in the prescribed form for registration of the articled clerk. They also violated the Regulation 29(11) [New Regulation 43(8)] by training the articled clerks, which they were not eligible to, since their main occupation was not practice of the profession of chartered accountancy. They were held guilty under this ~~clause~~ **item**.

(N.K. Malhotra in Re:- Page 427 of Vol. VII(1) of Disciplinary Cases – Council's decision dated 10th to 12th June, 1993 - Judgement dated 5th September, 2000 and A.P. Gupta in Re:- Page 331 of Vol. VII(1) of Disciplinary Cases – Council's decision dated 15th to 17th December, 1999 - Judgement dated 5th September, 2000).

Failure to pay stipend

A Chartered Accountant did not pay stipend to the articled clerk per month in accordance with Regulation 32B of the Chartered Accountant Regulations, 1964 in view of the letter written by the articled clerk to the effect that the stipend be not paid to him every month. This letter was purported to have written at the time of commencement of training- Held the letter taken from the articled clerk would not be relied upon as it was ante-dated and it was not written on the date it purported to be. The Chartered Accountant was guilty of professional

misconduct under the ~~clause~~ **item**. It was observed that it was very reprehensible that a practising Chartered Accountant should have tried to fabricate evidence in support of the defence.

(V.K. Mittal in Re:- Published at 57 of Vol.VI(1) of Disciplinary Cases and in the May, 1980 issue of the Institute's Journal at pages 1015-1017 - Judgement delivered on 13th February, 1980).

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

(U.V. Benadikar vs. N.G. Kulkarni - Page 473 of Vol VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 6th August, 2004)

~~**In the following cases also, the Chartered Accountants were held guilty for failure to pay the monthly stipend.**~~

~~***C.R. Lakhia in Re:- Page 146 of Vol.VI(1) of Disciplinary cases - Judgement dated 11th March, 1980 of High Court and judgement dated 10th December, 1980 of Supreme Court***~~

~~***S.C. Bhatia in Re:- Page 289 of Vol.VI(1) of Disciplinary cases - decided on 3rd May, 1982***~~

~~***U.S. Lekhi in Re:- Page 304 of Vol.VI(1) of Disciplinary cases - decided on 26th July, 1982***~~

~~***M.C. Jain in Re:- Page 306 of Vol.VI(1) of Disciplinary cases - Judgement dated 22nd September, 1982.***~~

~~***K.L. Singhee in Re:- Page 324 of Vol.VI(1) of Disciplinary cases - Judgement dated 8th October, 1982***~~

~~***B.Mohanty in Re:- Page 375 of Vol.VI(1) of Disciplinary cases - decided on April 4, 1984***~~

~~***G.V. Ramanaiah in Re:- Page 384 of Vol.VI(1) of Disciplinary cases - decided on 23rd October, 1984***~~

~~***R.L.P. Sinha in Re:- Page 406 of Vol.VI(1) of Disciplinary cases - Judgement dated 23rd September, 1985***~~

~~***M.L. Surana in Re:- Page 415 of Vol.VI(1) of Disciplinary cases - decided on 1st October, 1985***~~

~~***D.K. Bohara in Re:- Page 420 of Vol.VI(1) of Disciplinary cases - decided on 1st October, 1985***~~

~~***G.S. Punjawat in Re:- Page 427 of Vol.VI(1) of Disciplinary cases - decided on 1st October, 1985***~~

~~***B.P. Waghela in Re:- Page 445 of Vol.VI(1) of Disciplinary cases***~~

~~***- Judgement dated 20th April, 1989***~~

~~***Sharat Sekhri in Re:- Page 506 of Vol.VI(1) of the Disciplinary cases - Judgement dated 7th November, 1989***~~

~~***H.S. Venkata Rao in Re:- Page 663 of Vol.VI(1) of Disciplinary cases - Judgement dated 5th March, 1991***~~

~~***Dinesh Kumar in Re:- Page 1 of Vol. VII(1) of Disciplinary cases - Judgement dated 1st May, 1992***~~

~~***P. Vishwanadham in Re:- Page 38 of Vol. VII(1) of Disciplinary cases - Judgement dated 28th August, 1992***~~

~~***K.C. Koshal in Re:- Page 195 of Vol. VII(1) of Disciplinary cases - Judgement dated 16th November, 1998***~~

~~***J.K. Batra in Re:- Page 309 of Vol. VII(1) of Disciplinary cases - Judgement dated 20th July, 2000 and published in June 2001 issue of the Institute's Journal at Page 66***~~

~~***P.D. Aggarwal in Re:- Page 320 of Vol. VII(1) of Disciplinary cases - Judgement dated 20th July, 2000 and published in June 2001 issue of the Institute's Journal at Page 66***~~

~~***J.K. Gupta in Re:- Page 406 of Vol. VII(1) of Disciplinary cases - Judgement dated 5th September, 2000***~~

~~***I.C. Gupta in Re:- Page 395 of Vol. VII(1) of Disciplinary cases - Judgement dated 5th September, 2000.***~~

~~***P.B. Kapoor in Re:- Page 414 of Vol. VII(1) of Disciplinary cases - Judgement dated 5th September, 2000***~~

~~***P.L.Tapdiya in Re.- Page 508 of Volume VIII (1) of Disciplinary Cases- Judgement dated 6th August, 2004***~~

~~***Yogesh J. Patel vs. Arvind I. Patel – Page 521 of Volume VIII (1) of Disciplinary Cases- Judgement dated 6th August, 2004***~~

Where a Chartered Accountant accepted a position as auditor of three companies, previously held by the complainant, without communicating with him. Also that, audit fees amounting to Rs.35,500 remained due to the complainant from these companies and he was unjustly removed from these audits with the sole aim of depriving the complainant of the outstanding fees. Held that, he was guilty of professional misconduct within the meaning of ~~clause~~ **items** (8) and (9) of Part I of the First Schedule and notification No.1-CA (7)/46/99 dated 28-10-99 issued under ~~Clause~~ **Item** (1), Part I**I** of the Second Schedule to the Chartered Accountants Act, 1949.

(D.G. Chandak -vs.- S.D. Chauhan of M/s. S.D. Chauhan & Co., Mumbai; Pg- 492 of Vol. X (2A) of the Disciplinary Cases- Order of the Council dated 10th and 11th April, 2007).

Where a Chartered Accountant did not ensure the payment of undisputed audit fees before acceptance of the audits as required under notification no. 1-CA (7)/46/49 dated 28th Oct. 1999. Held that,

Respondent was guilty of professional misconduct within the meaning of ~~clause~~ **item** (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

(Prakash Chand Surana of M/s Prakash Surana & Associates –vs.- Pratap Singh Surana & Co.; Pg- 356 of Vol. IX (1) of the Disciplinary Cases - Council's decision dated 11th, 12th April, 2008).

The Council is empowered to issue guidelines in exercise of the power conferred by ~~clause~~ **item** (i) 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~~ **Item** (ii) of this Part (repealed vide CA Amendment Act, 2006).

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~~ **items** of the two schedules.

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

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

This is an adaptation of the well-accepted principle of the law of agency. A member in the forthcoming circumstance would be guilty of misconduct regardless of the fact that he was in wholetime 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.

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

~~Clause~~ Item (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;*

The following cases decided under ~~on~~ the erstwhile ~~clause~~ item (1) of part (III) of the First Schedule have ~~has~~ been shifted to item ~~clause~~ (3) part (II) of the Second Schedule due to the Amendment Act, 2006:-

In Disciplinary cases falling under this part, the Council/High Courts had decided as follows:

Recommendation knowing it to be false

A Chartered Accountant in an application for permission to study submitted by his Aticled Assistant to the council had confirmed that the normal working hours of his office were from 11 A.M. to 6 P.M. and the hours during which the Aticled Assistant was required to attend classes were 7.00 A.M. to 9.30 A.M. According to the information from College the Aticled Assistant attended the College from 10 A.M. to 1.55 P.M. on all week days except Mondays & Tuesdays when he had tutorials from 2.00 P.M. to 5.00 P.M. About the Aticled Assistant attending the classes even during office hours, the Chartered Accountant pleaded ignorance. The explanation of the Chartered Accountant was not accepted particularly when the Aticled Assistant used to take leave often and come late to the office. -Held the Chartered Accountant was guilty of professional misconduct. Articled training is mutual obligation which requires an abiding interest by the employer in the Aticled Assistant which needs constant watchfulness and vigilance. In the present case these expectations have been belied.

"Confirm"-meaning of

The dictionary meaning of the word "confirm" is to strengthen to fix or to establish; to ratify; to assure; to admit to full communion. These shades of meaning make it amply clear that before the member concerned can "confirm" his belief must be founded on some reasonable material or conduct.

"Knowledge how attributed"

The existence or otherwise of knowledge as to a particular state of affairs is obviously a matter which is personal to a member concerned and the only way in which the existence of such knowledge can be proved or disproved is to examine the totality of all the surrounding circumstances to ascertain as to whether the belief stated to be the basis on which the member so certified was that of an honest man acting as such bona fide and with due diligence.

(M.A. Dave in Re.: page 255 of Vol. V of the Disciplinary Cases decided on 19th and 20th July, 1974).

Making false statement to the Council

Where a Chartered Accountant who was employed as a manager of a firm of Registered Accountants, applied for admission as Fellow of the Institute stating that he was a partner, while he was not - Held, that the Chartered Accountant was guilty of misconduct as he had made the statement that he was a partner knowing it to be false.

(J.R. Chatrath in Re:- Page 96 of Vol.I of the Disciplinary Cases and

pages 44-47 of June, 1952 issue of the Institute's Bulletin - Judgement delivered on 14th April, 1952).

A Chartered Accountant in practice while applying for renewal of his certificate of practice in Form No.6 for the years 1973, 1974 and 1975 cancelled item Nos. 2 and 3 from the form thus indicating that he was not engaged in any other business or occupation. The admitted fact was that the Chartered Accountant had entered into partnership with persons who were not members of the Institute for the purposes of carrying on business. He was operating Bank Accounts, receiving the money from customers and looking after the affairs of the partnership. - Held he was guilty of professional misconduct under the ~~clauses~~ **items** as he had furnished particulars in Form No.6 while applying for renewal of certificate of practice, knowing them to be false.

(K.S.Dugar in Re: Page 1 of Vol. VI(2) of the Disciplinary Cases - decided on 2nd, 3rd and 4th April, 1980).

An Articled Assistant, while undergoing articles, was also in whole-time employment elsewhere without the permission of the Council. There was evidence that the member under whom he was undergoing articles was aware of this. The member was found guilty in terms of this ~~Clause~~ **Item** in so far as:

(i) he allowed the Articled Assistant to work elsewhere without the permission of the Council and

(ii) failed to disclose the facts in Bank Empanelment Form.

(N.K. Gupta in Re:- Page 1 of Vol. VIII.2 - 21(6) decided by the Council on 22nd, July, 1995)

A member had during the course of the hearing before Disciplinary Committee given a wrong statement duly verified and also a statement on oath knowing it to be false. He was found guilty in terms of this ~~clause~~ **item**.

(K.S. Dugar in Re:- Page 52 of Vol. VI(2) of Disciplinary Cases - Decided on 29th, 30th and 31st December, 1987)

The statement made by a member in Form No. 27 that 'x' was working in his firm as a Paid Assistant was found to be false and was found to have been made knowing it to be false. The member was held guilty in terms of this ~~Clause~~ **Item**.

(P.C. Sood vs. P.B. Kapoor - Page 95 of Vol. VI(2) of Disciplinary Cases - Decided on 11th, 12th and 13th February, 1988)

There was nothing wrong in a member being associated with a cultural or religious organisation but to use this association and facilities connected with it as a vehicle to gain professional work is not permissible. It is undesirable on the part of a member to pressurise for reappointment even in cases when he feels that he has been wrongly removed.A member had in his letter-head printed several places as branches though factually he had none and Form No. 27 filed by him

had also not referred to the "offices". The member was found guilty in terms of this ~~Clause~~ **Item**.

(K. Bhattacharjee vs. B.K. Chakraborty - Page 482 of Vol.VII(2) - Council's decision dated 11th, 12th and 13th February, 1988)

Where a Chartered Accountant in his application for empanelment as auditor of branches of public sector banks submitted to the Institute included the name of another member as one of partners of his firm though in fact the said member was not a partner of the said firm on the date of the said application. Held that the Chartered Accountant had contravened ~~clause~~ **item** (1) of Part III of the First Schedule in having submitted the application containing the particulars to the Council knowing them to be false.

(L.N. Gupta in Re:- Page 1 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 6th to 8th June, 1991).

Where a Chartered Accountant had submitted an application of his firm for empanelment as auditor of branches of Public Sector Banks and Statutory Central Audit and Branch Audit of Regional Rural Banks mentioning under the head "Details of disciplinary proceedings pending against any partner/proprietor" as "NIL", whereas a prima facie case against the member existed. Held that he had violated the provisions of ~~clause~~ **item** (1) of Part III of the First Schedule by stating that no disciplinary proceedings were pending against him in the said application as he had deliberately furnished false information when he was fully aware that disciplinary proceedings were pending against him.

(A.K. Mehra in Re:- Page 39 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 6th to 8th June, 1991).

Where a Chartered Accountant had while returning his Entry on Record for publication in the List of Members confirmed his status as in full time practice and did not disclose his engagement as salaried employee. At the time of furnishing particulars in the prescribed Form 27 for registration of his partnership firm, he didnot disclose his above engagement. Held that he was guilty under ~~clause~~ **item** (1) of Part III of the First Schedule.

(R.K. Jain in Re:- Page 243 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 10th to 12th June, 1993).

A Chartered Accountant claimed to be in full-time practice while applying for empanelment as bank branch auditor while he was in part-time employment with a private limited Company. Since he had submitted the particulars to the Council knowing them to be false, the Council held him guilty under ~~Clause~~ **Item** (1) of Part III and decided that his name be removed from the Register of Members for a period of 15 days.

(R.K. Seth in Re:- Page 660 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 16th to 18th January, 1997).

A Chartered Accountant had been in full-time employment in a Company besides holding Certificate of Practice without obtaining Institute's permission and in the bank empanelment form, he had given declaration to the effect that he was not devoting any time to any occupation/vocation/business etc. other than the profession of Chartered Accountants. He was held guilty for violation of ~~Clause~~ **Item** (11) of Part I and ~~Clause~~ **Item** (1) of Part III of the First Schedule. The Council ordered that his name be removed from the Register of Members for a period of six months.

(N.K. Gupta in Re:- Page 1 of Volume VIII(2) of Disciplinary Cases Council's decision dated 1st to 4th July, 1998).

The charges against the Respondent were that (i) while being in full-time service, he had falsely informed the Institute that he had left the service, (ii) had offered the Complainant the articleship which was not accepted by the Institute, since he was not entitled to train any Articled Assistant, in having not completed three years of continuous service, resulting in the Complainant spoiling about four months of articleship training, and (iii) he did not pay any stipend to the Complainant for training which was not recognised by the Institute. The Council held him guilty for violation of ~~Clause~~ **Item** (1) of Part III of the First Schedule and ordered that his name be removed from the Register of members for a period of three months.

(Sunil Patni vs. B.L. Gujar – Council's decision dated 1st to 4th July, 1998 - Page 11 of Volume VIII(2) of Disciplinary Cases).

Two members, while holding Certificate of Practice, had been in full time employment with an Insurance Company without obtaining the Institute's permission to be so engaged. They also did not disclose the particulars of their full time salaried employment at the time of furnishing particulars in the prescribed Form for registration of the Aticled Assistant. They were held guilty for violation of ~~Clause~~ **Item** (11) of Part I and ~~Clause~~ **Item** (1) of Part III of the First Schedule.

(C.M. Mehrotra in Re - Council's decision dated 11th to 13th October, 1999, Page 76 of Volume VIII(2) of Disciplinary Cases and A.P. Gupta in Re:- Council's decision dated 15th to 17th December, 1999, Page 134 of Volume VIII(2) of Disciplinary Cases).

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

(H.K. Gupta in Re:- Council's decision dated 15th to 17th December, 1999 - Page 110 of Volume VIII(2) of Disciplinary Cases).

Failure to comply with the requirements of the Council

Inspite of repeated reminders a Chartered Accountant failed to reply to the letters of the Institute asking him to confirm the date of leaving the services by the paid assistant. -Held the Chartered Accountant was guilty of professional misconduct under the ~~Clause~~ **Item**.

(A. Umanath Rao in Re:- Page 998 of Vol.IV of the Disciplinary Cases - decided on 11th and 12th January, 1965)

Where a Chartered Accountant had not disclosed to the Institute at any time about his engagement as a proprietor of a non-Chartered Accountants' firm while holding certificate of practice and had not furnished particulars of his engagement as a Director of a Company despite various letters of the Institute which remained unreplied. Held that he was guilty under ~~clause~~ **item** (11) of Part I and ~~clauses~~ **items** (1) and (3) of Part III of the First Schedule.

(P.S. Rao in Re:- Page 110 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 9th to 11th April, 1992).

Where a Chartered Accountant had continued to train an Articled Assistant though his name was removed from the membership of the Institute and he had failed to send any reply to the Institute asking him to send his explanation as to how he was training as his Articled Assistant when he was not a member of the Institute. Held that he was guilty under ~~clause~~ **item** (3) of Part III of the First Schedule.

(S.M. Vohra in Re:- Page 151 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 16th to 18th July, 1992).

A Chartered Accountant was a partner in a business firm without disclosing his interest and obtaining permission from the Council of the Institute. Held that he had violated inter alia the provisions of ~~Clause~~ **Item** (1) of Part III of First Schedule to the Chartered Accountant Act, 1949 for submitting particulars to the Council knowing them to be false.

(R.K. Gupta of M/s Gupta Rajendra & Co. vs. M.G. Baig – Page 158 of Vol.-VIII (2) of Disciplinary Cases decided by the Council on 1st to 3rd August, 2001)

Where a Chartered Accountant had given wrong information to the Institute to the effect that he was in full time practice while being in full time employment. Held that the Chartered Accountant had inter alia violated the provisions of ~~Clause~~ **Item** (1) of Part III of First Schedule.

(S.C. Srivastava in Re. – Page 194 of Volume VIII (2) of the Disciplinary Cases –Council's decision dated 1st to 3rd August, 2001)

In Form, 16-A for registration of service of various Aticled Assistant under him, the Respondent did not disclose his engagement as Managing Director in two Companies. Thus, he furnished false information to the Council, thereby inter alia attracting provisions of ~~Clause~~ **Item** (1) of Part III of First Schedule.

(Harish Kumar in Re: – Pages 286 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001)

A Chartered Accountant being in full time employment, did not mention anything in Form No. 27 when the firm in which he was partner applied for empanelment for bank branches audit. He showed himself as a partner in full time practice even while he was engaged with another business organization elsewhere. Held that he was guilty of professional misconduct under ~~Clause~~ **Item** (1) of Part III of the First Schedule of Chartered Accountants Act, 1949.

(Anil Kumar Agarwal in Re: - Pages 362 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001)

While applying for membership and Certificate of Practice, a Chartered Accountant did not report that he was a partner in his family business. Held that he was guilty of professional misconduct within the meaning of the ~~Clause~~ **Item**.

(Baijnath Agarwalla vs. Gopinath Aggarwalla - Pages 426 of Volume VIII (2) of Disciplinary Cases – Council's decision dated 26th to 28th August, 2001)

Where a Chartered Accountant did not disclose the particulars of his full time salaried employment at the time of furnishing particulars in the form 16A under CA Regulations 1964 for registration of the Articled Assistant under him. Held that he was inter alia guilty of professional misconduct under the ~~Clause~~ **Item**.

(N.K. Malhotra in Re:- Page 443 of Vol. VIII(2) of Disciplinary Cases – Council's decision dated 26th to 28th August, 2001)

Where a Chartered Accountant while submitting form 16A for registration of Articled Assistant did not disclose that he was also in employment elsewhere along with holding Certificate of Practice. Held that he was *inter alia* guilty of professional misconduct under ~~Clause~~ **Item** (1) of Part III of the First Schedule of the Chartered Accountants Act, 1949.

(S.K. Ahuja in Re:- Page 496 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 6th to 8th December, 2001)

Where a Chartered Accountant furnished particulars in the various forms sent to the Institute knowing them to be false. In the said form, the Respondent had either mentioned "No" or left blank or deleted the column through which the information was elicited as to whether he is engaged in any other occupation or business. Held that the Respondent was *inter alia* guilty of professional misconduct under ~~Clause~~ **Item** (1) Of Part III of First Schedule to the Chartered Accountants Act, 1949 for furnishing particulars knowing them to be false.

(Arvind Kumar in Re: – Page 553 of Vol. IXI – 2A – 21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December 2002]

The Respondent, while in employment with a Company wrote a letter to the Institute that he had resigned from the Company, which was false and misleading. Held that the Respondent was inter alia guilty of professional misconduct under the ~~Clause~~ **Item**.

(Managing Director, A.P. Handicrafts Dev. Corpn. Ltd. vs. A. Bhimeswara Swamy – Page 590 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 7th to 8th & 24th to 25th April 2003)

The Respondent Firm was a partnership firm but it was representing itself as a proprietary firm before the Income Tax Department. The Respondent firm was avoiding payment of Income Tax as a partnership firm for the last 3 to 5 years. The Respondent firm had 3 active partners, who were giving wrong and misleading information to the Institute and the Income Tax Department. Held that he was guilty of professional misconduct under the ~~Clause~~ **Item** 1 of Part III to the First Schedule to the Chartered Accountants Act, 1949.

(Sushil Kumar vs. S.L. Gupta of M/s Jain Khandelwal & Co. – Page 708 of Vol. VIII – 2A – 21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September, 2003)

Where a Chartered Accountant who was a partner in a C.A. firm besides being in employment was also holding Certificate of Practice without taking prior permission of the Institute. However, in the form for "Particulars of Offices & Firms" and Bank Empanelment Form, the Respondent did not disclose about his employment. Held that the Chartered Accountant was inter alia guilty of professional misconduct within the meaning of ~~Clause~~ **Item** (1) of Part III of First Schedule to the Chartered Accountants Act, 1949.

(Sudesh Pandit in Re: – Page 882 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 16th to 18th Sept. 2003)

The Complainant submitted an application for Empanelment of Auditors for the Audit of Branches of 27 Public Sector Banks and Statutory Central Audit and Bank Audit of Regional Rural Banks, wherein the Respondent wilfully and malafidely included Complainant's name as his paid employee, in his application for the above said audit. Consequently, Complainant's genuine application was rejected by the Institute on the ground that `paid C.A.' applied as Sole Proprietor/Partner. The Council held the Respondent guilty of:

(a) professional misconduct under ~~Clause~~ **Item** (1) of Part III of the First Schedule to the Chartered Accountants Act, 1949 and

(b) professional misconduct within the meaning of "Other Misconduct" under Section 22 read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Ashok Kumar Patni Vs. M. S. Singhatwadia - Page 563 of Vol. X – 2A – 21(4) as decided on 4th February, 2006 (257th Meeting of the Council)

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

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

The following case has been decided under ~~clause~~ **item** (10) of part I of the second Schedule. However, also incorporated here since appearing to be relevant for this ~~clause~~ **item** also.

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

(Tara Pada Banerjee, Dy. General Manager, Bank of Baroda Vs. B.K. Sarker - Page 15 of Vol. IX – 1 – 21(6), Council's decision dated 1st September, 2004 (245th Meeting of the Council) and High Court Judgement dated 5th May, 2006)

The foregoing ~~clauses~~ **items** are intended to enforce discipline among the members.

PART III OF THE SECOND SCHEDULE

Other Misconduct in relation to members of the Institute generally

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

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~~ **Item**.

DIVISION IV

RULES FRAMED UNDER THE CHARTERED ACCOUNTANTS ACT, 1949

INTRODUCTION

Section 29A of the Chartered Accountants Act, 1949 empowers the Central Government to make rules to carry out the provisions of the Act. In pursuance of this, the Central Government has notified six rules, which are as follows:

1) **The Chartered Accountants (Election to the Council) Rules, 2006.**

2) **The Chartered Accountants (Nomination of Members to the Council) Rules, 2006**

3) **The Chartered Accountants (Election Tribunal) Rules, 2006**

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

5) **The Appellate Authority (Allowances payable to, and other terms and conditions of service of Chairperson and members and the manner of meeting expenditure of the Authority) Rules, 2006**

6) **The Chartered Accountants (Procedures of Meetings of Quality Review Board, and Terms and Conditions of Service and allowances of the Chairperson and members of the Board) Rules, 2006**

In this Division we have incorporated all the above mentioned rules notified by Central Government to have an overall understanding of all these rules in relation to election to the council, nomination of members to the council, election tribunal, procedure of investigation of professional and other misconduct and conduct of cases, allowance payable to and other terms and conditions of service of chairperson and members and the manner of meeting expenditure of the authority and procedure of meeting of quality review board, and terms and conditions of service and allowances of the chairperson and members of the Board.

THE CHARTERED ACCOUNTANTS (ELECTION TO THE COUNCIL) RULES, 2006

Introduction

These rules have been framed by the Central Government in exercise of the powers conferred by Section 29A (2) (a) read with 9(2)(a) of the Act. They were notified by the Central Government on 5th September, 2006 and have been amended once in the year 2008 by the Chartered Accountants (Election to the Council) Amendment Rules, 2008. They govern various aspects pertaining to election to the Council of ICAI and contain 42 Rules and 8 Schedules.

Definitions

The Rules provide for definitions of important terms used subsequently, like, approved form, returning officer etc. As per the Rules, Returning Officer means the Secretary of the Council appointed under section 16 of the Act, or, in case the post of Secretary is vacant, any officer of the Institute designated by the Council for the purpose of conduct of elections.

Regional Constituencies and Dates of Election

As per Schedule 1 of the Rules, the electorate for the purpose of elections is divided into five Regional Constituencies, namely, Western India Regional Constituency, Southern India Regional Constituency, Eastern India Regional Constituency, Central India Regional Constituency and Northern India Regional Constituency. It is further provided that the elections to the Council are to be held on such date(s) as may be determined by the Council, which shall not be less than one month before the expiry of the term of the existing Council.

Members eligible to vote and their list

As per the eligibility of the members to vote in the elections, it is provided that any member, whose name is borne on the Register of Members on 1st April of the financial year in which the election to the Council is to take place, is eligible to vote. The Returning Officer is required to publish the list of members eligible to vote at least three months prior to the date of election. There is also provision for providing the list of members eligible to vote at the Headquarters, relevant Regional Councils and their relevant branches on payment of such price as may be fixed by the Council.

Members eligible to stand for election

Any member who is a fellow on the first day of April of the financial year in which election is to take place and whose name continues to be borne on the Register on the last date of scrutiny of nominations shall be eligible to stand for election to the Council from the regional constituency in which he is eligible to vote. However, in the following circumstances a person shall not be eligible to stand for election to the Council:

1) **If he has been found guilty of any professional or other misconduct and his name is removed from the register or he has been awarded penalty of fine**
2) **If he is holding a post under the Central or State Government**
3) **If he has been auditor of the Institute during the last three year**
4) **If he has held the office for more than three consecutive terms**
5) **If he has been elected as President**

Nominations, Fee for Election and Security Deposit:

The Council has the duty to publish in the gazette of India a notice stating the number of members to be elected from each regional constituency and calling for nominations of candidates for election at least 3 months before the date of election. A candidate is permitted to submit a maximum of 10 nominations only. A candidate willing to stand for election is also required to pay such fee as may be fixed by the Council by way of a demand draft drawn in favour of Secretary of the Institute. An upper limit of Rs. 50,000/- has been specified for the fees which may be charged by the Council. In addition to the fees specified above, candidates are also required to submit security deposit amounting to Rs.20,000/- for election.

Scrutiny of nominations, Withdrawal of Candidature

The nomination papers filed by proposed candidates are to be scrutinized by a Panel, which is to be appointed by the Council. On completion of the scrutiny of the nominations, the Returning Officer is required to prepare a list of valid nominations for each constituency. A candidate may withdraw his candidature by giving a notice by having it delivered to the Returning Officer anytime before 6.00 P.M. of the last date notified. The final list of nominations for each constituency to all the candidates for that constituency is then issued.

Election Code of Conduct

The Returning Officer issues an Election Code of Conduct for candidates, as approved by the Council, with a view to maintain a healthy and peaceful atmosphere during the election process and for ensuring a free and fair election. It contains instructions and norms to be followed by candidates and their authorized representatives appointed under these Rules during the entire election process including at the polling booth and counting centre. The Election Code is deemed to be a guideline of the Council and it is obligatory for each candidate to comply with the Election Code of Conduct.

Mode of Election and Admissible Number of Votes to A Voter

The elections to the Council are held in accordance with the system of proportional representation by means of a single transferable vote. The casting of vote is done by the means of secret ballot and every voter in any election shall cast his vote personally in the booth provided for the purpose, unless a voter is allowed in respect of any election to cast his vote by post as hereinafter provided. A voter shall have one vote only and he shall have as many preferences as there are candidates.

Polling Booths and Polling Officer

The setting up of polling booths is the responsibility of the Returning Officer. He is required to set up such number of polling booths at such places as he deems necessary. It is further provided that no polling booth is to be set up at any place having less than 25 members eligible to vote in the said place or within a distance of 50 kilometers thereof.

Eligibility to vote by post

A member whose name is included in the list of voters and whose name is not shown under any polling booth is permitted to vote by post. A member who is entitled to vote at a polling booth may be permitted at the discretion of the Returning Officer, to vote by post, if by reason of his suffering from any permanent infirmity or, in case of a member in service, a permanent change in address, he is unable to exercise his vote at the polling booth allotted to him.

Election result

Candidates will be deemed to be elected if their number is equal to or less than the number of members to be elected .The election shall be held in accordance with the system of proportional representation by means of a single transferable vote. The Returning Officer shall appoint such number of election observers, who shall not be members of the Institute, for the polling booths . There shall be a secret chamber(s) in each polling booth.

Grounds for declaring ballot papers invalid

In the following circumstances, a ballot paper shall be deemed to be invalid: –

(a) if a voter signs his name or writes any word or figure upon it or makes any mark including a tick (✓)/ cross (x), not being a mark of `x' put under clause (c) of sub-rule (2) of rule 20, upon it by which the ballot paper becomes recognizable or by which the voter can be identified; or

(b) if it is not printed by or under the authority of the Council or it is different in any manner from the ballot papers printed under rule 25; or

(c) if number 1 (in Arabic or Roman numerals or in words) is not marked on it; or

(d) if number 1 (in Arabic or Roman numerals or in words) is set opposite the name of more than one candidate; or

(e) if number 1 (in Arabic or Roman numerals or in words) and some other numbers are put opposite the name of the same candidate; or

(f) if it is unmarked or the marks made are void or cannot be unambiguously determined; or

(g) if it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established.

Counting of votes and appointment of Scrutinsers

It is the duty of the Returning Officer to appoint for each regional constituency date(s), place and time for the counting of votes at the headquarters of the Institute. The notice of such date(s), place and time is to be given to all the candidates in writing.
The Returning Officer may appoint two or more persons as scrutinisers of the voting papers and to assist him generally in counting the votes. Such persons should neither be members of the Council nor candidates for election. A candidate for election is entitled to be present in person or to appoint a member as a representative to be present on his behalf at the time of counting of votes.

Election not to be invalid due to accidental omission, etc

No election shall be deemed to be invalid merely by reason of any accidental omission of the name of a member from the list of members eligible to vote or any accidental mistake in not allowing him to vote or the accidental inclusion of name of a person not entitled to vote in the list of members eligible to vote or allowing him to vote, or any accidental irregularity or informality in the conduct of the election, including accidental omission to send or delay in sending the voting paper to a voter or the accidental non-receipt of, or delay in receipt of a voting paper, by voter.

Disciplinary action against member in connection with conduct of election

A member is deemed to have brought disrepute to the Council under item (2) of Part IV of the First Schedule of the Act, in case he violates the following rules:

1) Only one manifesto or circular is to be issued by a candidate in relation to the election in the period commencing from the date of issue of final list of nominations to the candidates.

2) A manifesto or circular issued should conform to the following requirements in the interest of maintaining dignity in the election, namely: –

(a) A manifesto or circular should contain information regarding the candidate himself and shall not make any reference, directly or indirectly, to any other candidate;

(b) The information, which a candidate may furnish in a manifesto or circular regarding himself, should not differ in any material respect from the information furnished by the Institute to the voters under rule 9. A candidate may, however, include in such manifesto or circular, any additional information not contained in the information furnished under rule 9;

(c) A manifesto or circular should neither contain any appeal to the voters on the basis of caste or on communal, religious, regional or sectional lines nor any tall claim;

(d) The distribution of a manifesto or circular should be restricted only to the members of the constituency concerned;

(e) A certified copy of such manifesto or circular should be sent to the Returning Officer by speed/registered post within 15 days of its issue;

(f) While a candidate may repeat, in any form, the manifesto or circular issued under sub-rule (2) of this rule without changing its contents, however, he should not issue more than one manifesto or circular.

3) A member shall not adopt one or more of the following practices with regard to the election to the Council, namely: −

(i) Bribery, that is to say, any gift, offer or promise of any gifts or gratification to any person by a candidate or any other person, with the connivance, with the object directly or indirectly of: −

(a) inducing a member to stand or not to stand as a candidate at an election or rewarding him for act or omission; or

(b) inducing to withdraw his candidature or rewarding such withdrawal; or

(c) inducing a voter to vote or not to vote at an election, or as a reward for act or omission;

(ii) undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or any other person, with his connivance, with the free exercise of any electoral right;

(iii) the publication by a candidate or by any other person, with his connivance, of any statement of fact which is

false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidature or in relation got he candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election;

(iv) the obtaining or procuring or abetting, or attempting to obtain or procure, by a candidate or by any other person, with his connivance, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State, other than the giving of vote by such person, if he is a member entitled to vote;

(v) the hiring or procuring, whether on payment or otherwise, of a vehicle by a candidate or by any other person, with his connivance, fort the conveyance of voters;

(vi) resorting to disorderly behaviour or misbehaviour within the zero tolerance zone to be determined by the Returning Officer of the polling booth and/or venue for counting of votes;

(vii) exhibiting or placing any notice or sign board relating to the election by a candidate or by any other person with the connivance of the candidate at any time and any where during the election period including on the date or dates of polling within a distance of 200 meters from the polling booth;

(viii) non-compliance with any of the directives or circulars of instruct9ins issued by the Returning Officer under these Rules in any matter relating to elections;

(ix) contesting the election representing a political party or on political lines;

(x) any act specified in clauses (i) to (ix) when done by a member, who is not a candidate, but is acting with the concurrence or connivance of a candidate;

(xi) the receipt by a member or an agreement by a member to receive any gratification:-

(a) as an inducement or reward for standing or not standing as a candidate; or

(b) as an inducement or reward for withdrawing his candidature; or

(c) as an inducement or reward for himself or any other person for voting or refraining from voting; or

(d) as an inducement or reward for inducing or attempting to induce any voter to vote or refrain from voting; or

(e) inducing or attempting to induce any candidate to withdraw his candidature;

(xii) Contravention or misuse of any of the provisions of these Rules or making of any false statement knowing it to be false or without knowing it to be true, while complying with any of the provisions of these Rules.

THE CHARTERED ACCOUNTANTS (NOMINATION OF MEMBERS TO THE COUNCIL) RULES, 2006

Introduction

The Chartered Accountants (Nomination of Members to the Council) Rules, 2006 were notified by the Central Government on 19th August, 2006, under Section 29A (2)(a) read with Section 9(2)(b) of the Act, to govern the various aspects pertaining to nomination of members to the Council. The Chartered Accountants (Election to the Council) Rules, 2006 contain three rules.

Field of consideration for nominations

The Central Government has been empowered to make nominations to the Council from amongst the persons who are holding a position in Government of India not below the rank of a Director or persons of eminence from the fields of law, banking, economics, business, finance, industry, management, public affairs or in any other matter which in opinion of the Central Government may be useful for the profession of Chartered Accountants. It is also provided that the persons so nominated by the Central Government should not be member of the Institute.

THE CHARTERED ACCOUNTANTS (ELECTION TRIBUNAL) RULES, 2006

Introduction

The Chartered Accountants (Election Tribunal) Rules, 2006 were notified by the Central Government on 17th November, 2006 under Section 29A (2)(a) read with Section 10B(3) of the Act to govern the various aspects pertaining to Election Tribunal. The Chartered Accountants (Election Tribunal) Rules, 2006 contain 11 Rules.

Constitution and Terms of service of Tribunal

The Central Government is required to establish a Tribunal within 45 days of receipt of an application by the Secretary of the Institute under Section 10A of the Act. The Presiding Officer and other members of the Tribunal are part-time members and are to be appointed for the term of the Tribunal.

Travelling and daily Allowance

The Presiding Officer and other members of the Tribunal would be paid the following amount as allowance for each day of sitting, namely, –

(a) Presiding Officer - Rs.500

(b) Members - Rs.400.

The Presiding Officer and other Members of the Tribunal, while on tour, are entitled to travelling allowance and daily allowances as admissible to them in their official capacity and in case the member is not a Government Servant, he will be entitled to the travelling allowance and daily allowance as admissible to an officer holding a post carrying a scale of pay of a Joint Secretary to the Government of India.

Meetings of Tribunal

All meetings of the Tribunal are to be held at the headquarters of the Institute or any other place where Tribunal may decide after taking care of interest of justice. The date and time of meetings are to be fixed by the Presiding Officer in consultation with other

members of the Tribunal. The quorum for the meeting of the Tribunal is two. The Presiding Officer chairs all the meetings of the Tribunal.

Procedure to be adopted by the Tribunal

The Tribunal is to be guided by the principles of natural justice in the discharge of its functions, and subject to the other provisions of the Act and Rules, the Tribunal is to regulate its own procedure. Tribunal may decide a case within 6 months from the date of its constitution. The Tribunal may dismiss the application, declare the election of all or any of the elected candidates to be void, declare the election of all or any of the elected candidates to be void and the applicant or any other candidate to have been duly elected and may pass such order as to costs as it may consider appropriate.

Duration of the Tribunal

The term of the Tribunal shall be over within 15 days from the date of announcement of its decision on the dispute under reference.

THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007

Introduction

The Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 were notified by the Central Government on 28th February, 2007 under Section 29A (2)(a) read with Section 21(4) and Section 21B(2) and (4) of the Act to govern various aspects pertaining to procedure of investigations of professional and other misconduct and conduct of cases. The Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 contain 6 Chapters and 21 Rules.

Procedure for filing complaint

A complaint against a member or a firm is to be filed before the Director (Discipline) in Form I. The same is to be filed in triplicate and may be filed in person or by post or courier. Every complaint received by the Director (Discipline) is required to be acknowledged by ordinary post together with an acknowledgement number.

Fee for filing complaint

Every complaint filed before the Director (Discipline) is to be accompanied by a fee as prescribed by the Council through regulations. However, this is not applicable to a complaint filed by or on behalf of the Central Government or any State Government or any statutory authority.

The fee is to be paid in the form of a demand draft in favour of the Institute of Chartered Accountants of India payable at the place where the Director (Discipline) is situated. The fees is non refundable.

Withdrawal of a complaint

There is a provision regarding withdrawal of complaint also. On receipt of a letter of withdrawal of a complaint by the complainant, the Director (Discipline) is required to place the

same before the Board of Discipline or the Disciplinary Committee, as the case may be, and the Board of Discipline or Disciplinary Committee, may, if it is of the view that the circumstances so warrant, permit the withdrawal, at any stage, including before or after registration of the complaint.

Information

Ananonymous information received by the Directorate (Discipline) will not be entertained by the Directorate (Discipline).

Examination of the Complaint

In order to form a prima facie opinion regarding a complaint, the Director (Discipline) is required to examine the complaint, written statement, rejoinder and other additional particulars or documents, if any, and then form his *prima facie* opinion as to whether the member or the firm is guilty or not of any professional or other misconduct or both under the First Schedule or the Second Schedule or both.

Where the Director(Discipline) is of the *prima facie* opinion that the member or the firm is guilty of any misconduct under the First Schedule, he is required to place his opinion along with the complaint and all other relevant papers before the Board of Discipline , otherwise if the member or the firm is guilty of misconduct under the Second Schedule or both the First and Second Schedules, he is required to place his opinion along with the complaint and all other relevant papers before the Disciplinary Committee.

Mode of Sending Notice

Every notice or letter issued by the Director(Discipline), Board of Discipline, or the Disciplinary Committee under these rules is to be sent to the member or the firm or any other person by registered post with acknowledgement due or speed post.

Functioning of Board of Discipline

All questions which come up before the Board of Discipline are decided on majority basis and the quorum for any meeting of the Board of Discipline is two members.

Orders of the Board of Discipline

In case the Board of Discipline arrives at a finding that the respondent is guilty of professional or other misconduct, it is required to give the respondent an opportunity of being heard before passing any order.

On arriving at a finding that the respondent is not guilty of professional or other misconduct, the Board of Discipline may pass orders closing the case.

Constitution and functioning of Disciplinary Committee

The Council may constitute one or more Disciplinary Committees if it considers necessary. Such disciplinary committee(s) may be located in one or more Regional Headquarters.

All questions which come up before the Disciplinary Committee are to be decided on majority basis.

The quorum for meeting of the Disciplinary Committee is prescribed as three members, of which at least one should be a member nominated by the Central Government under subsection (1) of section 21B of the Act.

Allowances to the members nominated by the Central Government

The members of the Disciplinary Committee nominated by the Central Government are paid Rs 1000/- per day for sitting fees. However, members holding position under the Central Government or State Government or any statutory authority are not entitled for any such allowances. The Presiding Officer and other Members are also entitled to the travelling allowance and daily allowance as admissible to them.

Attendance of hearings by the complainant, respondent and witness

The complainant and the respondent have been given the right to attend the hearings of the Board of Discipline or the Disciplinary Committee. However, they are not eligible for reimbursement of expenses incurred for attending the hearing.

A witness summoned before the Disciplinary Committee is be eligible for reimbursement of expenses according to prescribed guidelines.

THE APPELLATE AUTHORITY (ALLOWANCES PAYABLE TO, AND OTHER TERMS AND CONDITIONS OF SERVICE OF CHAIRPERSON AND MEMBERS AND THE MANNER OF MEETING EXPENDITURE OF THE AUTHORITY) RULES, 2006

Introduction

The Appellate Authority (Allowances payable to, and other terms and conditions of service of Chairperson and members and the manner of meeting expenditure of the Authority) Rules, 2006 were notified by the Central Government on 17th November, 2006 to govern the various aspects pertaining to allowances payable to and other terms and conditions of service of Chairperson and members and the manner of meeting expenditure of the Authority .These Rules comprise of 9 Rules.

Allowances

The Chairperson and the Members of the Authority are entitled to sitting fees per day which is as follows:

Chairperson - Rs. 2000/-

Member - Rs. 1500/-

The Chairperson and Members of the Appellate Authority are also entitled to the traveling allowances and daily allowances while on tour outside Delhi on the same rates as are prescribed in the High Court Judge (Travelling Allowances) Rules, 1956.

Facility of conveyance and accommodation

The Chairperson of the Appellate Authority are entitled to a staff car and 150 litres of petrol every month or actual consumption of petrol, whichever is less.

However, the Chairperson and other Members of the Appellate Authority are not eligible for accommodation or House Rent Allowance on account of their holding positions in the Appellate Authority.

Expenditure of the Appellate Authority

The expenditure of the Appellate Authority is to be borne by the Councils of Institute of Chartered Accountants of India, Institute of Cost and Works Accountants of India and the Institute of Company Secretaries of India in such proportion as may be decided by the Central Government.

Creation of a Fund

There is a provision for creation of a fund called the "Appellate Authority Fund" with contributions from the Councils of Institute of Chartered Accountants of India, Institute of Cost and Works Accountants of India and the Institute of Company Secretaries of

India and such other authorities as may be decided by the Central Government from time to time.

THE CHARTERED ACCOUNTANTS (PROCEDURES OF MEETINGS OF QUALITY REVIEW BOARD, AND TERMS AND CONDITIONS OF SERVICE AND ALLOWANCES OF THE CHAIRPERSON AND MEMBERS OF THE BOARD) RULES, 2006

Introduction

The Chartered Accountants (Procedures of Meetings of Quality Review Board, and Terms and Conditions of Service and allowances of the Chairperson and members of the Board) Rules, 2006 notified by the Central Government on 27th November, 2006 and were amended in the year 2009. They consist of 11 rules and govern the various aspects pertaining to procedures of meetings of quality review board, and terms and conditions of service and allowances of the chairperson and members of the board.

Procedure for Meetings of the Board

All meetings of the Board are to be held at the headquarters of the Institute and the Chairperson is authorized to fix the date and time of any meeting. The notice of the meeting of the Board is to be given to the other members of the Board 15 days in advance by the Chairperson or any person authorized by him.

The quorum for transaction of any business at a meeting of the Board is four members, of which at least one must be nominated by the Central Government under Sub-section (3) of Section 28A of the Act. The decision making by the Board is to be done on majority basis.

Agenda for the Board meeting

The agenda for a meeting of the Board is to be decided by the Chairperson. Any matter referred to the Board by the Central Government or the Council is to be included in the agenda for the meeting of the Board within time limits specified, if any, in such a reference.

Assistance to the Board

There is provision for setting up of a specialized technical unit by the Institute to provide secretarial assistance, as required, to the

Board in the discharge of its functions and to assist in carrying out review of quality of services provided by the Members.

Terms and conditions of service of the Chairperson and Members of the Board

The tenure of the Chairperson and Members of the Board is 3 years. The Chairperson and other members of the Board will be deemed to be part-time members.

Travelling and other Allowances

The Chairperson and other Members of the Board are entitled to travelling and daily allowances at the following rates:

---By Air

1. **Chairperson - Business Class**
2. **Members - Economy Class**

---By Train - Economy Class

The Chairperson and other Members who are Government Servant are entitled to travel by the class admissible to them. The Chairman and other Members of the Board are also entitled for reimbursement of lodging expense subject to maximum Rs.6000/. Daily allowance for "A" class cities is Rs.1000/ per day and for other cities is Rs. 800/- per day.

Resignation

The Chairperson and each Member of the Board shall cease to remain the Chairperson or Member, as the case may be, in case of his resignation or removal. The Chairperson or a Member of the Board may resign his office by a notice in writing under his hand addressed to the Central Government which is be effective from the date of resignation.

DIVISION V

THE CHARTERED ACCOUNTANTS REGULATIONS, 1988

INTRODUCTION

The Council of ICAI has been empowered to make regulations under Section 30 of the Chartered Accountants Act, 1949 for the purpose of carrying the objectives of the Act and the Council has also been empowered to amend and revise these regulations from time to time.

The regulations came into force in the year 1949 and they have been amended twice since then in the year 1964 and thereafter in 1988. The provisions of Chartered Accountants Regulations, 1988 have been explained in detail under this division.

THE CHARTERED ACCOUNTANTS REGULATIONS, 1988

CHAPTER I: PRELIMINARY (REGULATIONS 1-2)

Chapter 1 of the Regulations is titled "Preliminary" and contains Regulations 1 and 2. These Regulations have come into force with effect from June 1, 1988.

Regulation 2 contains the definitions of various important terms which have been used in the Regulations, for instance, "Articled Assistant", "Audit Assistant", "President", "Secretary", "Service with Armed Forces" etc. It is also provided that for those terms which are not defined herein, but which are defined in the Chartered Accountants Act, 1949, reference may be made to the Chartered Accountants Act, 1949 for ascertaining the meaning of those terms.

CHAPTER II: MEMBERS (REGULATIONS 3-20)

Any member may request for list of members from the Institute by making the requisite payment in this behalf. In order to be qualified as a member, a person should have completed the practical training and cleared the final examination of chartered accountancy.

In order to have his name entered in the Register of Members, a person is required to make an application to the Secretary of the Institute in the prescribed format along with required documentary evidence. Similarly, an associate member, on fulfilling the prescribed conditions, may make an application for being a fellow member of the Institute.

The annual membership fees and the annual fees for certificate of practice, as prescribed by the Council, is payable on 1st April each year.

The Chapter also makes provision for refund of fees to the members in case their application for certificate of practice is not accepted by the Council.

The Disciplinary Committee has been entrusted with the duty of conducting investigated and all other enquiries relating to misconduct by a member on a complaint being received against such member under Section 21 of the Chartered Accountants Act,

1949. Such complaint should contain the information regarding the acts and omission which, if proved, would render the person complained against guilty of professional or other misconduct and the oral and documentary evidence relied upon in support of the allegations made in the complaint. The Secretary may return a complaint to the Complainant, in case is not in the appropriate form or does not contain the aforesaid particulars, for representation after removing the objections. The detailed procedure to be followed on receipt of such complaint has been provided under this Chapter.

This chapter also makes provision for cancellation and restoration of Certificate of Practice. A member will be liable for cancellation of certificate of practice in case his name is removed from the Register of members, or, if the certificate of practice was issued on the basis of incorrect, misleading or false information or by mistake or inadvertence, or, if the member has ceased to practice, or, if the member has not paid his annual fees for certificate of practice till the specified time. In case the membership or certificate of practice is cancelled due to non-payment of fees, then the same may be restored upon payment of the fees, as maybe prescribed.

This chapter provides in detail the procedure for dealing with the complaints received under Section 21 of the Act. The complaints under Section 21 of the Act are to be made in the prescribed format along with the prescribed fees and clearly stating the facts of the case along with the evidence in this behalf. A copy of the complaint received by the Institute is to be provided to the opposite party who may file a written statement in his defense. In case the Council form a prima facie opinion that a member is guilty of professional misconduct, then the Disciplinary Committee shall make an enquiry in this regard. The Disciplinary Committee shall examine the complaint and submit its report to the Council, which shall record its finding in the matter.

CHAPTER III: EXAMINATIONS (REGULATIONS 21-42)

This Chapter gives power to the Council to decide the manner, time and places for the conduct of examinations. The eligibility for registration to the Common Proficiency Course is passing of Class 10 examination. Further, the eligibility for the Common Proficiency Test is registration with Board of Studies and appearing in Senior Secondary Examination. Certain circumstances are provided in the Chapter wherein a candidate is exempted from passing the Common Proficiency Test.

In order to get admission in the Intermediate (Professional Competence) Examination, a candidate has to clear the Common Proficiency Test and the Senior Secondary Examination and served as an articled assistant/ audit assistant for the prescribed period of time and completed a course in Information Technology Training for such duration as may be prescribed by the Council. The eligibility prescribed for admission to the Intermediate (Integrated Professional Competence) Examination is enrolment for the relevant levels of Intermediate (Integrated Professional Competence) Course and undergoing a study course for a period of not less than nine months as prescribed by the Council. The requirements for eligibility to the Final Examinations are also provided in detail under this Chapter.

The Examination Committee has the right to refuse to admit a candidate to an examination for sufficient reasons to be recorded. The Chapter requires that the admission ticket for the examinations shall be sent to each candidate atleast 21 days prior to the commencement of the examinations. The list of candidates who have successfully cleared the examination is to be published and the name of the candidates who have obtained distinction shall be indicated in the list. The candidates are also to be given examination certificates to the effect that they have cleared the examination.

The Examination Committee has been empowered to conduct investigation to ascertain whether a candidate has behaved in a disorderly manner in or near the examination hall or if he has resorted to unfair means to pass an examination and take such disciplinary action as it may deem fit. However, an opportunity of being heard is to be provided to the candidate before an adverse order is passed against him.

CHAPTER IV: ARTICLED ASSISTANTS AND AUDIT ASSISTANTS (REGULATIONS 43-80)

Articled Assistants (Regulations 43-67)

This Chapter provides for eligibility for engagement of articled assistants by members. As per this Chapter, only those members who have been designated as associates and fellows are eligible to engage articled assistants under them.

The number of articled assistants which a member, who is practicing in his individual name or as proprietor or as a partner, may train is dependent upon the number of years of practise that member is having. For instance, a member having continuous practice for a period of upto 3 years can train 1 articled assistant

under him. Similarly, guidelines are provided for members who are in full time salaried employment under a chartered accountant in practice or a firm of such chartered accountants. It is further provided that a member shall not engage any other articled clerk, articled assistant or apprentice under the bye-laws of any other Institute or Society or Body.

This Chapter also provides for eligibility for persons to be articled assistants. No person shall be entitled to be an articled assistant unless he has passed the Professional Education (Examination-II) or has passed Group I level or Accounting Technician level of Intermediate (Integrated Professional Competence) Examination, has successfully completed computer training programme or Information Technology Training and has completed the Orientation Course for such period and in such manner and within such time as may be decided by the Council.

There is a procedure prescribed for registration of articled assistants. A statement in Form No. 103 together with documentary evidence of compliance of the eligibility conditions has be sent to the Secretary for registration so as to reach him within thirty days of the commencement of articleship. The articled assistants are required to pay registration fee and tuition fee, which taken together should not exceed Rs. 25,000/-.

The Chapter prohibits charging of any amount by way of premium or as loan or deposit or in any other form from an articled assistant in connection with his engagement as an articled assistant. The minimum monthly stipend to be paid to the articled assistants is also prescribed. The rates are dependent upon the population of the town where the services of articleship are being offered.

The Council is required to maintain a register of articled assistants. In order to be eligible for the membership of the Institute, a person should have served the prescribed number of years as an articled assistant or partly as an articled assistant and partly as an audit assistant. The articled assistants may also undergo industrial training under the provisions of this Chapter. The articled assistant must have passed the Intermediate (Professional Competence) Examination or Professional Education (Examination-II) or Intermediate examination and the period for which this industrial training may be undergone is between nine months and twelve months during the last year of the prescribed period of practical training.

In order to be eligible for the membership of the Institute, the articled assistants are required to complete a course on General Management and Communication Skills and a course on Information Technology Training and Advanced Course on

Information Technology Training for such period as may be specified by the Council which shall not be less than one hundred hours and not more than five hundred hours.

Further, services rendered by an articled assistant with Armed Forces for a period not exceeding one year shall be deemed to be service as an articled assistant.

There are provisions prescribed for the termination or assignment of articled assistants as well. Termination of articleship is possible only by way of executing an agreement between the articled assistant and his principal in such exceptional circumstances or conditions as may be decided by the Council.

An articled assistant may also enter into fresh articleship for the remainder term of his service with another member in case his principal has ceased to practise or the name of the principal has been removed from the Register or the principal has died or the articleship is terminated.

The provisions governing leave to articled assistants are also provided in detail under the chapter. The Principal is required to issue a certificate to the articled assistant on completion of his service in respect of the service rendered by him. The articled assistants are not permitted to take any other course of study or training, whether academic or professional, or engage in any business or occupation during the period of service as an articled assistant and the the President or the Vice-President as the Executive Committee are empowered to conduct enquiries in this regard. Similarly, the Vice-President as the Executive Committee are also empowered to conduct enquiries regarding complaints received against the Principal.

Audit Assistants (Regulations 68-80)

This Chapter provides for eligibility for engagement of audit assistants by members. As per this Chapter, only those members who have been in continuous service for a period of 3 years or more are eligible to engage 1 articled assistant under them. Similarly, eligibility conditions are also prescribed for an audit assistant.

A person shall be entitled to be engaged as an audit assistant under a member only if such person had been in service as a salaried employee for a minimum period of one year either under that member or in the firm of chartered accountants in practice wherein the member is a partner on a monthly remuneration at the rates specified in the Chapter. There are further conditions stipulated for eligibility to be engaged as audit

assistant such as completion of 17 years of age on the date of commencement of audit service, passing of the Professional Education (Examination-II) or Group I level or Accounting Technician level of Intermediate (Integrated Professional Competence) Examination, completion of computer training programme or Information Technology Training and Orientation Course for such period and in such manner and within such time as may be decided by the Council.

There is a procedure prescribed for registration of audit assistants. A statement in Form No. 113 together with documentary evidence of compliance of the eligibility conditions has be sent to the Secretary for registration so as to reach him within thirty days of the commencement of articleship.

The Council is required to maintain a register of audit assistants. In order to be eligible for the membership of the Institute, a person should have served the prescribed number of years as an audit assistant or partly as an audit assistant and partly as an articled assistant. The audit assistants may also undergo industrial training under the provisions of this Chapter. The audit assistant must have passed the Intermediate (Professional Competence) Examination or Professional Education (Examination-II) or Intermediate examination and the period for which this industrial training may be undergone is between nine months and twelve months during the last year of the prescribed period of practical training.

In order to be eligible for the membership of the Institute, the audit assistants are required to complete a course on General Management and Communication Skills and a course on Information Technology Training and Advanced Course on Information Technology Training for such period as may be specified by the Council which shall not be less than one hundred hours and not more than five hundred hours. Further, services rendered by an audit assistant with Armed Forces for a period not exceeding two years shall be deemed to be service as an audit assistant.

The provisions governing leave to audit assistants are also provided in detail under the chapter. The employer is required to issue a certificate to the audit assistant on completion of his service in respect of the service rendered by him. The audit assistants are not permitted to take any other course of study or training, whether academic or professional, or engage in any business or occupation during the period of service as an audit assistant and the the President or the Vice-President as the Executive Committee are empowered to conduct enquiries in this regard. Similarly, the Vice-President as the Executive Committee

are also empowered to conduct enquiries regarding complaints received against the employer.

CHAPTER V: STUDENTS' ASSOCIATION (REGULATION 81)

As per this Chapter, the Council has been empowered to constitute a students' association for each regional constituency as may be specified by the Central Government from time to time. It is stated that the students' association is to function in accordance with the control, supervision and direction of the Council exercised through the respective Regional Council.

Further, the students' association is to be managed by a managing committee of not more than fifteen members of which three members are to be nominated by the Regional Council. There shall be a chairman of the students' association who is to be nominated by the Regional Council from among the three members nominated by it on the managing committee. There is also a provision regarding establishment of branches of students' association by the Council. The Council is also empowered to prescribe the duties and functions of the branch. The articled assistants and audit assistants are required to become a member of the students' association of their region and deposit such fees as may be fixed by the Council for the benefit of his association.

CHAPTER VI: ELECTIONS (REGULATIONS 82-126)

Regulation 82 to 126 were omitted by Notification No.1-CA(7)/116/2008 published in Part III, Section 4 of Gazette of India, Extraordinary, dated 25th September, 2008.

CHAPTER VII: REGIONAL COUNCILS (REGULATIONS 127-159)

Chapter VII contains provisions exclusively regarding the functioning of the Regional Councils. The Chapter specifies the regional constituencies for which the Regional Councils may be constituted. The Regional Council may also be constituted for such other constituencies as may be specified by the Central Government. The names of the Regional Councils are also prescribed in the Chapter, i.e., Western India Regional Council, Southern India Regional Council, Eastern India Regional Council, Central India Regional Council and Northern India Regional

Council. The headquarters of the Regional Councils for Western Region, Southern Region, Eastern Region, Central Region and Northern Region are located in Mumbai, Chennai, Kolkata, Kanpur and New Delhi respectively.

The duties and functions to be performed by the Regional Councils are mentioned elaborately under this Chapter. There are 28 odd functions and duties prescribed for the Regional Councils, such as, to award prizes for professional activities, to advise the Council on all matters referred to it and to offer such other assistance as may be required, to maintain a regional register of members and registers of articled assistants and audit assistants in its region, to propagate among the members the advisability and the necessity of observing the rules of professional etiquette and the provisions of the Act and these Regulations, to maintain a library and a reading room for the use of the members etc.

A regional register of members is to be maintained for each of the Western Region, Southern Region, Eastern Region, Central Region and Northern Region containing particulars in respect of every member whose professional address is situated within that region. It is to be noted that if the name of a member is removed from the Register of Members, then his name shall also be considered to be removed from the regional register of the member concerned. The constitution of the Regional Councils has also been prescribed.

The Regional Councils shall comprise of all the elected and nominated members of the Council in its region and such members as may be elected by the members in the region.

The provisions regarding election to the Regional Councils are contained in detail under this Chapter. It specifies the eligibility of the voters to vote for the election to the Regional Councils. As per the provisions, a member whose name is borne on the Register on the 1st day of April of the financial year in which the election to the Regional Council is to take place shall be eligible to vote. It also provides the eligibility to stand in the election to the Regional Councils. A person shall not be eligible to stand in the election to the Regional Councils if he is holding a post under the Central Government or State Government or if he is or has been elected as a member to Regional Council for more than three consecutive terms or if he is or has been elected as the Chairman to the Regional Council.

There are also provisions governing resignation from Regional Councils. Any member of a Regional Council may resign from his membership at any time by sending a written communication in this regard to the Chairman of the Regional Council. The office bearers of the Regional Councils are Chairman,

a Vice-Chairman, a Secretary and a Treasurer. The procedure for appointment of Chairman, Vice-Chairman, Secretary and Treasurer is specified the Chapter.

The functions to be performed by the office bearers have also been provided. The Chairman of a Regional Council shall be the Chief Executive authority of the Regional Council. In the absence of the Chairman, the Vice-Chairman shall perform his functions. The Secretary is responsible for the performance of the general duties appertaining to the office, under the guidance of the Chairman, or in his absence the Vice-Chairman. The Treasurer is responsible to cause true and correct accounts of the assets and liabilities to be maintained and also of the moneys received and expended and to deal with matters in respect of which such receipts and expenditure take place.

The Chapter also mentions the Committees to be constituted by the Regional Councils. The committees are Executive Committee, Students Committee, Professional Development Committee, Public Relations Committee, Career Counselling Committee and Continuing Professional Education Committee. Each committee shall consist of the Chairman or the-Vice-Chairman of the Regional Council ex-officio, and such other members of the Regional Council as may be elected by it. The Chapter also stipulates the matters relating to finance and accounts of the Regional Councils.

It is provided that the Council shall provide grant-in-aid to the Regional Council from time to time. Apart from such grant-in-aid, the Regional Council shall be self supporting and shall not borrow or obtain credit without the prior sanction of the Council. The funds of a Regional Council are to be kept in one of the scheduled banks and are to be employed for such purposes as may be sanctioned by the Regional Council. However, no funds are to be applied for payment to the members of the Regional Council except for reimbursing them for any expenses incurred by them in connection with the business of the Regional Council.

The accounts of a Regional Council, as maintained by the treasurer, are to be audited every year by a chartered accountant in practice or a firm of such chartered accountants appointed by the Regional Council. The Regional Council is also empowered to appoint such officers and other employees for its office as may be determined by and in accordance with the directions issued by the Council. It is provided that the property, assets and funds of the Regional Council is to vest in the Council, but the Regional Council is to administer them subject to the control, supervision and direction of the Council and/or its Executive Committee.

The provisions governing the meetings of the Regional Council are also provided in the Chapter. It provides for the number of the meetings which a Regional Council must have. As per the provisions, the Regional Council is free to meet as many times as it deems necessary for the conduct of its business subject to the condition that it must have two meetings every year. The notice of the meeting of the Regional Council is to be issues by the Secretary at least 14 days before the date of the meeting to every member of the Regional Council and it should contain details regarding the time, date and place of the meeting the business to be transacted thereat. The quoram prescribed for the meeting of the Regional council is a minimum of 3 members and the decisions are to be taken on the basis of majority.

The Chapter also contains provisions for annual general meeting and extraordinary general meeting of the Regional Council. The term of the Regional Councils shall be co-terminus with the term of the Council. There are provisions regarding Branches of the Regional Council as well The Council may by notification in the Gazette of India set up a branch of a Regional Council in a city other than the headquarters of the Regional Council provided that not less than 150 members have their addresses registered in the city or within a distance of 50 kilometres from the city limits.

CHAPTER VIII: MEETINGS AND PROCEEDINGS OF THE COUNCIL (REGULATIONS 160-168)

The provisions governing the meetings and proceedings of the Council are given elaborately under this Chapter. The Council is required to meet at least once in every six months. The time and place of the meeting is to be determined by the President. There are provisions for the special meeting of the Council as well.

In order to have a special meeting of the Council, a request in writing has to be addressed to the Secretary of the Institute by at least one-fourth of the members of the Council for the time being. The Regulations permit calling the meeting of the Council through teleconferencing or video conferencing. The notice of the Council meeting specifying the time and place of the meeting is required be sent to the registered address of every member of the Council at least 21 days before such meeting. The notice should also contain a statement of the business to be transacted at the meeting.

The meetings of the Council are to be presided by the President and in his absence the Vice-President. Further, in the

absence of both the President and the Vice-President, a member elected from among the members who are present at the meeting of the Council, shall preside. The quoram for the meeting of the Council has been prescribed as 1/3rd of the total number of members of the Council. It is further provided that in case the requisite quoram is not present at the time appointed for the meeting and if on the expiration of half an hour from the time appointed for the meeting, there is no quorum, the meeting will be adjourned to such time, date and place as the Chairman of the meeting may appoint.

The procedure for transacting the business of the Council has been mentioned in detail under this Chapter. In order to pass a resolution at the meeting of the Council, vote of majority of members present at the meeting shall be required and in the case of equality of votes, the Chairman of the meeting shall have a casting vote.

There is a provision for adjournment of the meeting of the Council as well. The Chairman of meeting of the Council has been empowered to adjourn the meeting from time to time and from place to place with the consent of the members present. The Secretary is responsible for recording the minutes of the meeting of the Council. The minutes after being approved by the members and signed by the Chairman of the next meeting, will be sufficient evidence of the proceedings of the Council.

CHAPTER IX: STANDING AND OTHER COMMITTEES (REGULATIONS 169-178)

Regarding the time and place for the meeting of the Standing Committee, it has been provided that the President may on the requisition of any two members of a Standing Committee call a meeting of that Committee. A notice of not less than seven days of every such meeting is required to be given to every member of the Committee. The Regulations permit calling the meeting of the Council through teleconferencing or video conferencing.

The quoram for a meeting of the Standing Committee has been prescribed as at least 3 members, including the President or in his absence the Vice-President. In case the requisite quorum is not present within half an hour of the time fixed for the meeting, the meeting will be adjourned to a date, time and place fixed by the President or in his absence the Vice-President. The procedure for transacting the business at a meeting of the Standing Committee is given in detail under the provisions of this Chapter.

In order to take decision on a question before a Standing Committee, vote of majority of members present at the meeting shall be required and in the case of equality of votes, the President or in his absence the Vice-President shall have a casting vote.

The Secretary of ICAI shall be the Secretary for every Standing Committee. The Secretary is responsible for recording the minutes of the meeting of the Standing Committee. The minutes after being approved by the members and signed by the Chairman of the next meeting, will be sufficient evidence of the proceedings of the Council. The functioning of the Standing Committees is to be done under the control, direction and supervision of the Council.

The functions to be performed by the Executive Committee, Finance Committee and Examination Committee are provided in detail under this Chapter.

The Executive Committee has been entrusted to perform a number of functions including enrolment of members with or without certificate of practice, admission of fellows, removal and restoration of names of members, cancellation of certificate of practice, grant of permission to a chartered accountant in practice to engage in any business or occupation other than the profession of accountancy, maintenance of the Register of articled assistants and Register of audit assistants and all other statutory registers, custody of the property, assets and funds of the Institute.

The Examination Committee has been entrusted to perform a number of functions as well, such as, holding of examinations, admissions thereto, cancellation of an examination, appointment and selection of examiners, prescription of books for the guidance of candidates, declaration of results, payment of remuneration to examiners and/or assistant examiners, superintendents of the examination and others.

The Finance Committee has been empowered with maintenance of true and correct accounts of all the receipts and payments on behalf of the Council and the matters in respect of which such receipts and payments take place and of all the property, securities, debts, funds and liabilities of the Institute, formulation of annual budget of the Institute and presenting it to the Council for approval, after obtaining the recommendation of the Executive Committee, investment of the funds of the Institute in securities and to vary such investments from time to time subject to the guidelines approved by the Council, making recommendation to the Executive Committee for sanction of likely expenditure up to twenty percent in excess of the estimates

previously sanctioned by the Council for the respective heads of the annual budget etc.

The Chapter also makes provisions for Committees of the Council, other than Standing Committees. Such Committees shall comprise of a Chairman, a Vice-Chairman and such other members of the Council, as may be elected on it by the Council and any other members who may be co-opted, with the sanction of the Council.

The Council shall direct the functions to be discharged by the Committees. The provisions relating to the time and place of meetings, procedure for transaction of business, casting vote, minutes, etc. with regard to Standing Committees as mentioned above are applicable 'mutatis mutandis' to such committees except the reference to President and Vice-President in the regulations referred to above, shall be construed as reference to Chairman and Vice-Chairman respectively of a committee and the Secretary shall be the Secretary for only such of the committees as may be directed by the Council and reference to two members for the purpose of requisitioning a meeting of the Standing Committee shall be construed as reference to one-fourth of the number of members of the committee for the time being in office.

The quoram prescribed for the meeting of committee is 1/3rd members. There are provisions for sub-committees of the Council, Standing Committees and other committees as well. The Council or any Standing Committee or other committee may appoint a sub-committee consisting of its members and such other members, as it may consider expedient. Every sub-committee is to consist of a Chairman who shall also be convener of the sub-committee.

The functions to be discharged by a sub-committee are to be as per the directions of the Council. The meetings of the sub-committee are to be held at such place, time and date as decided by the Chairman.

The quoram for the meeting of the sub-committee has been prescribed as one half or three of the members of the sub-committee, whichever is greater. In the event of there being no quorum within half an hour of the time fixed for the meeting, the meeting shall stand adjourned to a date, time and place specified by the Chairman of the meeting. The decisions at the meeting of the sub-committee are to be decided by majority of votes. In the event of equality of votes, the Chairman of the meeting will have a casting vote.

CHAPTER X: MISCELLANEOUS (REGULATIONS 179-206)

Chapter X comprises of the miscellaneous provisions regarding various topics which are not covered under the chapters mentioned above.

It contains provisions regarding headquarters of the Council, common seal, publishing the list of members, opening of branch office by a chartered accountant in practice or a firm of such chartered accountants etc.

The Central Government has been empowered to notify the place at which headquarters of the Council are to be located and the Secretary of the Institute is empowered to keep the common seal in his custody.

Under these Regulations, if any form is required to be obtained from the Secretary, the same is to be supplied on request by the Secretary or any other officer of the Institute that he may appoint for the purpose, upon payment of such fee as is fixed by the Council from time to time.

Further, the Council may distinguish between the associates and fellows in practice and between the associates and fellows not in practice while publishing the list of members under these regulations.

The provisions regarding opening or closing of a branch office by a chartered accountant in practice or a firm of such chartered accountants are contained elaborately under this Chapter. The Council has to be informed within one month of the opening or closing of such branch office.

A chartered accountant in practice is prohibited from engaging in any business or occupation other than the profession of accountancy. However, the Council may grant permission in this regard by passing a resolution in this behalf. There are certain part-time employments which a chartered accountant in practice may undertake. For instance, 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.

Guidelines on fees to be charged by the chartered accountants are also contained in the regulations. Chartered accountants practice are prohibited from charging or accepting

fees which are based on a percentage of profits, or which are contingent upon the findings, or results of such work in respect of any professional work.

Under the Chapter, the Secretary is responsible to cause to maintain proper books of accounts with respect to all sums of money received and expended by the Institute and the matters in respect of which the receipt and expenditure takes place, all sales and purchases of goods and all the assets and liabilities of the Institute.

There are provisions regarding nomination of auditors as well. The auditors of the Institute have the right of access to the books and accounts and vouchers of the Institute at all times and are also entitled to require from the Secretary such information and explanation as they consider think necessary for the performance of their duties as auditors.

The auditors are to submit a report to the Council on the accounts examined by them, and on every balance sheet and income and expenditure account or every other document annexed thereto. The Council is required to deliver the accounts of the preceding year to the auditors and the auditors are required to examine such accounts and report thereon.

The powers and duties of the President, Vice- President and the Secretary are also provided in the Chapter. The President is empowered to exercise such powers and perform such duties as are specified in the Act and Regulations and as may be delegated to him by the Council or the Standing Committees. The President is also empowered to direct any business to be brought before the Council or Standing Committee for consideration. In case the office of the President is vacant or if the President is unable to exercise the powers or perform the duties of his office, then in that event the Vice-President shall act in his place and shall exercise the powers and perform the duties of the President.

The Secretary has also been entrusted with a number of duties under this Chapter such as being in charge of the office of the Institute as its executive head, sanctioning and restoring of certificate of practice for associates and fellows, cancelling of certificates of practice of associates and fellows, being in charge of all the property of the Institute, making necessary arrangements for receiving moneys due to the Council and also issuing receipts, admitting candidates to the examinations held under these Regulations and making all necessary arrangements for the conduct of the examinations and signing and issuing all notifications on behalf of the Council etc.

The Council is also empowered to post qualifying courses and examinations. It is stated under this Chapter that the Council may impart or arrange to impart practical and theoretical training and hold examinations in such subjects as it may consider useful for members and may award certificate or diplomas in connection with the post qualification courses in Management Accountancy, Corporate Management, Tax Management, Information Systems Audit, Insurance and Risk Management, and International Trade Laws and World Trade Organisation.

DIVISION VI

Guidelines, 2014

This Division VI : "Guidelines, 2014" comprises:-

Chapter I :'Framework for professional Ethics' ('Framework' in short), containing provisions adopted and incorporated from the International Ethical Standards Board for Accountants (IESBA) Code of Ethics, 2013.

Chapter II : General

Chapter III : Advertisement

Chapter IV : Website

Chapter V : Corporate Form of Practice

Chapter VI : Logo

Chapter VII : Conversion of a CA Firm into LLPs

Chapter VIII : Networking

Chapter IX : Self Regulatory Measures

CHAPTER I : FRAMEWORK FOR PROFESSIONAL ETHICS

- **The method of carrying out changes in the IESBA Code of Professional Ethics, 2013 is as that : <u>Additions shown as underlined and bold</u>, <u>Deletions shown as strikethrough and bold</u> and <u>New provision added is indicated by suffix of 'A' after the last Para No.</u>**
- **The provisions newly incorporated by IESBA Code of Professional Ethics, 2013 are shown in italics and bold.**

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PART A — GENERAL APPLICATION OF THE ~~CODE~~ FRAMEWORK FOR PROFESSIONAL ETHICS

SECTION 100

Introduction and Fundamental Principles

100.1 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Therefore, a professional accountant's responsibility is not exclusively to satisfy the needs of an individual client or employer. In acting in the public interest, a professional accountant shall observe and comply with this ~~Code~~ **Framework for professional Ethics (hereinafter called as "Framework")** . If a professional accountant is prohibited from complying with certain parts of this ~~Code~~ **Framework** by law or regulation, the professional accountant shall comply with all other parts of this ~~Code~~ **Framework**.

100.2 This ~~Code~~ **Framework** contains three parts. Part A establishes the fundamental principles of professional ethics for professional accountants and provides a conceptual framework that professional accountants shall apply to:

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

(b) Evaluate the significance of the threats identified; and

(c) Apply safeguards, when necessary, to eliminate the threats or reduce them to an acceptable level. Safeguards are necessary when the professional accountant determines that the threats are not at a level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the professional accountant at that time, that compliance with the fundamental principles is not compromised.

A professional accountant shall use professional judgment in applying this ~~conceptual framework~~ **concept**.

100.3 Parts B and C describe how the ~~conceptual framework~~ **concept** applies in certain situations. They provide examples of safeguards that may be appropriate to address threats to compliance with the fundamental principles. They also describe situations where safeguards are not available to address the threats, and consequently, the circumstance or relationship

creating the threats shall be avoided. Part B applies to professional accountants in public practice. Part C applies to professional accountants in business. Professional accountants in public practice may also find Part C relevant to their particular circumstances.

100.4 The use of the word "shall" in this ~~**Code**~~ **Framework** imposes a requirement on the professional accountant or firm to comply with the specific provision in which "shall" has been used. Compliance is required unless an exception is permitted by this ~~**Code**~~ **Framework**.

Fundamental Principles

100.5 A professional accountant shall comply with the following fundamental principles:

(a) Integrity – to be straightforward and honest in all professional and business relationships.

(b) Objectivity – to not allow bias, conflict of interest or undue influence of others to override professional or business judgments.

(c) Professional Competence and Due Care – to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional services based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards.

(d) Confidentiality – to respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of the professional accountant or third parties.

(e) Professional Behavio**u**r – to comply with relevant laws and regulations and avoid any action that discredits the profession.

Each of these fundamental principles is discussed in more detail in Sections 110–150.

~~Conceptual~~ *Framework* ***~~Approach~~***

100.6 The circumstances in which professional accountants operate may create specific threats to compliance with the fundamental principles. It is impossible to define every situation that creates threats to compliance with the fundamental principles and specify the appropriate action. In addition, the nature of engagements and work assignments may differ and, consequently, different threats may be created, requiring the application of different safeguards. Therefore, this ~~**Code**~~ **Framework** establishes a conceptual framework that requires a professional accountant to identify, evaluate, and address threats to compliance with the fundamental principles. The ~~**conceptual**~~ framework ~~**approach**~~ assists professional accountants in complying with the ethical requirements of this ~~**Code**~~ **Framework** and meeting their responsibility to act in the public interest. It accommodates many variations in circumstances that create threats to compliance with the fundamental principles and can deter a professional accountant from concluding that a situation is permitted if it is not specifically prohibited.

100.7 When a professional accountant identifies threats to compliance with the fundamental principles and, based on an evaluation of those threats, determines that they are not at an acceptable level, the professional accountant shall determine whether appropriate safeguards are available and can be applied to eliminate the threats or reduce them to an acceptable level. In making that determination, the professional accountant shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at the time, would be likely to conclude that the threats would be eliminated or reduced to an acceptable level by the application of the safeguards, such that compliance with the fundamental principles is not compromised.

100.8 A professional accountant shall evaluate any threats to compliance with the fundamental principles when the professional accountant knows, or could reasonably be expected to know, of circumstances or relationships that may compromise compliance with the fundamental principles.

100.9 A professional accountant shall take qualitative as well as quantitative factors into account when evaluating the significance of a threat. When applying the ~~**conceptual framework**~~ **concept ,** a professional accountant may encounter situations in which threats cannot be eliminated or reduced to an acceptable level, either because the threat is too significant or because appropriate

safeguards are not available or cannot be applied. In such situations, the professional accountant shall decline or discontinue the specific professional service involved or, when necessary, resign from the engagement (in the case of a professional accountant in public practice) or the employing organization (in the case of a professional accountant in business).

100.10 Sections 290 and 291 contain provisions with which a professional accountant shall comply if the professional accountant identifies a breach of an independence provision of the ~~Code~~ Framework. If a professional accountant identifies a breach of any other provision of this ~~Code~~ Framework, the professional accountant shall evaluate the significance of the breach and its impact on the accountant's ability to comply with the fundamental principles. The accountant shall take whatever actions that may be available, as soon as possible, to satisfactorily address the consequences of the breach. The accountant shall determine whether to report the breach, for example, to those who may have been affected by the breach, a member body, relevant regulator or oversight authority.

~~**100.11 When a professional accountant encounters unusual circumstances in which the application of a specific requirement of the Code would result in a disproportionate outcome or an outcome that may not be in the public interest, it is recommended that the professional accountant consult with a member body or the relevant regulator.**~~

Threats and Safeguards

100.12 Threats may be created by a broad range of relationships and circumstances. When a relationship or circumstance creates a threat, such a threat could compromise, or could be perceived to compromise, a professional accountant's compliance with the fundamental principles. A circumstance or relationship may create more than one threat, and a threat may affect compliance with more than one fundamental principle. Threats fall into one or more of the following categories:

(a) Self-interest threat – the threat that a financial or other interest will inappropriately influence the professional accountant's judgment or behavio**u**r;

(b) Self-review threat – the threat that a professional accountant will not appropriately evaluate the results of a previous

judgment made or service performed by the professional accountant, or by another individual within the professional accountant's firm or employing organization, on which the accountant will rely when forming a judgment as part of providing a current service;

(c) Advocacy threat – the threat that a professional accountant will promote a client's or employer's position to the point that the professional accountant's objectivity is compromised;

(d) Familiarity threat ☐ the threat that due to a long or close relationship with a client or employer, a professional accountant will be too sympathetic to their interests or too accepting of their work; and

(e) Intimidation threat – the threat that a professional accountant will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the professional accountant.

Parts B and C of this ~~**Code**~~ **Framework** explain how these categories of threats may be created for professional accountants in public practice and professional accountants in business, respectively. Professional accountants in public practice may also find Part C relevant to their particular circumstances.

100.13 Safeguards are actions or other measures that may eliminate threats or reduce them to an acceptable level. They fall into two broad categories:

(a) Safeguards created by the profession, legislation or regulation; and

(b) Safeguards in the work environment.

100.14 Safeguards created by the profession, legislation or regulation include:

- Educational, training and experience requirements for entry into the profession.
- Continuing professional ~~**development**~~ **education** requirements.
- Corporate governance regulations.
- Professional standards.

- Professional or regulatory monitoring and disciplinary procedures.

- External review by a legally empowered third party of the reports, returns, communications or information produced by a professional accountant.

100.15 Parts B and C of this ~~**Code**~~ **Framework** discuss safeguards in the work environment for professional accountants in public practice and professional accountants in business, respectively.

100.16 Certain safeguards may increase the likelihood of identifying or deterring unethical behavio**u**r. Such safeguards, which may be created by the accounting profession, legislation, regulation, or an employing organization, include:

- Effective, well-publicized complaint systems operated by the employing organization, the profession or a regulator, which enable colleagues, employers and members of the public to draw attention to unprofessional or unethical behavio**u**r.

- An explicitly stated duty to report breaches of ethical requirements.

Conflicts of Interest

100.17 A professional accountant may be faced with a conflict of interest when undertaking a professional activity. A conflict of interest creates a threat to objectivity and may create threats to the other fundamental principles. Such threats may be created when:

- ***The professional accountant undertakes a professional activity related to a particular matter for two or more parties whose interests with respect to that matter are in conflict; or***

- ***The interests of the professional accountant with respect to a particular matter and the interests of a party for whom the professional accountant undertakes a professional activity related to that matter are in conflict.***

100.18 Parts B and C of this ~~Code~~ Framework discuss conflicts of interest for professional accountants in public practice and professional accountants in business, respectively.

Ethical Conflict Resolution

100.19 A professional accountant may be required to resolve a conflict in complying with the fundamental principles.

100.20 When initiating either a formal or informal conflict resolution process, the following factors, either individually or together with other factors, may be relevant to the resolution process:

(a) Relevant facts;

(b) Ethical issues involved;

(c) Fundamental principles related to the matter in question;

(d) Established internal procedures; and

(e) Alternative courses of action.

Having considered the relevant factors, a professional accountant shall determine the appropriate course of action, weighing the consequences of each possible course of action. If the matter remains unresolved, the professional accountant may wish to consult with other appropriate persons within the firm or employing organization for help in obtaining resolution.

100.21 Where a matter involves a conflict with, or within, an organization, a professional accountant shall determine whether to consult with those charged with governance of the organization, such as the board of directors or the audit committee.

100.22 It may be in the best interests of the professional accountant to document the substance of the issue, the details of any discussions held, and the decisions made concerning that issue.

100.23 If a significant conflict cannot be resolved, a professional accountant may consider obtaining professional advice from the relevant professional body or from legal advisors. The professional accountant generally can obtain guidance on ethical issues without breaching the fundamental principle of confidentiality if the matter is discussed with the relevant professional body on an anonymous basis or with a legal advisor under the protection of legal privilege. Instances in which the professional accountant may consider obtaining legal advice vary. For example, a professional accountant may have encountered a fraud, the reporting of which could breach the professional accountant’s responsibility to respect confidentiality. The professional accountant may consider obtaining

legal advice in that instance to determine whether there is a requirement to report.

100.24 If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional accountant shall, where possible, refuse to remain associated with the matter creating the conflict. The professional accountant shall determine whether, in the circumstances, it is appropriate to withdraw from the engagement team or specific assignment, or to resign altogether from the engagement, the firm or the employing organization.

SECTION 110

Integrity

110.1 The principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in all professional and business relationships. Integrity also implies fair dealing and truthfulness.

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

(a) Contains a materially false or misleading statement;

(b) Contains statements or information furnished recklessly; or

(c) Omits or obscures information required to be included where such omission or obscurity would be misleading.

When a professional accountant becomes aware that the accountant has been associated with such information, the accountant shall take steps to be disassociated from that information.

110.3 A professional accountant will be deemed not to be in breach of paragraph 110.2 if the professional accountant provides a modified report in respect of a matter contained in paragraph 110.2.

SECTION 120

Objectivity

120.1 The principle of objectivity imposes an obligation on all professional accountants not to compromise their professional or

business judgment because of bias, conflict of interest or the undue influence of others.

120.2 A professional accountant may be exposed to situations that may impair objectivity. It is impracticable to define and prescribe all such situations. A professional accountant shall not perform a professional service if a circumstance or relationship biases or unduly influences the accountant's professional judgment with respect to that service.

SECTION 130

Professional Competence and Due Care

130.1 The principle of professional competence and due care imposes the following obligations on all professional accountants:

(a) To maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service; and

(b) To act diligently in accordance with applicable technical and professional standards when providing professional services.

130.2 Competent professional service requires the exercise of sound judgment in applying professional knowledge and skill in the performance of such service. Professional competence may be divided into two separate phases:

(a) Attainment of professional competence; and

(b) Maintenance of professional competence.

130.3 The maintenance of professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development enables a professional accountant to develop and maintain the capabilities to perform competently within the professional environment.

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

130.5 A professional accountant shall take reasonable steps to ensure that those working under the professional accountant's authority in a professional capacity have appropriate training and supervision.

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

SECTION 140

Confidentiality

140.1 The principle of confidentiality imposes an obligation on all professional accountants to refrain from:

(a) Disclosing outside the firm or employing organization confidential information acquired as a result of professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and

(b) Using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.

140.2 A professional accountant shall maintain confidentiality, including in a social environment, being alert to the possibility of inadvertent disclosure, particularly to a close business associate or a close or immediate family member.

140.3 A professional accountant shall maintain confidentiality of information disclosed by a prospective client or employer.

140.4 A professional accountant shall maintain confidentiality of information within the firm or employing organization.

140.5 A professional accountant shall take reasonable steps to ensure that staff under the professional accountant's control and persons from whom advice and assistance is obtained respect the professional accountant's duty of confidentiality.

140.6 The need to comply with the principle of confidentiality continues even after the end of relationships between a professional accountant and a client or employer. When a professional accountant changes employment or acquires a new client, the professional accountant is entitled to use prior experience. The professional accountant shall not, however, use or disclose any confidential information either acquired or received as a result of a professional or business relationship.

140.7 The following are circumstances where professional accountants are or may be required to disclose confidential information or when such disclosure may be appropriate:

(a) Disclosure is permitted by law and is authorized by the client or the employer;

(b) Disclosure is required by law, for example:

(i) Production of documents or other provision of evidence in the course of legal proceedings; or

(ii) Disclosure to the appropriate public authorities of infringements
of the law that come to light; and

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

(i) To comply with the quality review of a member body or professional body;

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

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

(iv) To comply with technical standards and ethics requirements.

140.8 In deciding whether to disclose confidential information, relevant factors to consider include:

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

- Whether all the relevant information is known and substantiated, to the extent it is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment shall be used in determining the type of disclosure to be made, if any.

- The type of communication that is expected and to whom it is addressed.

- Whether the parties to whom the communication is addressed are appropriate recipients.

SECTION 150

Professional Behaviour

150.1 The principle of professional behaviour imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any action that the professional accountant knows or should know may discredit the profession. This includes actions that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession.

150.2 In ~~**marketing and**~~ promoting themselves and their work **or their organisation**, professional accountants shall not bring the profession into disrepute. Professional accountants shall be honest and truthful and not:

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

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

(c) Advertise any professional/other facts which are in violation of advertisement guidelines issued by the Council* of the Institute from time to time.

* ~~See Definitions.~~

PART B—PROFESSIONAL ACCOUNTANTS IN PUBLIC PRACTICE

SECTION 200

Introduction

200.1 This Part of the ~~**Code—**~~**Framework** describes how the ~~**conceptual framework**~~ **concept** contained in Part A applies in certain situations to professional accountants in public practice. This Part does not describe all of the circumstances and relationships that could be encountered by a professional accountant in public practice that create or may create threats to compliance with the fundamental principles. Therefore, the professional accountant in public practice is encouraged to be alert for such circumstances and relationships.

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

Threats and Safeguards

200.3 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances and relationships. The nature and significance of the threats may differ depending on whether they arise in relation to the provision of services to an audit client and whether the audit client is a public interest entity, to an assurance client that is not an audit client, or to a non-assurance client.

Threats fall into one or more of the following categories:

(a) Self-interest;

(b) Self-review;

(c) Advocacy;

(d) Familiarity; and

(f) Intimidation.

These threats are discussed further in Part A of this ~~Code~~ **Framework .**

200.4 Examples of circumstances that create self-interest threats for a professional accountant in public practice include:

- A member of the assurance team having a direct financial interest in the assurance client.
- A firm having undue dependence on total fees from a client.
- A member of the assurance team having a significant close business relationship with an assurance client.
- A firm being concerned about the possibility of losing a significant client.
- A member of the audit team entering into employment negotiations with the audit client.
- A firm entering into a contingent fee arrangement relating to an assurance engagement.
- A professional accountant discovering a significant error when evaluating the results of a previous professional service performed by a member of the professional accountant's firm.

200.5 Examples of circumstances that create self-review threats for a professional accountant in public practice include:

- A firm issuing an assurance report on the effectiveness of the operation of financial systems after designing or implementing the systems.

- A firm having prepared the original data used to generate records that are the subject matter of the assurance engagement.

- A member of the assurance team being, or having recently been, a director or officer of the client.

- A member of the assurance team being, or having recently been, employed by the client in a position to exert significant influence over the subject matter of the engagement.

- The firm performing a service for an assurance client that directly affects the subject matter information of the assurance engagement.

200.6 Examples of circumstances that create advocacy threats for a professional accountant in public practice include:

- The firm promoting shares in an audit client.

- A professional accountant acting as an advocate on behalf of an audit client in litigation or disputes with third parties.

200.7 Examples of circumstances that create familiarity threats for a professional accountant in public practice include:

- A member of the engagement team having a close or immediate family member who is a director or officer of the client.

- A member of the engagement team having a close or immediate family member who is an employee of the client who is in a position to exert significant influence over the subject matter of the engagement.

- A director or officer of the client or an employee in a position to exert significant influence over the subject matter of the engagement having recently served as the engagement partner.

- A professional accountant accepting gifts or preferential treatment from a client, unless the value is trivial or inconsequential.

- Senior personnel having a long association with the assurance client.

200.8 Examples of circumstances that create intimidation threats for a professional accountant in public practice include:

- A firm being threatened with dismissal from a client engagement.

- An audit client indicating that it will not award a planned non-assurance contract to the firm if the firm continues to disagree with the client's accounting treatment for a particular transaction.

- A firm being threatened with litigation by the client.

- A firm being pressured to reduce inappropriately the extent of work performed in order to reduce fees.

- A professional accountant feeling pressured to agree with the judgment of a client employee because the employee has more expertise on the matter in question.

- A professional accountant being informed by a partner of the firm that a planned promotion will not occur unless the accountant agrees with an audit client's inappropriate accounting treatment.

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

(a) Safeguards created by the profession, legislation or regulation; and

(b) Safeguards in the work environment.

Examples of safeguards created by the profession, legislation or regulation are described in paragraph 100.14 of Part A of this **~~Code~~ Framework .**

200.10 A professional accountant in public practice shall exercise judgment to determine how best to deal with threats that are not at an acceptable level, whether by applying safeguards to eliminate the threat or reduce it to an acceptable level or by terminating or declining the relevant engagement. In exercising this judgment, a professional accountant in public practice shall consider whether a reasonable and informed third party, weighing

all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude that the threats would be eliminated or reduced to an acceptable level by the application of safeguards, such that compliance with the fundamental principles is not compromised. This consideration will be affected by matters such as the significance of the threat, the nature of the engagement and the structure of the firm.

200.11 In the work environment, the relevant safeguards will vary depending on the circumstances. Work environment safeguards comprise firm-wide safeguards and engagement-specific safeguards.

200.12 Examples of firm-wide safeguards in the work environment include:

- Leadership of the firm that stresses the importance of compliance with the fundamental principles.

- Leadership of the firm that establishes the expectation that members of an assurance team will act in the public interest.

- Policies and procedures to implement and monitor quality control of engagements.

- Documented policies regarding the need to identify threats to compliance with the fundamental principles, evaluate the significance of those threats, and apply safeguards to eliminate or reduce the threats to an acceptable level or, when appropriate safeguards are not available or cannot be applied, terminate or decline the relevant engagement.

- Documented internal policies and procedures requiring compliance with the fundamental principles.

- Policies and procedures that will enable the identification of interests or relationships between the firm or members of engagement teams and clients.

- Policies and procedures to monitor and, if necessary, manage the reliance on revenue received from a single client.

- Using different partners and engagement teams with separate reporting lines for the provision of non-assurance services to an assurance client.

- Policies and procedures to prohibit individuals who are not members of an engagement team from inappropriately influencing the outcome of the engagement.

- Timely communication of a firm's policies and procedures, including any changes to them, to all partners and professional staff, and appropriate training and education on such policies and procedures.

- Designating a member of senior management to be responsible for overseeing the adequate functioning of the firm's quality control system.

- Advising partners and professional staff of assurance clients and related entities from which independence is required.

- A disciplinary mechanism to promote compliance with policies and procedures.

- Published policies and procedures to encourage and empower staff to communicate to senior levels within the firm any issue relating to compliance with the fundamental principles that concerns them.

200.13 Examples of engagement-specific safeguards in the work environment include:

- Having a professional accountant who was not involved with the non-assurance service review the non-assurance work performed or otherwise advise as necessary.

- Having a professional accountant who was not a member of the assurance team review the assurance work performed or otherwise advise as necessary.

- Consulting an independent third party, such as a committee of independent directors, a professional regulatory body or another professional accountant.

- Discussing ethical issues with those charged with governance of the client.

- Disclosing to those charged with governance of the client the nature of services provided and extent of fees charged.

- Involving another firm to perform or re-perform part of the engagement.

- Rotating senior assurance team personnel.

200.14 Depending on the nature of the engagement, a professional accountant in public practice may also be able to rely on safeguards that the client has implemented. However it is not possible to rely solely on such safeguards to reduce threats to an acceptable level.

200.15 Examples of safeguards within the client's systems and procedures include:

- The client requires persons other than management to ratify or approve the appointment of a firm to perform an engagement.

- The client has competent employees with experience and seniority to make managerial decisions.

- The client has implemented internal procedures that ensure objective choices in commissioning non-assurance engagements.

- The client has a corporate governance structure that provides appropriate oversight and communications regarding the firm's services.

SECTION 210

Professional Appointment

Client Acceptance

210.1 Before accepting a new client relationship, a professional accountant in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behavio**u**r may be created from, for example, questionable issues associated with the client (its owners, management or activities).

210.2 Client issues that, if known, could threaten compliance with the fundamental principles include, for example, client involvement in illegal activities (such as money laundering), dishonesty or questionable financial reporting practices.

210.3 A professional accountant in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level.

Examples of such safeguards include:

- Obtaining knowledge and understanding of the client, its owners, managers and those responsible for its governance and business activities; or

- Securing the client's commitment to improve corporate governance practices or internal controls.

210.4 Where it is not possible to reduce the threats to an acceptable level, the professional accountant in public practice shall decline to enter into the client relationship.

210.5 It is recommended that a professional accountant in public practice periodically review acceptance decisions for recurring client engagements.

210.5A It is recommended that the members comply with the following Know Your Client (KYC) Norms. These are recommendatory in nature, and apply only in case of attest function:-

KNOW YOUR CLIENT (KYC) NORMS

The financial services industry globally is required to obtain information of their clients and comply Know Your Client Norms (KYC norms).

Keeping in mind the highest standards of Chartered Accountancy profession in India, the Council of ICAI thought it necessary to recommend such norms to be observed by the members of the profession who are in practice.

In light of this background, the Council of ICAI approved the following KYC Norms. However, these norms are recommendatory in nature and every Chartered Accountant carrying out attest function is encouraged to follow them.

1. ENTITY INFORMATION

A. GENERAL INFORMATION
- ✓ Name of the Entity
- ✓ Type of Entity
- ✓ Business Description

B. CORPORATE STRUCTURE

- ✓ Name of ultimate parent company
- ✓ Name of Parent company
- ✓ Name of Affiliates

C. REGULATORY INFORMATION

- ✓ Company PAN No
- ✓ Company Identification No
- ✓ Directors' Identification No
- ✓ Directors' Names & Addresses
- ✓ Name(s) and Addresses of Companies, in which above person is director

D. ENGAGEMENT INFORMATION

- ✓ Type of Engagement

2. OTHER INFORMATION

- ✓ Entities financial Information
- ✓ Name of the ultimate parent Auditor
- ✓ Any known violation of any Law/Regulations

Engagement Acceptance

210.6 The fundamental principle of professional competence and due care imposes an obligation on a professional accountant in public practice to provide only those services that the professional accountant in public practice is competent to perform. Before accepting a specific client engagement, a professional accountant in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care is created if the engagement team does not possess, or cannot acquire, the competencies necessary to properly carry out the engagement.

210.7 A professional accountant in public practice shall evaluate the significance of threats and apply safeguards, when necessary, to eliminate them or reduce them to an acceptable level. Examples of such safeguards include:

- Acquiring an appropriate understanding of the nature of the client's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed;

- Acquiring knowledge of relevant industries or subject matters;

- Possessing or obtaining experience with relevant regulatory or reporting requirements;

- Assigning sufficient staff with the necessary competencies;

- Using experts where necessary;

- Agreeing on a realistic time frame for the performance of the engagement; or

- Complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.

210.8 When a professional accountant in public practice intends to rely on the advice or work of an expert, the professional accountant in public practice shall determine whether such reliance is warranted. Factors to consider include: reputation, expertise, resources available and applicable professional and ethical standards. Such information may be gained from prior association with the expert or from consulting others.

Changes in a Professional Appointment

210.9 A professional accountant in public practice who is asked to replace another professional accountant in public practice, or who is considering tendering for an engagement currently held by another professional accountant in public practice, shall determine whether there are any reasons, professional or otherwise, for not accepting the engagement, such as circumstances that create threats to compliance with the fundamental principles that cannot be eliminated or reduced to an acceptable level by the application of safeguards. For example, there may be a threat to professional competence and due care if a professional accountant in public practice accepts the engagement before knowing all the pertinent facts.

210.10 A professional accountant in public practice shall evaluate the significance of any threats. Depending on the nature of the engagement, this may require direct communication with the

existing accountant to establish the facts and circumstances regarding the proposed change so that the professional accountant in public practice can decide whether it would be appropriate to accept the engagement. For example, the apparent reasons for the change in appointment may not fully reflect the facts and may indicate disagreements with the existing accountant that may influence the decision to accept the appointment.

210.11 Safeguards shall be applied when necessary to eliminate any threats or reduce them to an acceptable level. Examples of such safeguards include:

- When replying to requests to submit tenders, stating in the tender that, before accepting the engagement, contact with the existing accountant will be requested so that inquiries may be made as to whether there are any professional or other reasons why the appointment should not be accepted;

- Asking the existing accountant to provide known information on any facts or circumstances that, in the existing accountant's opinion, the proposed accountant needs to be aware of before deciding whether to accept the engagement; or

- Obtaining necessary information from other sources.

When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a professional accountant in public practice shall, unless there is satisfaction as to necessary facts by other means, decline the engagement.

210.12 A professional accountant in public practice may be asked to undertake work that is complementary or additional to the work of the existing accountant. Such circumstances may create threats to professional competence and due care resulting from, for example, a lack of or incomplete information. The significance of any threats shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. An example of such a safeguard is notifying the existing accountant of the proposed work, which would give the existing accountant the opportunity to provide any relevant information needed for the proper conduct of the work.

210.13 An existing accountant is bound by confidentiality. Whether that professional accountant is permitted or required to discuss the affairs of a client with a proposed accountant will depend on the nature of the engagement and on:

(a) Whether the client's permission to do so has been obtained; or

(b) The legal or ethical requirements relating to such communications and disclosure, which may vary by jurisdiction.

Circumstances where the professional accountant is or may be required to disclose confidential information or where such disclosure may otherwise be appropriate are set out in Section 140 of Part A of this ~~Code~~ **Framework .**

210.14 A professional accountant in public practice will generally need to obtain the client's permission, preferably in writing, to initiate discussion with an existing accountant. Once that permission is obtained, the existing accountant shall comply with relevant legal and other regulations governing such requests. Where the existing accountant provides information, it shall be provided honestly and unambiguously. If the proposed accountant is unable to communicate with the existing accountant, the proposed accountant shall take reasonable steps to obtain information about any possible threats by other means, such as through inquiries of third parties or background investigations of senior management or those charged with governance of the client.

SECTION 220

Conflicts of Interest

220.1 A professional accountant in public practice may be faced with a conflict of interest when performing a professional service. A conflict of interest creates a threat to objectivity and may create threats to the other fundamental principles. Such threats may be created when:

- ***The professional accountant provides a professional service related to a particular matter for two or more clients whose interests with respect to that matter are in conflict; or***

- ***The interests of the professional accountant with respect to a particular matter and the interests of the client for whom the professional accountant provides a professional service related to that matter are in conflict.***

A professional accountant shall not allow a conflict of interest to compromise professional or business judgment.

When the professional service is an assurance service, compliance with the fundamental principle of objectivity also requires being independent of assurance clients in accordance with Sections 290 or 291 as appropriate.

220.2 Examples of situations in which conflicts of interest may arise include:

- ***Providing a transaction advisory service to a client seeking to acquire an audit client of the firm, where the firm has obtained confidential information during the course of the audit that may be relevant to the transaction.***
- ***Advising two clients at the same time who are competing to acquire the same company where the advice might be relevant to the parties' competitive positions.***
- ***Providing services to both a vendor and a purchaser in relation to the same transaction.***

- ***Preparing valuations of assets for two parties who are in an adversarial position with respect to the assets.***

- ***Representing two clients regarding the same matter who are in a legal dispute with each other, such as during divorce proceedings or the dissolution of a partnership.***

- ***Providing an assurance report for a licensor on royalties due under a license agreement when at the same time advising the licensee of the correctness of the amounts payable.***

- ***Advising a client to invest in a business in which, for example, the spouse of the professional accountant in public practice has a financial interest.***

- ***Providing strategic advice to a client on its competitive position while having a joint venture or similar interest with a major competitor of the client.***

- ***Advising a client on the acquisition of a business which the firm is also interested in acquiring.***

- ***Advising a client on the purchase of a product or service while having a royalty or commission agreement with one of the potential vendors of that product or service.***

220.3 When identifying and evaluating the interests and relationships that might create a conflict of interest and implementing safeguards, when necessary, to eliminate or reduce any threat to compliance with the fundamental principles to an acceptable level, a professional accountant in public practice shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at the time, would be likely to conclude that compliance with the fundamental principles is not compromised.

220.4 When addressing conflicts of interest, including making disclosures or sharing information within the firm or network and seeking guidance of third parties, the professional accountant in public practice shall remain alert to the fundamental principle of confidentiality.

220.5 If the threat created by a conflict of interest is not at an acceptable level, the professional accountant in public practice shall apply safeguards to eliminate the threat or reduce it to an acceptable level. If safeguards cannot reduce the threat to an acceptable level, the professional accountant shall decline to perform or shall discontinue professional services that would result in the conflict of interest; or shall terminate relevant relationships or dispose of relevant interests to eliminate the threat or reduce it to an acceptable level.

220.6 Before accepting a new client relationship, engagement, or business relationship, a professional accountant in public practice shall take reasonable steps to identify circumstances that might create a conflict of interest, including identification of:

- ***The nature of the relevant interests and relationships between the parties involved; and***

- ***The nature of the service and its implication for relevant parties.***

The nature of the services and the relevant interests and relationships may change during the course of the engagement. This is particularly true when a professional accountant is asked to conduct an engagement in a situation that may become adversarial, even though the parties who engage the professional accountant may not initially be involved in a dispute. The professional

accountant shall remain alert to such changes for the purpose of identifying circumstances that might create a conflict of interest.

220.7 For the purpose of identifying interests and relationships that might create a conflict of interest, having an effective conflict identification process assists a professional accountant in public practice to identify actual or potential conflicts of interest prior to determining whether to accept an engagement and throughout an engagement. This includes matters identified by external parties, for example clients or potential clients. The earlier an actual or potential conflict of interest is identified, the greater the likelihood of the professional accountant being able to apply safeguards, when necessary, to eliminate the threat to objectivity and any threat to compliance with other fundamental principles or reduce it to an acceptable level. The process to identify actual or potential conflicts of interest will depend on such factors as:

- ***The nature of the professional services provided.***
- ***The size of the firm.***
- ***The size and nature of the client base.***
- ***The structure of the firm, for example, the number and geographic location of offices.***

220.8 If the firm is a member of a network, conflict identification shall include any conflicts of interest that the professional accountant in public practice has reason to believe may exist or might arise due to interests and relationships of a network firm. Reasonable steps to identify such interests and relationships involving a network firm will depend on factors such as the nature of the professional services provided, the clients served by the network and the geographic locations of all relevant parties.

220.9 If a conflict of interest is identified, the professional accountant in public practice shall evaluate:

- ***The significance of relevant interests or relationships; and***
- ***The significance of the threats created by performing the professional service or services. In general, the more direct the connection between the professional service***

and the matter on which the parties' interests are in conflict, the more significant the threat to objectivity and compliance with the other fundamental principles will be.

220.10 The professional accountant in public practice shall apply safeguards, when necessary, to eliminate the threats to compliance with the fundamental principles created by the conflict of interest or reduce them to an acceptable level. Examples of safeguards include:

- ***Implementing mechanisms to prevent unauthorized disclosure of confidential information when performing professional services related to a particular matter for two or more clients whose interests with respect to that matter are in conflict. This could include:***
  - ***Using separate engagement teams who are provided with clear policies and procedures on maintaining confidentiality.***
  - ***Creating separate areas of practice for specialty functions within the firm, which may act as a barrier to the passing of confidential client information from one practice area to another within a firm.***
  - ***Establishing policies and procedures to limit access to client files, the use of confidentiality agreements signed by employees and partners of the firm and/or the physical and electronic separation of confidential information.***
- ***Regular review of the application of safeguards by a senior individual not involved with the client engagement or engagements.***
- ***Having a professional accountant who is not involved in providing the service or otherwise affected by the conflict, review the work performed to assess whether the key judgments and conclusions are appropriate.***
- ***Consulting with third parties, such as a professional body, legal counsel or another professional accountant.***

220.11 In addition, it is generally necessary to disclose the nature of the conflict of interest and the related safeguards, if any, to clients affected by the conflict and, when safeguards are required to reduce the threat to an acceptable level, to obtain their consent to the professional

accountant in public practice performing the professional services.

Disclosure and consent may take different forms, for example:

- ***General disclosure to clients of circumstances where the professional accountant, in keeping with common commercial practice, does not provide services exclusively for any one client (for example, in a particular service in a particular market sector) in order for the client to provide general consent accordingly. Such disclosure might, for example, be made in the professional accountant's standard terms and conditions for the engagement.***

- ***Specific disclosure to affected clients of the circumstances of the particular conflict, including a detailed presentation of the situation and a comprehensive explanation of any planned safeguards and the risks involved, sufficient to enable the client to make an informed decision with respect to the matter and to provide explicit consent accordingly.***
- ***In certain circumstances, consent may be implied by the client's conduct where the professional accountant has sufficient evidence to conclude that clients know the circumstances at the outset and have accepted the conflict of interest if they do not raise an objection to the existence of the conflict.***

The professional accountant shall determine whether the nature and significance of the conflict of interest is such that specific disclosure and explicit consent is necessary. For this purpose, the professional accountant shall exercise professional judgment in weighing the outcome of the evaluation of the circumstances that create a conflict of interest, including the parties that might be affected, the nature of the issues that might arise and the potential for the particular matter to develop in an unexpected manner.

220.12 Where a professional accountant in public practice has requested explicit consent from a client and that consent has been refused by the client, the professional accountant shall decline to perform or shall discontinue professional services that would result in the conflict of interest; or shall terminate relevant relationships or dispose of relevant interests to eliminate the threat or reduce it to an

acceptable level, such that consent can be obtained, after applying any additional safeguards if necessary.

220.13 When disclosure is verbal, or consent is verbal or implied, the professional accountant in public practice is encouraged to document the nature of the circumstances giving rise to the conflict of interest, the safeguards applied to reduce the threats to an acceptable level and the consent obtained.

~~***220.14 In certain circumstances, making specific disclosure for the purpose of obtaining explicit consent would result in a breach of confidentiality. Examples of such circumstances may include:***~~

- ~~***Performing a transaction-related service for a client in connection with a hostile takeover of another client of the firm.***~~

- ~~***Performing a forensic investigation for a client in connection with a suspected fraudulent act where the firm has confidential information obtained through having performed a professional service for another client who might be involved in the fraud.***~~

~~***The firm shall not accept or continue an engagement under such circumstances unless the following conditions are met:***~~

- ~~***The firm does not act in an advocacy role for one client where this requires the firm to assume an adversarial position against the other client with respect to the same matter;***~~

- ~~***Specific mechanisms are in place to prevent disclosure of confidential information between the engagement teams serving the two clients; and***~~

- ~~***The firm is satisfied that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant in public practice at the time, would be likely to conclude that it is appropriate for the firm to accept or continue the engagement because a restriction on the firm's ability to provide the service would produce a disproportionate adverse outcome for the clients or other relevant third parties.***~~

~~***The professional accountant shall document the nature of the circumstances, including the role that the professional***~~

~~***accountant is to undertake, the specific mechanisms in place to prevent disclosure of information between the engagement teams serving the two clients and the rationale for the conclusion that it is appropriate to accept the engagement.***~~

SECTION 230

Second Opinions

230.1 Situations where a professional accountant in public practice is asked to provide a second opinion on the application of accounting, auditing, reporting or other standards or principles to specific circumstances or transactions by or on behalf of a company or an entity that is not an existing client may create threats to compliance with the fundamental principles. For example, there may be a threat to professional competence and due care in circumstances where the second opinion is not based on the same set of facts that were made available to the existing accountant or is based on inadequate evidence. The existence and significance of any threat will depend on the circumstances of the request and all the other available facts and assumptions relevant to the expression of a professional judgment.

230.2 When asked to provide such an opinion, a professional accountant in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level. Examples of such safeguards include seeking client permission to contact the existing accountant, describing the limitations surrounding any opinion in communications with the client and providing the existing accountant with a copy of the opinion.

230.3 If the company or entity seeking the opinion will not permit communication with the existing accountant, a professional accountant in public practice shall determine whether, taking all the circumstances into account, it is appropriate to provide the opinion sought.

SECTION 240

Fees and Other Types of Remuneration

240.1 When entering into negotiations regarding professional services, a professional accountant in public practice may quote whatever fee is deemed appropriate. The fact that one professional accountant in public practice may quote a fee lower than another is not in

itself unethical. Nevertheless, there may be threats to compliance with the fundamental principles arising from the level of fees quoted. For example, a self-interest threat to professional competence and due care is created if the fee quoted is so low that it may be difficult to perform the engagement in accordance with applicable technical and professional standards for that price.

240.2 The existence and significance of any threats created will depend on factors such as the level of fee quoted and the services to which it applies. The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.

Examples of such safeguards include:

- Making the client aware of the terms of the engagement and, in particular, the basis on which fees are charged and which services are covered by the quoted fee; or

- Assigning appropriate time and qualified staff to the task.

~~**240.3 Contingent fees are widely used for certain types of non-assurance engagements[1]. They may, however, create threats to compliance with the fundamental principles in certain circumstances. They may create a self interest threat to objectivity. The existence and significance of such threats will depend on factors including:**~~

- ~~**The nature of the engagement.**~~

- ~~**The range of possible fee amounts.**~~

- ~~**The basis for determining the fee.**~~

- ~~**Whether the outcome or result of the transaction is to be reviewed by an independent third party.**~~

240.4 The significance of any such threats shall be evaluated and safeguards applied when necessary to eliminate or reduce them to an acceptable level.

Examples of such safeguards include:

- An advance written agreement with the client as to the basis of remuneration;

[1] ~~Contingent fees for non-assurance services provided to audit clients and other assurance clients are discussed in Sections 290 and 291 of this Code~~

- Disclosure to intended users of the work performed by the professional accountant in public practice and the basis of remuneration;

- Quality control policies and procedures; or

- Review by an independent third party of the work performed by the professional accountant in public practice.

240.5 In certain circumstances, a professional accountant in public practice may receive a referral fee or commission relating to a client. For example, where the professional accountant in public practice does not provide the specific service required, a fee may be received for referring a continuing client to another professional accountant in public practice or other ~~**expert**~~ **professionals recognized within the provisions of the Act.** ~~**A professional accountant in public practice may receive a commission from a third party (for example, a software vendor) in connection with the sale of goods or services to a client. Accepting such a referral fee or commission creates a self-interest threat to objectivity and professional competence and due care.**~~

240.6 A professional accountant in public practice may also pay a referral fee to obtain a client, for example, where the client continues as a client of another professional accountant in public practice **or other professionals recognized within the provisions of the Act** but requires specialist services not offered by the existing accountant **or other professionals recognized within the provisions of the Act**. The payment of such a referral fee also creates a self-interest threat to objectivity and professional competence and due care.

240.7 The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.
Examples of such safeguards include:

- Disclosing to the client any arrangements to pay a referral fee to another professional accountant for the work referred;

- Disclosing to the client any arrangements to receive a referral fee for referring the client to another professional accountant in public practice; or

- ~~**Obtaining advance agreement from the client for commission arrangements in connection with the sale by a third party of goods or services to the client.**~~

~~**240.8 A professional accountant in public practice may purchase all or part of another firm on the basis that payments will be made to individuals formerly owning the firm or to their heirs or estates. Such payments are not regarded as commissions or referral fees for the purpose of paragraphs 240.5 240.7 above.**~~

SECTION 250

~~Marketing~~ Promoting Professional Services

250.1 When a professional accountant in public practice solicits new work through advertising or other forms of ~~**marketing**~~ **promoting**, there may be a threat to compliance with the fundamental principles. For example, a self-interest threat to compliance with the principle of professional behavio**u**r is created if services, achievements, or products are marketed in a way that is inconsistent with that principle.

250.2 A professional accountant in public practice shall not bring the profession into disrepute when ~~**marketing**~~ **promoting** professional services. The professional accountant in public practice shall be honest and truthful, and not:

(a) Make exaggerated claims for services offered, qualifications possessed, or experience gained; or

(b) Make disparaging references or unsubstantiated comparisons to the work of another.

If the professional accountant in public practice is in doubt about whether a proposed form of advertising or ~~**marketing**~~ **promoting** is appropriate, the professional accountant in public practice shall consider consulting with the relevant professional body.

250.2A Professional accountants in public practice shall, while advertising their services, follow the Council guidelines for advertisement issued from time to time.

SECTION 260

Gifts and Hospitality

260.1 A professional accountant in public practice, or an immediate or close family member, may be offered gifts and hospitality from a client. Such an offer may create threats to compliance with the

fundamental principles. For example, a self-interest or familiarity threat to objectivity may be created if a gift from a client is accepted; an intimidation threat to objectivity may result from the possibility of such offers being made public.

260.2 The existence and significance of any threat will depend on the nature, value, and intent of the offer. Where gifts or hospitality are offered that a reasonable and informed third party, weighing all the specific facts and circumstances, would consider trivial and inconsequential, a professional accountant in public practice may conclude that the offer is made in the normal course of business without the specific intent to influence decision making or to obtain information. In such cases, the professional accountant in public practice may generally conclude that any threat to compliance with the fundamental principles is at an acceptable level.

260.3 A professional accountant in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate the threats or reduce them to an acceptable level. When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a professional accountant in public practice shall not accept such an offer.

SECTION 270

Custody of Client Assets

270.1 A professional accountant in public practice shall not assume custody of client monies or other assets unless permitted to do so by law and, if so, in compliance with any additional legal duties imposed on a professional accountant in public practice holding such assets.

270.2 The holding of client assets creates threats to compliance with the fundamental principles; for example, there is a self-interest threat to professional behavio**u**r and may be a self-interest threat to objectivity arising from holding client assets. A professional accountant in public practice entrusted with money (or other assets) belonging to others shall therefore:

(a) Keep such assets separately from personal or firm assets;

(b) Use such assets only for the purpose for which they are intended;

(c) At all times be ready to account for those assets and any income, dividends, or gains generated, to any persons entitled to such accounting; and

(d) Comply with all relevant laws and regulations relevant to the holding of and accounting for such assets.

270.3 As part of client and engagement acceptance procedures for services that may involve the holding of client assets, a professional accountant in public practice shall make appropriate inquiries about the source of such assets and consider legal and regulatory obligations. For example, if the assets were derived from illegal activities, such as money laundering, a threat to compliance with the fundamental principles would be created. In such situations, the professional accountant may consider seeking legal advice.

SECTION 280

Objectivity—All Services

280.1 A professional accountant in public practice shall determine when providing any professional service whether there are threats to compliance with the fundamental principle of objectivity resulting from having interests in, or relationships with, a client or its directors, officers or employees. For example, a familiarity threat to objectivity may be created from a family or close personal or business relationship.

280.2 A professional accountant in public practice who provides an assurance service shall be independent of the assurance client. Independence of mind and in appearance is necessary to enable the professional accountant in public practice to express a conclusion, and be seen to express a conclusion, without bias, conflict of interest, or undue influence of others. Sections 290 and 291 provide specific guidance on independence requirements for professional accountants in public practice when performing assurance engagements.

280.3 The existence of threats to objectivity when providing any professional service will depend upon the particular circumstances of the engagement and the nature of the work that the professional accountant in public practice is performing.

280.4 A professional accountant in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level. Examples of such safeguards include:

- Withdrawing from the engagement team;
- Supervisory procedures;
- Terminating the financial or business relationship giving rise to the threat;
- Discussing the issue with higher levels of management within the firm; or
- Discussing the issue with those charged with governance of the client.

If safeguards cannot eliminate or reduce the threat to an acceptable level, the professional accountant shall decline or terminate the relevant engagement.

SECTION 290
INDEPENDENCE—AUDIT AND REVIEW ENGAGEMENTS
CONTENTS

Structure of Section

290.1 This section addresses the independence requirements for audit engagements and review engagements, which are assurance engagements in which a professional accountant in public practice expresses a conclusion on financial statements**.** Such engagements comprise audit and review engagements to report on a complete set of financial statements and a single financial statement. Independence requirements for assurance engagements that are not audit or review engagements are addressed in Section 291.

290.2 In certain circumstances involving audit engagements where the audit report includes a restriction on use and distribution and provided certain conditions are met, the independence requirements in this section may be modified as provided in paragraphs 290.500 to 290.514. The modifications are not permitted in the case of an audit of financial statements required by law or regulation.

290.3 In this section, the term(s):

(a) "Audit," "audit team," "audit engagement," "audit client" and "audit report" includes review, review team, review engagement, review client and review report; and

(b) "Firm" includes network firm, except where otherwise stated.

A ~~Conceptual~~ Framework ~~Approach~~ to Independence

290.4 In the case of audit engagements, it is in the public interest and, therefore, required by this ~~**Code**~~ **Framework ,** that members of audit teams, firms and network firms shall be independent of audit clients.

290.5 The objective of this section is to assist firms and members of audit teams in applying the ~~**conceptual**~~ framework ~~**approach**~~ described below to achieving and maintaining independence.

290.6 Independence comprises:

(a) Independence of Mind

The state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity and exercise objectivity and professional skepticism.

(b) Independence in Appearance

The avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that a firm's, or a member of the audit team's, integrity, objectivity or professional skepticism has been compromised.

290.7 The ~~**conceptual**~~ framework ~~**approach**~~ shall be applied by professional accountants to:

(a) Identify threats to independence;

(b) Evaluate the significance of the threats identified; and

(c) Apply safeguards, when necessary, to eliminate the threats or reduce them to an acceptable level.

When the professional accountant determines that appropriate safeguards are not available or cannot be applied to eliminate the threats or reduce them to an acceptable level, the professional accountant shall eliminate the circumstance or relationship creating the threats or decline or terminate the audit engagement.

A professional accountant shall use professional judgment in applying this conceptual framework.

290.8 Many different circumstances, or combinations of circumstances, may be relevant in assessing threats to independence. It is impossible to define every situation that creates threats to independence and to specify the appropriate action. Therefore, this ~~**Code**~~ **Framework** establishes a conceptual framework that requires firms and members of audit teams to identify, evaluate, and address threats to independence. The ~~**conceptual**~~ framework ~~**approach**~~ assists professional accountants in practice in complying with the ethical requirements in this ~~**Code**~~ **Framework**. It accommodates many variations in circumstances that create threats to independence and can deter a professional accountant from concluding that a situation is permitted if it is not specifically prohibited.

290.9 Paragraphs 290.100 and onwards describe how the ~~**conceptual**~~ framework ~~**approach**~~ to independence is to be applied. These paragraphs do not address all the circumstances and relationships that create or may create threats to independence.

290.10 In deciding whether to accept or continue an engagement, or whether a particular individual may be a member of the audit team, a firm shall identify and evaluate threats to independence. If the threats are not at an acceptable level, and the decision is whether to accept an engagement or include a particular individual on the audit team, the firm shall determine whether safeguards are available to eliminate the threats or reduce them to an acceptable level. If the decision is whether to continue an engagement, the firm shall determine whether any existing safeguards will continue to be effective to eliminate the threats or reduce them to an acceptable level or whether other safeguards will need to be applied or whether the engagement needs to be terminated. Whenever new information about a threat to independence comes to the attention of the firm during the engagement, the firm shall evaluate the significance of the threat in accordance with the ~~**conceptual**~~ framework ~~**approach**~~.

290.11 Throughout this section, reference is made to the significance of threats to independence. In evaluating the significance of a threat, qualitative as well as quantitative factors shall be taken into account.

290.12 This section does not, in most cases, prescribe the specific responsibility of individuals within the firm for actions related to independence because responsibility may differ depending on the size, structure and organization of a firm. The firm is required by *I~~**nternational***~~ *Standards on Quality Control* (~~**I**~~ISQCs) to establish policies and procedures designed to provide it with reasonable assurance that independence is maintained when required by relevant ethical requirements. In addition, ~~***International***~~ *Standards on Auditing* (~~**I**~~ISAs) require the engagement partner to form a conclusion on compliance with the independence requirements that apply to the engagement.

Networks and Network Firms

290.13 If a firm is deemed to be a network firm, the firm shall be independent of the audit clients of the other firms within the network (unless otherwise stated in this ~~**Code**~~ **Framework**). The independence requirements in this section that apply to a network firm apply to any entity, such as a consulting practice or professional law practice, that meets the definition of a network

firm irrespective of whether the entity itself meets the definition of a firm.

290.14 To enhance their ability to provide professional services, firms frequently form larger structures with other firms and entities. Whether these larger structures create a network depends on the particular facts and circumstances and does not depend on whether the firms and entities are legally separate and distinct. For example, a larger structure may be aimed only at facilitating the referral of work, which in itself does not meet the criteria necessary to constitute a network. Alternatively, a larger structure might be such that it is aimed at co-operation and the firms share a common brand name, a common system of quality control, or significant professional resources and consequently is deemed to be a network.

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

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

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

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

290.19 Where the larger structure is aimed at co-operation and the entities within the structure share a common business strategy, it is deemed to be a network. Sharing a common business strategy involves an agreement by the entities to achieve common strategic

objectives. An entity is not deemed to be a network firm merely because it co-operates with another entity solely to respond jointly to a request for a proposal for the provision of a professional service.

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

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

290.22 If a firm sells a component of its practice, the sales agreement sometimes provides that, for a limited period of time, the component may continue to use the name of the firm, or an element of the name, even though it is no longer connected to the firm. In such circumstances, while the two entities may be practicing under a common name, the facts are such that they do not belong to a larger structure aimed at co-operation and are, therefore, not network firms. Those entities shall determine how to disclose that they are not network firms when presenting themselves to outside parties.

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

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

- Training courses and facilities.

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

290. 24A A firm may merely be an alliance, and not network. The former has a fine distinction with the latter. An Alliance will not be bound by the provisions of Networking in Sections 290.13 – 290.24. 'Alliance' indicates that a limited number of partners have close relationship by affinity, similarity or/and common interests; common purpose and goals are distinguishing features of alliances. 'Network', on the other hand, connotes a kind of traffic connection within a system – flow of resources through an open system of entities in the direction they are needed; unlike an alliance which has a state of joining, closeness and exclusion of others. While alliance implies authority, which decides upon inclusion and exclusion, networks suggest an open system of flows, without a governance structure. Alliance is common between large partners while networks are not determined about the size. It is the objective that has a central influence on the network formation.

Public Interest Entities

290.25 Section 290 contains additional provisions that reflect the extent of public interest in certain entities. For the purpose of this section, public interest entities are:

(i) All listed entities; and

(ii) Any entity:

(i) Defined by regulation or legislation as a public interest entity; or

(ii) For which the audit is required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to the audit of listed entities. Such regulation may be promulgated by any relevant regulator, including an audit regulator.

290.26 Firms and member bodies are encouraged to determine whether to treat additional entities, or certain categories of entities, as public interest entities because they have a large number and wide range of stakeholders. Factors to be considered include:

- The nature of the business, such as the holding of assets in a fiduciary capacity for a large number of stakeholders. Examples may include financial institutions, such as banks and insurance companies, and pension funds;
- Size; and
- Number of employees.

Related Entities

290.27 In the case of an audit client that is a listed entity, references to an audit client in this section include related entities of the client (unless otherwise stated). For all other audit clients, references to an audit client in this section include related entities over which the client has direct or indirect control. When the audit team knows or has reason to believe that a relationship or circumstance involving another related entity of the client is relevant to the evaluation of the firm's independence from the client, the audit team shall include that related entity when identifying and evaluating threats to independence and applying appropriate safeguards.

Those Charged with Governance

290.28 Even when not required by the ~~**Code**~~ **Framework**, applicable auditing standards, law or regulation, regular communication is encouraged between the firm and those charged with governance of the audit client regarding relationships and other matters that might, in the firm's opinion, reasonably bear on independence. Such communication enables those charged with governance to:

(a) Consider the firm's judgments in identifying and evaluating threats to independence,

(b) Consider the appropriateness of safeguards applied to eliminate them or reduce them to an acceptable level, and

(c) Take appropriate action.

Such an approach can be particularly helpful with respect to intimidation and familiarity threats.

Documentation

290.29 Documentation provides evidence of the professional accountant's judgments in forming conclusions regarding compliance with independence requirements. The absence of documentation is not a determinant of whether a firm considered a particular matter nor whether it is independent.

The professional accountant shall document conclusions regarding compliance with independence requirements, and the substance of any relevant discussions that support those conclusions. Accordingly:

(a) When safeguards are required to reduce a threat to an acceptable level, the professional accountant shall document the nature of the threat and the safeguards in place or applied that reduce the threat to an acceptable level; and

(b) When a threat required significant analysis to determine whether safeguards were necessary and the professional accountant concluded that they were not because the threat was already at an acceptable level, the professional accountant shall document the nature of the threat and the rationale for the conclusion.

Engagement Period

290.30 Independence from the audit client is required both during the engagement period and the period covered by the financial statements. The engagement period starts when the audit team begins to perform audit services. The engagement period ends when the audit report is issued. When the engagement is of a recurring nature, it ends at the later of the notification by either party that the professional relationship has terminated or the issuance of the final audit report.

290.31 When an entity becomes an audit client during or after the period covered by the financial statements on which the firm will express an opinion, the firm shall determine whether any threats to independence are created by:

(a) Financial or business relationships with the audit client during or after the period covered by the financial statements but before accepting the audit engagement; or

(b) Previous services provided to the audit client.

290.32 If a non-assurance service was provided to the audit client during or after the period covered by the financial statements but before the audit team begins to perform audit services and the service would not be permitted during the period of the audit engagement, the firm shall evaluate any threat to independence created by the service. If a threat is not at an acceptable level, the audit engagement shall only be accepted if safeguards are applied to eliminate any threats or reduce them to an acceptable level. Examples of such safeguards include:

- Not including personnel who provided the non-assurance service as members of the audit team;

- Having a professional accountant review the audit and non-assurance work as appropriate; or

- Engaging another firm to evaluate the results of the non-assurance service or having another firm re-perform the non-assurance service to the extent necessary to enable it to take responsibility for the service.

Mergers and Acquisitions

290.33 When, as a result of a merger or acquisition, an entity becomes a related entity of an audit client, the firm shall identify and evaluate previous and current interests and relationships with the related entity that, taking into account available safeguards, could affect its independence and therefore its ability to continue the audit engagement after the effective date of the merger or acquisition.

290.34 The firm shall take steps necessary to terminate, by the effective date of the merger or acquisition, any current interests or relationships that are not permitted under this ~~**Code**~~ **Framework**. However, if such a current interest or relationship cannot reasonably be terminated by the effective date of the merger or acquisition, for example, because the related entity is unable by the effective date to effect an orderly transition to another service provider of a non-assurance service provided by the firm, the firm shall evaluate

the threat that is created by such interest or relationship. The more significant the threat, the more likely the firm's objectivity will be compromised and it will be unable to continue as auditor. The significance of the threat will depend upon factors such as:

- The nature and significance of the interest or relationship;

- The nature and significance of the related entity relationship (for example, whether the related entity is a subsidiary or parent); and

- The length of time until the interest or relationship can reasonably be terminated.

The firm shall discuss with those charged with governance the reasons why the interest or relationship cannot reasonably be terminated by the effective date of the merger or acquisition and the evaluation of the significance of the threat.

290.35 If those charged with governance request the firm to continue as auditor, the firm shall do so only if:

(a) The interest or relationship will be terminated as soon as reasonably possible and in all cases within six months of the effective date of the merger or acquisition;

(b) Any individual who has such an interest or relationship, including one that has arisen through performing a non-assurance service that would not be permitted under this section, will not be a member of the engagement team for the audit or the individual responsible for the engagement quality control review; and

(c) Appropriate transitional measures will be applied, as necessary, and discussed with those charged with governance. Examples of transitional measures include:

- Having a professional accountant review the audit or non-assurance work as appropriate;

- Having a professional accountant, who is not a member of the firm expressing the opinion on the financial statements, perform a review that is equivalent to an engagement quality control review; or

- Engaging another firm to evaluate the results of the non-assurance service or having another firm re-perform

the non-assurance service to the extent necessary to enable it to take responsibility for the service.

290.36 The firm may have completed a significant amount of work on the audit prior to the effective date of the merger or acquisition and may be able to complete the remaining audit procedures within a short period of time. In such circumstances, if those charged with governance request the firm to complete the audit while continuing with an interest or relationship identified in paragraph 290.33, the firm shall do so only if it:

(a) Has evaluated the significance of the threat created by such interest or relationship and discussed the evaluation with those charged with governance;

(b) Complies with the requirements of paragraph 290.35(b)–(c); and

(c) Ceases to be the auditor no later than the issuance of the audit report

290.37 When addressing previous and current interests and relationships covered by paragraphs 290.33 to 290.36, the firm shall determine whether, even if all the requirements could be met, the interests and relationships create threats that would remain so significant that objectivity would be compromised and, if so, the firm shall cease to be the auditor.

290.38 The professional accountant shall document any interests or relationships covered by paragraphs 290.34 and 36 that will not be terminated by the effective date of the merger or acquisition and the reasons why they will not be terminated, the transitional measures applied, the results of the discussion with those charged with governance, and the rationale as to why the previous and current interests and relationships do not create threats that would remain so significant that objectivity would be compromised.

Breach of a Provision of this Section

290.39 A breach of a provision of this section may occur despite the firm having policies and procedures designed to provide it with reasonable assurance that independence is maintained. A consequence of a breach may be that termination of the audit engagement is necessary.

290.40 When the firm concludes that a breach has occurred, the firm shall terminate, suspend or eliminate the interest or relationship that caused the breach and address the consequences of the breach.

290.41 When a breach is identified, the firm shall consider whether there are any legal or regulatory requirements that apply with respect to the breach and, if so, shall comply with those requirements. The firm shall consider reporting the breach to a member body, relevant regulator or oversight authority if such reporting is common practice or is expected in the particular jurisdiction.

290.42 When a breach is identified, the firm shall, in accordance with its policies and procedures, promptly communicate the breach to the engagement partner, those with responsibility for the policies and procedures relating to independence, other relevant personnel in the firm, and, where appropriate, the network, and those subject to the independence requirements who need to take appropriate action. The firm shall evaluate the significance of that breach and its impact on the firm's objectivity and ability to issue an audit report. The significance of the breach will depend on factors such as:

- ***The nature and duration of the breach;***
- ***The number and nature of any previous breaches with respect to the current audit engagement;***
- ***Whether a member of the audit team had knowledge of the interest or relationship that caused the breach;***
- ***Whether the individual who caused the breach is a member of the audit team or another individual for whom there are independence requirements;***
- ***If the breach relates to a member of the audit team, the role of that individual;***
- ***If the breach was caused by the provision of a professional service, the impact of that service, if any, on the accounting records or the amounts recorded in the financial statements on which the firm will express an opinion; and***
- ***The extent of the self-interest, advocacy, intimidation or other threats created by the breach.***

290.43 Depending upon the significance of the breach, it may be necessary to terminate the audit engagement or it may be possible to take action that satisfactorily addresses the consequences of the breach. The firm shall determine whether such action can be taken and is appropriate in the circumstances. In making this determination, the firm shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing the significance of the breach, the action to be taken and all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude that the firm's objectivity would be compromised and therefore the firm is unable to issue an audit report.

290.44 Examples of actions that the firm may consider include:

- ***Removing the relevant individual from the audit team;***
- ***Conducting an additional review of the affected audit work or re-performing that work to the extent necessary, in either case using different personnel;***
- ***Recommending that the audit client engage another firm to review or re-perform the affected audit work to the extent necessary; and***
- ***Where the breach relates to a non-assurance service that affects the accounting records or an amount that is recorded in the financial statements, engaging another firm to evaluate the results of the non-assurance service or having another firm re-perform the non-assurance service to the extent necessary to enable it to take responsibility for the service.***

290.45 If the firm determines that action cannot be taken to satisfactorily address the consequences of the breach, the firm shall inform those charged with governance as soon as possible and take the steps necessary to terminate the audit engagement in compliance with any applicable legal or regulatory requirements relevant to terminating the audit engagement. Where termination is not permitted by law or regulation, the firm shall comply with any reporting or disclosure requirements.

290.46 If the firm determines that action can be taken to satisfactorily address the consequences of the breach, the firm shall discuss the breach and the action it has taken or

proposes to take with those charged with governance. The firm shall discuss the breach and the action as soon as possible, unless those charged with governance have specified an alternative timing for reporting less significant breaches. The matters to be discussed shall include:

- ***The significance of the breach, including its nature and duration;***
- ***How the breach occurred and how it was identified;***
- ***The action taken or proposed to be taken and the firm's rationale for why the action will satisfactorily address the consequences of the breach and enable it to issue an audit report;***
- ***The conclusion that, in the firm's professional judgment, objectivity has not been compromised and the rationale for that conclusion; and***
- ***Any steps that the firm has taken or proposes to take to reduce or avoid the risk of further breaches occurring.***

290.47 The firm shall communicate in writing with those charged with governance all matters discussed in accordance with paragraph 290.46 and obtain the concurrence of those charged with governance that action can be, or has been, taken to satisfactorily address the consequences of the breach. The communication shall include a description of the firm's policies and procedures relevant to the breach designed to provide it with reasonable assurance that independence is maintained and any steps that the firm has taken, or proposes to take, to reduce or avoid the risk of further breaches occurring. If those charged with governance do not concur that the action satisfactorily addresses the consequences of the breach, the firm shall take the steps necessary to terminate the audit engagement, where permitted by law or regulation, in compliance with any applicable legal or regulatory requirements relevant to terminating the audit engagement. Where termination is not permitted by law or regulation, the firm shall comply with any reporting or disclosure requirements.

290.48 If the breach occurred prior to the issuance of the previous audit report, the firm shall comply with this section in evaluating the significance of the breach and its impact on the firm's objectivity and its ability to issue an

audit report in the current period. The firm shall also consider the impact of the breach, if any, on the firm's objectivity in relation to any previously issued audit reports, and the possibility of withdrawing such audit reports, and discuss the matter with those charged with governance.

290.49 The firm shall document the breach, the action taken, key decisions made and all the matters discussed with those charged with governance and any discussions with a member body, relevant regulator or oversight authority. When the firm continues with the audit engagement, the matters to be documented shall also include the conclusion that, in the firm's professional judgment, objectivity has not been compromised and the rationale for why the action taken satisfactorily addressed the consequences of the breach such that the firm could issue an audit report.

Application of the ~~Conceptual~~ Framework ~~Approach~~ to Independence

290.100 Paragraphs 290.102 to 290.231 describe specific circumstances and relationships that create or may create threats to independence. The paragraphs describe the potential threats and the types of safeguards that may be appropriate to eliminate the threats or reduce them to an acceptable level and identify certain situations where no safeguards could reduce the threats to an acceptable level. The paragraphs do not describe all of the circumstances and relationships that create or may create a threat to independence. The firm and the members of the audit team shall evaluate the implications of similar, but different, circumstances and relationships and determine whether safeguards, including the safeguards in paragraphs 200.12 to 200.15, can be applied when necessary to eliminate the threats to independence or reduce them to an acceptable level.

290.101 Paragraphs 290.102 to 290.126 contain references to the materiality of a financial interest, loan, or guarantee, or the significance of a business relationship. For the purpose of determining whether such an interest is material to an individual, the combined net worth of the individual and the individual's immediate family members may be taken into account.

Financial Interests

290.102 Holding a financial interest in an audit client may create a self-interest threat. The existence and significance of any threat created depends on:

(a) The role of the person holding the financial interest,

(b) Whether the financial interest is direct or indirect, and

(c) The materiality of the financial interest.

290.103 Financial interests may be held through an intermediary (for example, a collective investment vehicle, estate or trust). The determination of whether such financial interests are direct or indirect will depend upon whether the beneficial owner has control over the investment vehicle or the ability to influence its investment decisions. When control over the investment vehicle or the ability to influence investment decisions exists, this ~~**Code**~~ **Framework** defines that financial interest to be a direct financial interest. Conversely, when the beneficial owner of the financial interest has no control over the investment vehicle or ability to influence its investment decisions, this ~~**Code**~~ **Framework** defines that financial interest to be an indirect financial interest.

290.104 If a member of the audit team, a member of that individual's immediate family, or a firm has a direct financial interest or a material indirect financial interest in the audit client, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Therefore, none of the following shall have a direct financial interest or a material indirect financial interest in the client: a member of the audit team; a member of that individual's immediate family; or the firm.

290.105 When a member of the audit team has a close family member who the audit team member knows has a direct financial interest or a material indirect financial interest in the audit client, a self-interest threat is created. The significance of the threat will depend on factors such as:

- The nature of the relationship between the member of the audit team and the close family member; and

- The materiality of the financial interest to the close family member. The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.
  Examples of such safeguards include:

- The close family member disposing, as soon as practicable, of all of the financial interest or disposing of a sufficient portion of an indirect financial interest so that the remaining interest is no longer material;

- Having a professional accountant review the work of the member of the audit team; or

- Removing the individual from the audit team.

290.106 If a member of the audit team, a member of that individual's immediate family, or a firm has a direct or material indirect financial interest in an entity that has a controlling interest in the audit client, and the client is material to the entity, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Therefore, none of the following shall have such a financial interest: a member of the audit team; a member of that individual's immediate family; and the firm.

290.107 The holding by a firm's retirement benefit plan of a direct or material indirect financial interest in an audit client creates a self-interest threat. The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.

290.108 If other partners in the office in which the engagement partner practices in connection with the audit engagement, or their immediate family members, hold a direct financial interest or a material indirect financial interest in that audit client, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Therefore, neither such partners nor their immediate family members shall hold any such financial interests in such an audit client.

290.109 The office in which the engagement partner practices in connection with the audit engagement is not necessarily the office to which that partner is assigned. Accordingly, when the engagement partner is located in a different office from that of the other members of the audit team, professional judgment shall be used to determine in which office the partner practices in connection with that engagement.

290.110 If other partners and managerial employees who provide non-audit services to the audit client, except those whose involvement is minimal, or their immediate family members, hold a direct financial interest or a material indirect financial interest in the audit client, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, neither such personnel nor their immediate family members shall hold any such financial interests in such an audit client.

290.111 Despite paragraphs 290.108 and 290.110, the holding of a financial interest in an audit client by an immediate family member of:

(a) A partner located in the office in which the engagement partner practices in connection with the audit engagement; or

(b) A partner or managerial employee who provides non-audit services to the audit client

is deemed not to compromise independence if the financial interest is received as a result of the immediate family member's employment rights (for example, through pension or share option plans) and, when necessary, safeguards are applied to eliminate any threat to independence or reduce it to an acceptable level.

However, when the immediate family member has or obtains the right to dispose of the financial interest or, in the case of a stock option, the right to exercise the option, the financial interest shall be disposed of or forfeited as soon as practicable.

290.112 A self-interest threat may be created if the firm or a member of the audit team, or a member of that individual's immediate family, has a financial interest in an entity and an audit client also has a financial interest in that entity. However, independence is deemed not to be compromised if these interests are immaterial and the audit client cannot exercise significant influence over the entity. If such interest is material to any party, and the audit client can exercise significant influence over the other entity, no safeguards could reduce the threat to an acceptable level. Accordingly, the firm shall not have such an interest and any individual with such an interest shall, before becoming a member of the audit team, either:

(a) Dispose of the interest; or

(b) Dispose of a sufficient amount of the interest so that the remaining interest is no longer material.

290.113 A self-interest, familiarity or intimidation threat may be created if a member of the audit team, or a member of that individual's immediate family, or the firm, has a financial interest in an entity when a director, officer or controlling owner of the audit client is also known to have a financial interest in that entity. The existence and significance of any threat will depend upon factors such as:

- The role of the professional on the audit team;

- Whether ownership of the entity is closely or widely held;

- Whether the interest gives the investor the ability to control or significantly influence the entity; and

- The materiality of the financial interest.

The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.
Examples of such safeguards include:

- Removing the member of the audit team with the financial interest from the audit team; or

- Having a professional accountant review the work of the member of the audit team.

290.114 The holding by a firm, or a member of the audit team, or a member of that individual's immediate family, of a direct financial interest or a material indirect financial interest in the audit client as a trustee creates a self-interest threat. Similarly, a self-interest threat is created when:

(a) A partner in the office in which the engagement partner practices in connection with the audit;

(b) Other partners and managerial employees who provide non-assurance services to the audit client, except those whose involvement is minimal; or

(c) Their immediate family members, hold a direct financial interest or a material indirect financial interest in the audit client as trustee.

Such an interest shall not be held unless:

(a) Neither the trustee, nor an immediate family member of the trustee, nor the firm are beneficiaries of the trust;

(b) The interest in the audit client held by the trust is not material to the trust;

(c) The trust is not able to exercise significant influence over the audit client; and

(d) The trustee, an immediate family member of the trustee, or the firm cannot significantly influence any investment decision involving a financial interest in the audit client.

290.115 Members of the audit team shall determine whether a self-interest threat is created by any known financial interests in the audit client held by other individuals including:

(a) Partners and professional employees of the firm, other than those referred to above, or their immediate family members; and

(b) Individuals with a close personal relationship with a member of the audit team.

Whether these interests create a self-interest threat will depend on factors such as:

- The firm's organizational, operating and reporting structure; and

- The nature of the relationship between the individual and the member of the audit team.

The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.
Examples of such safeguards include:

- Removing the member of the audit team with the personal relationship from the audit team;

- Excluding the member of the audit team from any significant decision making concerning the audit engagement; or

- Having a professional accountant review the work of the member of the audit team.

290.116 If a firm or a partner or employee of the firm, or a member of that individual's immediate family, receives a direct financial interest or a material indirect financial interest in an audit client, for example, by way of an inheritance, gift or as a result of a merger and such interest would not be permitted to be held under this section, then:

(a) If the interest is received by the firm, the financial interest shall be disposed of immediately, or a sufficient amount of an

indirect financial interest shall be disposed of so that the remaining interest is no longer material;

(b) If the interest is received by a member of the audit team, or a member of that individual's immediate family, the individual who received the financial interest shall immediately dispose of the financial interest, or dispose of a sufficient amount of an indirect financial interest so that the remaining interest is no longer material; or

(c) If the interest is received by an individual who is not a member of the audit team, or by an immediate family member of the individual, the financial interest shall be disposed of as soon as possible, or a sufficient amount of an indirect financial interest shall be disposed of so that the remaining interest is no longer material. Pending the disposal of the financial interest, a determination shall be made as to whether any safeguards are necessary.

290.117 When an inadvertent violation of this section as it relates to a financial interest in an audit client occurs, it is deemed not to compromise independence if:

(a) The firm has established policies and procedures that require prompt notification to the firm of any breaches resulting from the purchase, inheritance or other acquisition of a financial interest in the audit client;

(b) The actions in paragraph 290.116 (a)–(c) are taken as applicable; and (c) The firm applies other safeguards when necessary to reduce any remaining threat to an acceptable level. Examples of such safeguards include:

- Having a professional accountant review the work of the member of the audit team; or
- Excluding the individual from any significant decision-making concerning the audit engagement.

The firm shall determine whether to discuss the matter with those charged with governance.

Loans and Guarantees

290.118 A loan, or a guarantee of a loan, to a member of the audit team, or a member of that individual's immediate family, or the firm from an audit client that is a bank or a similar institution may create a threat to independence. If the loan or guarantee is not made under normal lending procedures, terms and conditions, a self-interest threat would be created that would be so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, neither a member of the audit team, a member of

that individual's immediate family, nor a firm shall accept such a loan or guarantee.

290.119 If a loan to a firm from an audit client that is a bank or similar institution is made **within the terms of statutory provisions and guidelines/ guidance notes issued by the Council from time to time** ~~**under normal lending procedures, terms and conditions**~~ and it is material to the audit client or firm receiving the loan it may be possible to apply safeguards to reduce the self-interest threat to an acceptable level. An example of such a safeguard is having the work reviewed by a professional accountant from a network firm that is neither involved with the audit nor received the loan.

290.120 **Subject to statutory provisions and the RBI Guidelines issued from time to time in regard to the Banking Companies , a** ~~**A**~~ loan, or a guarantee of a loan, from an audit client that is a bank or a similar institution to a member of the audit team, or a member of that individual's immediate family, does not create a threat to independence if the loan or guarantee is made under normal lending procedures, terms and conditions. Examples of such loans include home mortgages, bank overdrafts, car loans and credit card balances.

290.121 If the firm or a member of the audit team, or a member of that individual's immediate family, accepts a loan from, or has a borrowing guaranteed by, an audit client that is not a bank or similar institution, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level, unless **the loan or guarantee is within the limits specified by the statute and guidelines/guidance notes issued by the Council from time to time and** the loan or guarantee is immaterial to both (a) the firm or the member of the audit team and the immediate family member, and (b) the client.

290.122 Similarly, if the firm or a member of the audit team, or a member of that individual's immediate family, makes or guarantees a loan to an audit client, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level, unless the loan or guarantee is immaterial to both (a) the firm or the member of the audit team and the immediate family member, and (b) the client.

290.123 **Subject to the provisions of Council General Guidelines, if** ~~**If**~~ a firm or a member of the audit team, or a member of that individual's immediate family, has deposits or a brokerage account with an audit client that is a bank, broker or similar institution, a

threat to independence is not created if the deposit or account is held under normal commercial terms.

Business Relationships

290.124 A close business relationship between a firm, or a member of the audit team, or a member of that individual's immediate family, and the audit client or its management, arises from a commercial relationship or common financial interest and may create self-interest or intimidation threats. Examples of such relationships include:

- Having a financial interest in a joint venture with either the client or a controlling owner, director, officer or other individual who performs senior managerial activities for that client.

- Arrangements to combine one or more services or products of the firm with one or more services or products of the client and to market the package with reference to both parties.

- Distribution or ~~**marketing**~~ **promotion** arrangements under which the firm distributes or markets the client's products or services, or the client distributes or ~~**markets**~~ **promotes** the firm's products or services.

Unless any financial interest is immaterial and the business relationship is insignificant to the firm and the client or its management, the threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Therefore, unless the financial interest is immaterial and the business relationship is insignificant, the business relationship shall not be entered into, or it shall be reduced to an insignificant level or terminated.

In the case of a member of the audit team, unless any such financial interest is immaterial and the relationship is insignificant to that member, the individual shall be removed from the audit team.

If the business relationship is between an immediate family member of a member of the audit team and the audit client or its management, the significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.

290.125 A business relationship involving the holding of an interest by the firm, or a member of the audit team, or a member of that individual's immediate family, in a closely-held entity when the audit client or a director or officer of the client, or any group thereof, also holds an interest in that entity does not create threats to independence if:

(a) The business relationship is insignificant to the firm, the member of the audit team and the immediate family member, and the client;

(b) The financial interest is immaterial to the investor or group of investors; and

(c) The financial interest does not give the investor, or group of investors, the ability to control the closely-held entity.

290.126 The purchase of goods and services from an audit client by the firm, or a member of the audit team, or a member of that individual's immediate family, does not generally create a threat to independence if the transaction is in the normal course of business and at arm's length. However, such transactions may be of such a nature or magnitude that they create a self-interest threat. The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Eliminating or reducing the magnitude of the transaction; or
- Removing the individual from the audit team.

Family and Personal Relationships

290.127 Family and personal relationships between a member of the audit team and a director or officer or certain employees (depending on their role) of the audit client may create self-interest, familiarity or intimidation threats. The existence and significance of any threats will depend on a number of factors, including the individual's responsibilities on the audit team, the role of the family member or other individual within the client and the closeness of the relationship.

290.128 When an immediate family member of a member of the audit team is:

(a) a director or officer of the audit client; or

(b) an employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion,

or was in such a position during any period covered by the engagement or the financial statements, the threats to independence can only be reduced to an acceptable level by removing the individual from the audit team. The closeness of the relationship is such that no other safeguards could reduce the threat to an acceptable level. Accordingly, no individual who has such a relationship shall be a member of the audit team.

290.129 Threats to independence are created when an immediate family member of a member of the audit team is an employee in a position to exert significant influence over the client's financial position, financial performance or cash flows. The significance of the threats will depend on factors such as:

- The position held by the immediate family member; and
- The role of the professional on the audit team.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Removing the individual from the audit team; or
- Structuring the responsibilities of the audit team so that the professional does not deal with matters that are within the responsibility of the immediate family member.

290.130 Threats to independence are created when a close family member of a member of the audit team is:

(a) A director or officer of the audit client; or

(b) An employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion.

The significance of the threats will depend on factors such as:

- The nature of the relationship between the member of the audit team and the close family member;
- The position held by the close family member; and
- The role of the professional on the audit team.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Removing the individual from the audit team; or
- Structuring the responsibilities of the audit team so that the professional does not deal with matters that are within the responsibility of the close family member.

290.131 Threats to independence are created when a member of the audit team has a close relationship with a person who is not an immediate or close family member, but who is a director or officer or an employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion. A member of the audit team who has such a relationship shall consult in accordance with firm policies and procedures. The significance of the threats will depend on factors such as:

- The nature of the relationship between the individual and the member of the audit team;
- The position the individual holds with the client; and
- The role of the professional on the audit team.

The significance of the threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- Removing the professional from the audit team; or
- Structuring the responsibilities of the audit team so that the professional does not deal with matters that are within the responsibility of the individual with whom the professional has a close relationship.

290.132 Self-interest, familiarity or intimidation threats may be created by a personal or family relationship between (a) a partner or employee of the firm who is not a member of the audit team and (b) a director or officer of the audit client or an employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion. Partners and employees of the firm who are aware of such relationships shall consult in accordance with firm policies and procedures. The existence and significance of any threat will depend on factors such as:

- The nature of the relationship between the partner or employee of the firm and the director or officer or employee of the client;

- The interaction of the partner or employee of the firm with the audit team;

- The position of the partner or employee within the firm; and

- The position the individual holds with the client.

The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.
Examples of such safeguards include:

- Structuring the partner's or employee's responsibilities to reduce any potential influence over the audit engagement; or

- Having a professional accountant review the relevant audit work performed.

290.133 When an inadvertent violation of this section as it relates to family and personal relationships occurs, it is deemed not to compromise independence if:

(a) The firm has established policies and procedures that require prompt notification to the firm of any breaches resulting from changes in the employment status of their immediate or close family members or other personal relationships that create threats to independence;

(b) The inadvertent violation relates to an immediate family member of a member of the audit team becoming a director or officer of the audit client or being in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion, and the relevant professional is removed from the audit team; and

(c) The firm applies other safeguards when necessary to reduce any remaining threat to an acceptable level. Examples of such safeguards include:

(i) Having a professional accountant review the work of the member of the audit team; or

(ii) Excluding the relevant professional from any significant decision-making concerning the engagement.

The firm shall determine whether to discuss the matter with those charged with governance.

Employment with an Audit Client

290.134 Familiarity or intimidation threats may be created if a director or officer of the audit client, or an employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion, has been a member of the audit team or partner of the firm.

290.135 If a former member of the audit team or partner of the firm has joined the audit client in such a position and a significant connection remains between the firm and the individual, the threat would be so significant that no safeguards could reduce the threat to an acceptable level. Therefore, independence would be deemed to be compromised if a former member of the audit team or partner joins the audit client as a director or officer, or as an employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion, unless:

(a) The individual is not entitled to any benefits or payments from the firm, unless made in accordance with fixed pre-determined arrangements, and any amount owed to the individual is not material to the firm; and

(b) The individual does not continue to participate or appear to participate in the firm's business or professional activities.

290.136 If a former member of the audit team or partner of the firm has joined the audit client in such a position, and no significant connection remains between the firm and the individual, the existence and significance of any familiarity or intimidation threats will depend on factors such as:

- The position the individual has taken at the client;
- Any involvement the individual will have with the audit team;
- The length of time since the individual was a member of the audit team or partner of the firm; and

- The former position of the individual within the audit team or firm, for example, whether the individual was responsible for maintaining regular contact with the client's management or those charged with governance.

The significance of any threats created shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- Modifying the audit plan;

- Assigning individuals to the audit team who have sufficient experience in relation to the individual who has joined the client; or

- Having a professional accountant review the work of the former member of the audit team.

290.137 If a former partner of the firm has previously joined an entity in such a position and the entity subsequently becomes an audit client of the firm, the significance of any threat to independence shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.

290.138 A self-interest threat is created when a member of the audit team participates in the audit engagement while knowing that the member of the audit team will, or may, join the client sometime in the future. Firm policies and procedures shall require members of an audit team to notify the firm when entering employment negotiations with the client. On receiving such notification, the significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Removing the individual from the audit team; or

- A review of any significant judgments made by that individual while on the team.

Audit Clients that are Public Interest Entities

290.139 Familiarity or intimidation threats are created when a key audit partner joins the audit client that is a public interest entity as:

(a) A director or officer of the entity; or

(b) An employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion.

Independence would be deemed to be compromised unless, subsequent to the partner ceasing to be a key audit partner, the public interest entity had issued audited financial statements covering a period of not less than twelve months and the partner was not a member of the audit team with respect to the audit of those financial statements.

290.140 An intimidation threat is created when the individual who was the firm's Senior or Managing Partner (Chief Executive or equivalent) joins an audit client that is a public interest entity as:

(a) An employee in a position to exert significant influence over the preparation of the entity's accounting records or its financial statements; or

(b) A director or officer of the entity.

Independence would be deemed to be compromised unless twelve months have passed since the individual was the senior or Managing Partner (Chief Executive or equivalent) of the firm.

290.141 Independence is deemed not to be compromised if, as a result of a business combination, a former key audit partner or the individual who was the firm's former Senior or Managing Partner is in a position as described in paragraphs 290.139 and 290.140, and:

(a) The position was not taken in contemplation of the business combination;

(b) Any benefits or payments due to the former partner from the firm have been settled in full, unless made in accordance with fixed predetermined arrangements and any amount owed to the partner is not material to the firm;

(c) The former partner does not continue to participate or appear to participate in the firm's business or professional activities; and

(d) The position held by the former partner with the audit client is discussed with those charged with governance.

Temporary Staff Assignments

290.142 The lending of staff by a firm to an audit client may create a self-review threat. Such assistance may be given, but only for a short period of time and the firm's personnel shall not be involved in:

(a) Providing non-assurance services that would not be permitted under this section; or

(b) Assuming management responsibilities.

In all circumstances, the audit client shall be responsible for directing and supervising the activities of the loaned staff.

The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.
Examples of such safeguards include:

- Conducting an additional review of the work performed by the loaned staff;

- Not giving the loaned staff audit responsibility for any function or activity that the staff performed during the temporary staff assignment; or

- Not including the loaned staff as a member of the audit team.

Recent Service with an Audit Client

290.143 Self-interest, self-review or familiarity threats may be created if a member of the audit team has recently served as a director, officer, or employee of the audit client. This would be the case when, for example, a member of the audit team has to evaluate elements of the financial statements for which the member of the audit team had prepared the accounting records while with the client.

290.144 If, during the period covered by the audit report, a member of the audit team had served as a director or officer of the audit client, or was an employee in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion, the threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Consequently, such individuals shall not be assigned to the audit team.

290.145 Self-interest, self-review or familiarity threats may be created if, before the period covered by the audit report, a member of the

audit team had served as a director or officer of the audit client, or was an employee in a position to exert significant influence over the preparation of the client's accounting records or financial statements on which the firm will express an opinion. For example, such threats would be created if a decision made or work performed by the individual in the prior period, while employed by the client, is to be evaluated in the current period as part of the current audit engagement. The existence and significance of any threats will depend on factors such as:

- The position the individual held with the client;
- The length of time since the individual left the client; and
- The role of the professional on the audit team.

The significance of any threat shall be evaluated and safeguards applied when necessary to reduce the threat to an acceptable level. An example of such a safeguard is conducting a review of the work performed by the individual as a member of the audit team.

Serving as a Director or Officer of an Audit Client

290.146 If a partner or employee of the firm serves as a director or officer of an audit client, the self-review and self-interest threats created would be so significant that no safeguards could reduce the threats to an acceptable level. Accordingly, no partner or employee shall serve as a director or officer of an audit client.

290.147 The position of Company Secretary has different implications in different jurisdictions. Duties may range from administrative duties, such as personnel management and the maintenance of company records and registers, to duties as diverse as ensuring that the company complies with regulations or providing advice on corporate governance matters. Generally, this position is seen to imply a close association with the entity.

290.148 If a partner or employee of the firm serves as Company Secretary for an audit client, self-review and advocacy threats are created that would generally be so significant that no safeguards could reduce the threats to an acceptable level. ~~**Despite paragraph 290.146, when this practice is specifically permitted under local law, professional rules or practice, and provided management makes all relevant decisions, the duties and activities shall be limited to those of a routine and administrative nature, such as preparing minutes and maintaining statutory returns. In those circumstances, the**~~

~~**significance of any threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level.**~~

290.149 Performing routine administrative services to support a company secretarial function or providing advice in relation to company secretarial administration matters does not generally create threats to independence, as long as client management makes all relevant decisions.

Long Association of Senior Personnel (Including Partner Rotation) with an Audit Client

General Provisions

290.150 Familiarity and self-interest threats are created by using the same senior personnel on an audit engagement over a long period of time. The significance of the threats will depend on factors such as:

- How long the individual has been a member of the audit team;
- The role of the individual on the audit team;
- The structure of the firm;
- The nature of the audit engagement;
- Whether the client's management team has changed; and
- Whether the nature or complexity of the client's accounting and reporting issues has changed.

The significance of the threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- Rotating the senior personnel off the audit team;
- Having a professional accountant who was not a member of the audit team review the work of the senior personnel; or
- Regular independent internal or external quality reviews of the engagement.

Audit Clients that are Public Interest Entities

290.151 In respect of an audit of a public interest entity, an individual shall not be a key audit partner for more than seven years. After such time, the individual shall not be a member of the engagement team or be a key audit partner for

the client for two years. During that period, the individual shall not participate in the audit of the entity, provide quality control for the engagement, consult with the engagement team or the client regarding technical or industry-specific issues, transactions or events or otherwise directly influence the outcome of the engagement.

290.152 Despite paragraph 290.151, key audit partners whose continuity is especially important to audit quality may, in rare cases due to unforeseen circumstances outside the firm's control, be permitted an additional year on the audit team as long as the threat to independence can be eliminated or reduced to an acceptable level by applying safeguards. For example, a key audit partner may remain on the audit team for up to one additional year in circumstances where, due to unforeseen events, a required rotation was not possible, as might be the case due to serious illness of the intended engagement partner.

290.153 The long association of other partners with an audit client that is a public interest entity creates familiarity and self-interest threats. The significance of the threats will depend on factors such as:

- How long any such partner has been associated with the audit client;
- The role, if any, of the individual on the audit team; and
- The nature, frequency and extent of the individual's interactions with the client's management or those charged with governance.

The significance of the threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- Rotating the partner off the audit team or otherwise ending the partner's association with the audit client; or
- Regular independent internal or external quality reviews of the engagement.

290.154 When an audit client becomes a public interest entity, the length of time the individual has served the audit client as a key audit partner before the client becomes a public interest entity shall be taken into account in determining the timing of the rotation. If the individual has served the audit client as a key audit partner for five years or less when the client becomes a public interest entity, the number of years the individual may continue to serve the client in that capacity before rotating off the engagement is seven years less the number of years already served. If the individual has served the audit client as a key audit partner for six or more years when the client becomes a public interest entity, the partner may continue to serve in that capacity for a maximum of two additional years before rotating off the engagement.

290.155 When a firm has only a few people with the necessary knowledge and experience to serve as a key audit partner on the audit of a public interest entity, rotation of key audit partners may not be an available safeguard. ~~**If an independent regulator in the relevant jurisdiction has provided an exemption from partner rotation in such circumstances, an individual may remain a key audit partner for more than seven years, in accordance with such regulation, provided that the independent regulator has specified alternative safeguards which are applied, such as a regular independent external review.**~~

Provision of Non-assurance Services to an Audit Client

290.156 Firms have traditionally provided to their audit clients a range of non-assurance services that are consistent with their skills and expertise. Providing non-assurance services may, however, create threats to the independence of the firm or members of the audit team. The threats created are most often self-review, self-interest and advocacy threats.

290.157 New developments in business, the evolution of financial markets and changes in information technology make it impossible to draw up an all inclusive list of non-assurance services that might be provided to an audit client. When specific guidance on a particular non-assurance service is not included in this section, the conceptual framework shall be applied when evaluating the particular circumstances.

290.158 Before the firm accepts an engagement to provide a non-assurance service to an audit client, a determination shall be made as to whether providing such a service would create a threat to

independence. In evaluating the significance of any threat created by a particular non-assurance service, consideration shall be given to any threat that the audit team has reason to believe is created by providing other related non-assurance services. If a threat is created that cannot be reduced to an acceptable level by the application of safeguards, the non-assurance service shall not be provided.

290.160 A firm may provide non-assurance services that would otherwise be restricted under this section to the following related entities of the audit client:

(a) An entity, which is not an audit client, that has direct or indirect control over the audit client;

(b) An entity, which is not an audit client, with a direct financial interest in the client if that entity has significant influence over the client and the interest in the client is material to such entity; or

(c) An entity, which is not an audit client, that is under common control with the audit client,

if it is reasonable to conclude that (a) the services do not create a self-review threat because the results of the services will not be subject to audit procedures and (b) any threats that are created by the provision of such services are eliminated or reduced to an acceptable level by the application of safeguards.

290.161 A non-assurance service provided to an audit client does not compromise the firm's independence when the client becomes a public interest entity if:

(a) The previous non-assurance service complies with the provisions of this section that relate to audit clients that are not public interest entities;

(b) Services that are not permitted under this section for audit clients that are public interest entities are terminated before or as soon as practicable after the client becomes a public interest entity; and

(c) The firm applies safeguards when necessary to eliminate or reduce to an acceptable level any threats to independence arising from the service.

Management Responsibilities

290.162 Management of an entity performs many activities in managing the entity in the best interests of stakeholders of the entity. It is not possible to specify every activity that is a management responsibility. However, management responsibilities involve leading and directing an entity, including making significant decisions regarding the acquisition, deployment and control of human, financial, physical and intangible resources.

290.163 Whether an activity is a management responsibility depends on the circumstances and requires the exercise of judgment. Examples of activities that would generally be considered a management responsibility include:

- Setting policies and strategic direction;
- Directing and taking responsibility for the actions of the entity's employees;
- Authorizing transactions;
- Deciding which recommendations of the firm or other third parties to implement
- Taking responsibility for the preparation and fair presentation of the financial statements in accordance with the applicable financial reporting framework; and
- Taking responsibility for designing, implementing and maintaining internal control.

290.164 Activities that are routine and administrative, or involve matters that are insignificant, generally are deemed not to be a management responsibility. For example, executing an insignificant transaction that has been authorized by management or monitoring the dates for filing statutory returns and advising an audit client of those dates is deemed not to be a management responsibility. Further, providing advice and recommendations to assist management in discharging its responsibilities is not assuming a management responsibility.

290.165 If a firm were to assume a management responsibility for an audit client, the threats created would be so significant that no safeguards could reduce the threats to an acceptable level. For example, deciding which recommendations of the firm to implement will create self-review and self-interest threats. Further, assuming a management responsibility creates a familiarity threat because the firm becomes too closely aligned

with the views and interests of management. Therefore, the firm shall not assume a management responsibility for an audit client.

290.166 To avoid the risk of assuming a management responsibility when providing non-assurance services to an audit client, the firm shall be satisfied that a member of management is responsible for making the significant judgments and decisions that are the proper responsibility of management, evaluating the results of the service and accepting responsibility for the actions to be taken arising from the results of the service. This reduces the risk of the firm inadvertently making any significant judgments or decisions on behalf of management. The risk is further reduced when the firm gives the client the opportunity to make judgments and decisions based on an objective and transparent analysis and presentation of the issues.

Preparing Accounting Records and Financial Statements

General Provisions

290.167 Management is responsible for the preparation and fair presentation of the financial statements in accordance with the applicable financial reporting framework. These responsibilities include:

- Originating or changing journal entries, or determining the account classifications of transactions; and

- Preparing or changing source documents or originating data, in electronic or other form, evidencing the occurrence of a transaction (for example, purchase orders, payroll time records, and customer orders).

290.168 Providing an audit client with accounting and bookkeeping services, such as preparing accounting records or financial statements, creates a self-review threat when the firm subsequently audits the financial statements. **It may however be noted that the members are not permitted to write the books of account of their auditee clients, as per the provisions of ' Guidance Note on Independence of Auditors' .**

290.169 The audit process, however, necessitates dialogue between the firm and management of the audit client, which may involve:

- The application of accounting standards or policies and financial statement disclosure requirements;

- The appropriateness of financial and accounting control and the methods used in determining the stated amounts of assets and liabilities; or

- Proposing adjusting journal entries;

These activities are considered to be a normal part of the audit process and do not, generally, create threats to independence.

290.170 Similarly, the client may request technical assistance from the firm on matters such as resolving account reconciliation problems or analyzing and accumulating information for regulatory reporting. In addition, the client may request technical advice on accounting issues such as the conversion of existing financial statements from one financial reporting framework to another (for example, to comply with group accounting policies or to transition to a different financial reporting framework such as ~~**International**~~ Financial Reporting Standards). Such services do not, generally, create threats to independence provided the firm does not assume a management responsibility for the client.

Audit clients that are not public interest entities

~~**290.171 The firm may provide services related to the preparation of accounting records and financial statements to an audit client that is not a public interest entity where the services are of a routine or mechanical nature, so long as any self-review threat created is reduced to an acceptable level. Examples of such services include:**~~

~~**• Providing payroll services based on client originated data;**~~

~~**• Recording transactions for which the client has determined or approved the appropriate account classification;**~~

~~**• Posting transactions coded by the client to the general ledger;**~~

~~**• Posting client-approved entries to the trial balance; and**~~

~~**• Preparing financial statements based on information in the trial balance.**~~

~~In all cases, the significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:~~

- ~~Arranging for such services to be performed by an individual who is not a member of the audit team; or~~

- ~~If such services are performed by a member of the audit team, using a partner or senior staff member with appropriate expertise who is not a member of the audit team to review the work performed.~~

~~Audit clients that are public interest entities~~

~~290.172 Except in emergency situations, a firm shall not provide to an audit client that is a public interest entity accounting and bookkeeping services, including payroll services, or prepare financial statements on which the firm will express an opinion or financial information which forms the basis of the financial statements.~~

~~290.173 Despite paragraph 290.172, a firm may provide accounting and bookkeeping services, including payroll services and the preparation of financial statements or other financial information, of a routine or mechanical nature for divisions or related entities of an audit client that is a public interest entity if the personnel providing the services are not members of the audit team and:~~

~~(a) The divisions or related entities for which the service is provided are collectively immaterial to the financial statements on which the firm will express an opinion; or~~
~~(b) The services relate to matters that are collectively immaterial to the financial statements of the division or related entity.~~

~~Emergency Situations~~

~~290.174 Accounting and bookkeeping services, which would otherwise not be permitted under this section, may be provided to audit clients in emergency or other unusual situations, when it is impractical for the audit client to make other arrangements. This may be the case when (a) only the firm has the resources and necessary knowledge of the client's systems and procedures to assist the client in the timely preparation of its accounting records and~~

~~**financial statements, and (b) a restriction on the firm's ability to provide the services would result in significant difficulties for the client (for example, as might result from a failure to meet regulatory reporting requirements). In such situations, the following conditions shall be met:**~~

~~**(a) Those who provide the services are not members of the audit team;**~~

~~**(b) The services are provided for only a short period of time and are not expected to recur; and**~~

~~**(c) The situation is discussed with those charged with governance.**~~

Valuation Services

General Provisions

290.175 A valuation comprises the making of assumptions with regard to future developments, the application of appropriate methodologies and techniques, and the combination of both to compute a certain value, or range of values, for an asset, a liability or for a business as a whole.

290.176 Performing valuation services for an audit client may create a self-review threat. The existence and significance of any threat will depend on factors such as:

- Whether the valuation will have a material effect on the financial statements
- The extent of the client's involvement in determining and approving the valuation methodology and other significant matters of judgment.
- The availability of established methodologies and professional guidelines.
- For valuations involving standard or established methodologies, the degree of subjectivity inherent in the item.
- The reliability and extent of the underlying data.
- The degree of dependence on future events of a nature that could create significant volatility inherent in the amounts involved.

- The extent and clarity of the disclosures in the financial statements.

The significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Having a professional who was not involved in providing the valuation service review the audit or valuation work performed; or

- Making arrangements so that personnel providing such services do not participate in the audit engagement.

290.177 Certain valuations do not involve a significant degree of subjectivity. This is likely the case where the underlying assumptions are either established by law or regulation, or are widely accepted and when the techniques and methodologies to be used are based on generally accepted standards or prescribed by law or regulation. In such circumstances, the results of a valuation performed by two or more parties are not likely to be materially different.

290.178 If a firm is requested to perform a valuation to assist an audit client with its tax reporting obligations or for tax planning purposes and the results of the valuation will not have a direct effect on the financial statements, the provisions included in paragraph 290.191 apply.

Audit clients that are not public interest entities

290.179 In the case of an audit client that is not a public interest entity, if the valuation service has a material effect on the financial statements on which the firm will express an opinion and the valuation involves a significant degree of subjectivity, no safeguards could reduce the self-review threat to an acceptable level. Accordingly a firm shall not provide such a valuation service to an audit client.

Audit clients that are public interest entities

290.180 A firm shall not provide valuation services to an audit client that is a public interest entity if the valuations would have a material effect, separately or in the aggregate, on the financial statements on which the firm will express an opinion.

Taxation Services

290.181 Taxation services comprise a broad range of services, including:

- Tax return preparation;
- Tax calculations for the purpose of preparing the accounting entries;
- Tax planning and other tax advisory services; and
- Assistance in the resolution of tax disputes.

While taxation services provided by a firm to an audit client are addressed separately under each of these broad headings; in practice, these activities are often interrelated.

290.182 Performing certain tax services creates self-review and advocacy threats. The existence and significance of any threats will depend on factors such as:

- The system by which the tax authorities assess and administer the tax in question and the role of the firm in that process;
- The complexity of the relevant tax regime and the degree of judgment necessary in applying it;
- The particular characteristics of the engagement; and
- The level of tax expertise of the client's employees.

Tax Return Preparation

290.183 Tax return preparation services involve assisting clients with their tax reporting obligations by drafting and completing information, including the amount of tax due (usually on standardized forms) required to be submitted to the applicable tax authorities. Such services also include advising on the tax return treatment of past transactions and responding on behalf of the audit client to the tax authorities' requests for additional information and analysis (including providing explanations of and technical support for the approach being taken). Tax return preparation services are generally based on historical information and principally involve analysis and presentation of such historical information under existing tax law, including precedents and established practice. Further, the tax returns are subject to whatever review or approval process the tax authority deems appropriate. Accordingly, providing such services does not generally create a threat to independence if management takes

responsibility for the returns including any significant judgments made.

Tax Calculations for the Purpose of Preparing Accounting Entries.

Audit clients that are not public interest entities

290.184 Preparing calculations of current and deferred tax liabilities (or assets) for an audit client for the purpose of preparing accounting entries that will be subsequently audited by the firm creates a self-review threat. The significance of the threat will depend on:

(a) The complexity of the relevant tax law and regulation and the degree of judgment necessary in applying them;

(b) The level of tax expertise of the client's personnel; and

(c) The materiality of the amounts to the financial statements.

Safeguards shall be applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Using professionals who are not members of the audit team to perform the service;

- If the service is performed by a member of the audit team, using a partner or senior staff member with appropriate expertise who is not a member of the audit team to review the tax calculations; or

- Obtaining advice on the service from an external tax professional.

Audit clients that are public interest entities

290.185 Except in emergency situations, in the case of an audit client that is a public interest entity, a firm shall not prepare tax calculations of current and deferred tax liabilities (or assets) for the purpose of preparing accounting entries that are material to the financial statements on which the firm will express an opinion.

290.186 The preparation of calculations of current and deferred tax liabilities (or assets) for an audit client for the purpose of the preparation of accounting entries, which would otherwise not be permitted under this section, may be provided to audit clients in emergency or other unusual situations when it is impractical for

the audit client to make other arrangements. This may be the case when (a) only the firm has the resources and necessary knowledge of the client's business to assist the client in the timely preparation of its calculations of current and deferred tax liabilities (or assets), and (b) a restriction on the firm's ability to provide the services would result in significant difficulties for the client (for example, as might result from a failure to meet regulatory reporting requirements). In such situations, the following conditions shall be met:

(a) Those who provide the services are not members of the audit team;

(b) The services are provided for only a short period of time and are not expected to recur; and

(c) The situation is discussed with those charged with governance.

Tax Planning and Other Tax Advisory Services

290.187 Tax planning or other tax advisory services comprise a broad range of services, such as advising the client how to structure its affairs in a tax efficient manner or advising on the application of a new tax law or regulation.

290.188 A self-review threat may be created where the advice will affect matters to be reflected in the financial statements. The existence and significance of any threat will depend on factors such as:

- The degree of subjectivity involved in determining the appropriate treatment for the tax advice in the financial statements;
- The extent to which the outcome of the tax advice will have a material effect on the financial statements;
- Whether the effectiveness of the tax advice depends on the accounting treatment or presentation in the financial statements and there is doubt as to the appropriateness of the accounting treatment or presentation under the relevant financial reporting framework;
- The level of tax expertise of the client's employees;
- The extent to which the advice is supported by tax law or regulation, other precedent or established practice; and
- Whether the tax treatment is supported by a private ruling or has otherwise been cleared by the tax authority before the preparation of the financial statements.

For example, providing tax planning and other tax advisory services where the advice is clearly supported by tax authority or other precedent, by established practice or has a basis in tax law that is likely to prevail does not generally create a threat to independence.

290.189 The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Using professionals who are not members of the audit team to perform the service;

- Having a tax professional, who was not involved in providing the tax service, advise the audit team on the service and review the financial statement treatment;

- Obtaining advice on the service from an external tax professional; or

- Obtaining pre-clearance or advice from the tax authorities.

290.190 Where the effectiveness of the tax advice depends on a particular accounting treatment or presentation in the financial statements and:

(a) The audit team has reasonable doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework; and

(b) The outcome or consequences of the tax advice will have a material effect on the financial statements on which the firm will express an opinion;

The self-review threat would be so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, a firm shall not provide such tax advice to an audit client.

290.191 In providing tax services to an audit client, a firm may be requested to perform a valuation to assist the client with its tax reporting obligations or for tax planning purposes. Where the result of the valuation will have a direct effect on the financial statements, the provisions included in paragraphs 290.175 to 290.180 relating to valuation services are applicable. Where the valuation is performed for tax purposes only and the result of the valuation will not have a direct effect on the financial statements (that is, the financial statements are only affected through accounting entries related to tax), this would not generally create

threats to independence if such effect on the financial statements is immaterial or if the valuation is subject to external review by a tax authority or similar regulatory authority. If the valuation is not subject to such an external review and the effect is material to the financial statements, the existence and significance of any threat created will depend upon factors such as:

- The extent to which the valuation methodology is supported by tax law or regulation, other precedent or established practice and the degree of subjectivity inherent in the valuation.

- The reliability and extent of the underlying data.

The significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Using professionals who are not members of the audit team to perform the service;

- Having a professional review the audit work or the result of the tax service; or

- Obtaining pre-clearance or advice from the tax authorities.

Assistance in the Resolution of Tax Disputes

290.192 An advocacy or self-review threat may be created when the firm represents an audit client in the resolution of a tax dispute once the tax authorities have notified the client that they have rejected the client's arguments on a particular issue and either the tax authority or the client is referring the matter for determination in a formal proceeding, for example before a tribunal or court. The existence and significance of any threat will depend on factors such as:

- Whether the firm has provided the advice which is the subject of the tax dispute;

- The extent to which the outcome of the dispute will have a material effect on the financial statements on which the firm will express an opinion;

- The extent to which the matter is supported by tax law or regulation, other precedent, or established practice;

- Whether the proceedings are conducted in public; and

- The role management plays in the resolution of the dispute.

The significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Using professionals who are not members of the audit team to perform the service;

- Having a tax professional, who was not involved in providing the tax service, advise the audit team on the services and review the financial statement treatment; or

- Obtaining advice on the service from an external tax professional.

290.193 Where the taxation services involve acting as an advocate for an audit client before a public tribunal or court in the resolution of a tax matter and the amounts involved are material to the financial statements on which the firm will express an opinion, the advocacy threat created would be so significant that no safeguards could eliminate or reduce the threat to an acceptable level. Therefore, the firm shall not perform this type of service for an audit client. What constitutes a "public tribunal or court" shall be determined according to how tax proceedings are heard in the particular jurisdiction.

290.194 The firm is not, however, precluded from having a continuing advisory role (for example, responding to specific requests for information, providing factual accounts or testimony about the work performed or assisting the client in analyzing the tax issues) for the audit client in relation to the matter that is being heard before a public tribunal or court.

Internal Audit Services

General Provisions

290.195 The scope and objectives of internal audit activities vary widely and depend on the size and structure of the entity and the requirements of management and those charged with governance. Internal audit activities may include:

- Monitoring of internal control – reviewing controls, monitoring their operation and recommending improvements thereto;

- Examination of financial and operating information – reviewing the means used to identify, measure, classify and report financial and operating information, and specific inquiry into individual items including detailed testing of transactions, balances and procedures;

- Review of the economy, efficiency and effectiveness of operating activities including non-financial activities of an entity; and

- Review of compliance with laws, regulations and other external requirements, and with management policies and directives and other internal requirements.

290.195A A statutory auditor of an entity can not be it's internal auditor as it will not be possible for him to give an independent and objective opinion.

290. 195B The Council at its 281st Meeting held in 2008 decided that an internal auditor of an assessee cannot be appointed as his tax auditor.

~~**290.196 Internal audit services involve assisting the audit client in the performance of its internal audit activities. The provision of internal audit services to an audit client creates a self-review threat to independence if the firm uses the internal audit work in the course of a subsequent external audit. Performing a significant part of the client's internal audit activities increases the possibility that firm personnel providing internal audit services will assume a management responsibility. If the firm's personnel assume a management responsibility when providing internal audit services to an audit client, the threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, a firm's personnel shall not assume a management responsibility when providing internal audit services to an audit client.**~~

~~**290.197 Examples of internal audit services that involve assuming management responsibilities include:**~~

~~**(a) Setting internal audit policies or the strategic direction of internal audit activities;**~~

~~**(b) Directing and taking responsibility for the actions of the entity's internal audit employees;**~~

~~(c) Deciding which recommendations resulting from internal audit activities shall be implemented;~~

~~(d) Reporting the results of the internal audit activities to those charged with governance on behalf of management;~~

~~(e) Performing procedures that form part of the internal control, such as reviewing and approving changes to employee data access privileges;~~

~~(f) Taking responsibility for designing, implementing and maintaining internal control; and~~

~~(g) Performing outsourced internal audit services, comprising all or a substantial portion of the internal audit function, where the firm is responsible for determining the scope of the internal audit work and may have responsibility for one or more of the matters noted in (a) (f).~~

~~290.198 To avoid assuming a management responsibility, the firm shall only provide internal audit services to an audit client if it is satisfied that:~~

~~(a) The client designates an appropriate and competent resource, preferably within senior management, to be responsible at all times for internal audit activities and to acknowledge responsibility for designing, implementing, and maintaining internal control;~~

~~(b) The client's management or those charged with governance reviews, assesses and approves the scope, risk and frequency of the internal audit services;~~

~~(c) The client's management evaluates the adequacy of the internal audit services and the findings resulting from their performance;~~

~~(d) The client's management evaluates and determines which recommendations resulting from internal audit services to implement and manages the implementation process; and~~

~~(e) The client's management reports to those charged with governance the significant findings and recommendations resulting from the internal audit services.~~

~~**290.199 When a firm uses the work of an internal audit function, ISAs require the performance of procedures to evaluate the adequacy of that work. When a firm accepts an engagement to provide internal audit services to an audit client, and the results of those services will be used in conducting the external audit, a self-review threat is created because of the possibility that the audit team will use the results of the internal audit service without appropriately evaluating those results or exercising the same level of professional skepticism as would be exercised when the internal audit work is performed by individuals who are not members of the firm. The significance of the threat will depend on factors such as:**~~

~~**• The materiality of the related financial statement amounts;**~~

~~**• The risk of misstatement of the assertions related to those financial statement amounts; and**~~

~~**• The degree of reliance that will be placed on the internal audit service.**~~

~~**The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. An example of such a safeguard is using professionals who are not members of the audit team to perform the internal audit service.**~~

~~**Audit clients that are public interest entities**~~

~~**290.200 In the case of an audit client that is a public interest entity, a firm shall not provide internal audit services that relate to:**~~

~~**(a) A significant part of the internal controls over financial reporting;**~~

~~**(b) Financial accounting systems that generate information that is, separately or in the aggregate, significant to the client's accounting records or financial statements on which the firm will express an opinion; or**~~

~~**(c) Amounts or disclosures that are, separately or in the aggregate, material to the financial statements on which the firm will express an opinion.**~~

IT Systems Services

General Provisions

290.201 Services related to information technology (IT) systems include the design or implementation of hardware or software systems. The systems may aggregate source data, form part of the internal control over financial reporting or generate information that affects the accounting records or financial statements, or the systems may be unrelated to the audit client's accounting records, the internal control over financial reporting or financial statements. Providing systems services may create a self-review threat depending on the nature of the services and the IT systems.

290.202 The following IT systems services are deemed not to create a threat to independence as long as the firm's personnel do not assume a management responsibility:

(a) Design or implementation of IT systems that are unrelated to internal control over financial reporting;

(b) Design or implementation of IT systems that do not generate information forming a significant part of the accounting records or financial statements;

(c) Implementation of "off-the-shelf" accounting or financial information reporting software that was not developed by the firm if the customization required to meet the client's needs is not significant; and

(d) Evaluating and making recommendations with respect to a system designed, implemented or operated by another service provider or the client.

Audit clients that are not public interest entities

290.203 Providing services to an audit client that is not a public interest entity involving the design or implementation of IT systems that (a) form a significant part of the internal control over financial reporting or (b) generate information that is significant to the client's accounting records or financial statements on which the firm will express an opinion creates a self-review threat.

290.204 The self-review threat is too significant to permit such services unless appropriate safeguards are put in place ensuring that:

(a) The client acknowledges its responsibility for establishing and monitoring a system of internal controls;

(b) The client assigns the responsibility to make all management decisions with respect to the design and implementation of the hardware or software system to a competent employee, preferably within senior management;

(c) The client makes all management decisions with respect to the design and implementation process;

(d) The client evaluates the adequacy and results of the design and implementation of the system; and

(e) The client is responsible for operating the system (hardware or software) and for the data it uses or generates.

290.205 Depending on the degree of reliance that will be placed on the particular IT systems as part of the audit, a determination shall be made as to whether to provide such non-assurance services only with personnel who are not members of the audit team and who have different reporting lines within the firm. The significance of any remaining threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. An example of such a safeguard is having a professional accountant review the audit or non-assurance work.

Audit clients that are public interest entities

290.206 In the case of an audit client that is a public interest entity, a firm shall not provide services involving the design or implementation of IT systems that
(a) form a significant part of the internal control over financial reporting or

(b) generate information that is significant to the client's accounting records or financial statements on which the firm will express an opinion.

Litigation Support Services

290.207 Litigation support services may include activities such as acting as an expert witness, calculating estimated damages or other amounts that might become receivable or payable as the result of litigation or other legal dispute, and assistance with document management and retrieval. These services may create a self-review or advocacy threat.

290.208 If the firm provides a litigation support service to an audit client and the service involves estimating damages or other amounts that affect the financial statements on which the firm will express an opinion, the valuation service provisions included in paragraphs 290.175 to 290.180 shall be followed. In the case of other litigation support services, the significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.

Legal Services

290.209 For the purpose of this section, legal services are defined as any services for which the person providing the services must either be admitted to practice law before the courts of the jurisdiction in which such services are to be provided or have the required legal training to practice law. Such legal services may include, depending on the jurisdiction, a wide and diversified range of areas including both corporate and commercial services to clients, such as contract support, litigation, mergers and acquisition legal advice and support and assistance to clients' internal legal departments. Providing legal services to an entity that is an audit client may create both self-review and advocacy threats.

290.210 Legal services that support an audit client in executing a transaction (for example, contract support, legal advice, legal due diligence and restructuring) may create self-review threats. The existence and significance of any threat will depend on factors such as:

- The nature of the service;

- Whether the service is provided by a member of the audit team; and

- The materiality of any matter in relation to the client's financial statements.

The significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Using professionals who are not members of the audit team to perform the service; or

- Having a professional who was not involved in providing the legal services provide advice to the audit team on the service and review any financial statement treatment.

290.211 Acting in an advocacy role for an audit client in resolving a dispute or litigation when the amounts involved are material to the financial statements on which the firm will express an opinion would create advocacy and self-review threats so significant that no safeguards could reduce the threat to an acceptable level. Therefore, the firm shall not perform this type of service for an audit client.

290.212 When a firm is asked to act in an advocacy role for an audit client in resolving a dispute or litigation when the amounts involved are not material to the financial statements on which the firm will express an opinion, the firm shall evaluate the significance of any advocacy and self-review threats created and apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Using professionals who are not members of the audit team to perform the service; or

- Having a professional who was not involved in providing the legal services advise the audit team on the service and review any financial statement treatment.

290.213 The appointment of a partner or an employee of the firm as General Counsel for legal affairs of an audit client would create self-review and advocacy threats that are so significant that no safeguards could reduce the threats to an acceptable level. The position of General Counsel is generally a senior management position with broad responsibility for the legal affairs of a company, and consequently, no member of the firm shall accept such an appointment for an audit client.

Recruiting Services

General Provisions

290.214 Providing recruiting services to an audit client may create self-interest, familiarity or intimidation threats. The existence and significance of any threat will depend on factors such as:

- The nature of the requested assistance; and

- The role of the person to be recruited.

The significance of any threat created shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. In all cases, the firm shall not assume management responsibilities, including acting as a negotiator on the client's behalf, and the hiring decision shall be left to the client.

The firm may generally provide such services as reviewing the professional qualifications of a number of applicants and providing advice on their suitability for the post. In addition, the firm may interview candidates and advise on a candidate's competence for financial accounting, administrative or control positions.

Audit clients that are public interest entities

290.215 A firm shall not provide the following recruiting services to an audit client that is a public interest entity with respect to a director or officer of the entity or senior management in a position to exert significant influence over the preparation of the client's accounting records or the financial statements on which the firm will express an opinion:

- Searching for or seeking out candidates for such positions; and

- Undertaking reference checks of prospective candidates for such positions.

Corporate Finance Services

290.216 Providing corporate finance services such as:

- Assisting an audit client in developing corporate strategies;

- Identifying possible targets for the audit client to acquire;

- Advising on disposal transactions;

- Assisting finance raising transactions; and

- Providing structuring advice,

may create advocacy and self-review threats. The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Using professionals who are not members of the audit team to provide the services; or

- Having a professional who was not involved in providing the corporate finance service advise the audit team on the service and review the accounting treatment and any financial statement treatment.

290.217 Providing a corporate finance service, for example advice on the structuring of a corporate finance transaction or on financing arrangements that will directly affect amounts that will be reported in the financial statements on which the firm will provide an opinion may create a self-review threat. The existence and significance of any threat will depend on factors such as:

- The degree of subjectivity involved in determining the appropriate treatment for the outcome or consequences of the corporate finance advice in the financial statements;

- The extent to which the outcome of the corporate finance advice will directly affect amounts recorded in the financial statements and the extent to which the amounts are material to the financial statements; and

- Whether the effectiveness of the corporate finance advice depends on a particular accounting treatment or presentation in the financial statements and there is doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework.

The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Using professionals who are not members of the audit team to perform the service; or

- Having a professional who was not involved in providing the corporate finance service to the client advise the audit team on the service and review the accounting treatment and any financial statement treatment.

290.218 Where the effectiveness of corporate finance advice depends on a particular accounting treatment or presentation in the financial statements and:

(a) The audit team has reasonable doubt as to the appropriateness of the related accounting treatment or presentation under the relevant financial reporting framework; and

(b) The outcome or consequences of the corporate finance advice will have a material effect on the financial statements on which the firm will express an opinion.

The self-review threat would be so significant that no safeguards could reduce the threat to an acceptable level, in which case the corporate finance advice shall not be provided.

290.219 Providing corporate finance services involving promoting, dealing in, or underwriting an audit client's shares would create an advocacy or self-review threat that is so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, a firm shall not provide such services to an audit client.

Fees

Fees—Relative Size

290.220 When the total fees from an audit client represent a large proportion of the total fees of the firm expressing the audit opinion, the dependence on that client and concern about losing the client creates a self-interest or intimidation threat. The significance of the threat will depend on factors such as:

• The operating structure of the firm;

• Whether the firm is well established or new; and

• The significance of the client qualitatively and/or quantitatively to the firm.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

• Reducing the dependency on the client;

• External quality control reviews; or

• Consulting a third party, such as a professional regulatory body or a professional accountant, on key audit judgments.

290.221 A self-interest or intimidation threat is also created when the fees generated from an audit client represent a large proportion of the revenue from an individual partner's clients or a large proportion of the revenue of an individual office of the firm. The significance of the threat will depend upon factors such as:

- The significance of the client qualitatively and/or quantitatively to the partner or office; and

- The extent to which the remuneration of the partner, or the partners in the office, is dependent upon the fees generated from the client.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.
Examples of such safeguards include:

- Reducing the dependency on the audit client;

- Having a professional accountant review the work or otherwise advise as necessary; or

- Regular independent internal or external quality reviews of the engagement.

Audit Clients that are Public Interest Entities

290.222 Where an audit client is a public interest entity and, for two consecutive years, the total fees from the client and its related entities (subject to the considerations in paragraph 290.27) represent more than 15% of the total fees received by the firm expressing the opinion on the financial statements of the client, the firm shall disclose to those charged with governance of the audit client the fact that the total of such fees represents more than 15% of the total fees received by the firm, and discuss which of the safeguards below it will apply to reduce the threat to an acceptable level, and apply the selected safeguard:

- Prior to the issuance of the audit opinion on the second year's financial statements, a professional accountant, who is not a member of the firm expressing the opinion on the financial statements, performs an engagement quality control review of that engagement or a professional regulatory body performs a review of that engagement that is equivalent to an engagement quality control review ("a pre-issuance review"); or

- After the audit opinion on the second year's financial statements has been issued, and before the issuance of the audit opinion on the third year's financial statements, a professional accountant, who is not a member of the firm expressing the opinion on the financial statements, or a professional regulatory body performs

a review of the second year's audit that is equivalent to an engagement quality control review ("a post-issuance review").

When the total fees significantly exceed 15%, the firm shall determine whether the significance of the threat is such that a post-issuance review would not reduce the threat to an acceptable level and, therefore, a preissuance review is required. In such circumstances a pre-issuance review shall be performed.

Thereafter, when the fees continue to exceed 15% each year, the disclosure to and discussion with those charged with governance shall occur and one of the above safeguards shall be applied. If the fees significantly exceed 15%, the firm shall determine whether the significance of the threat is such that a post-issuance review would not reduce the threat to an acceptable level and, therefore, a pre-issuance review is required. In such circumstances a pre-issuance review shall be performed.

Fees—Overdue

290.223 A self-interest threat may be created if fees due from an audit client remain unpaid for a long time, especially if a significant part is not paid before the issue of the audit report for the following year. Generally the firm is expected to require payment of such fees before such audit report is issued. If fees remain unpaid after the report has been issued, the existence and significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. An example of such a safeguard is having an additional professional accountant who did not take part in the audit engagement provide advice or review the work performed. The firm shall determine whether the overdue fees might be regarded as being equivalent to a loan to the client and whether, because of the significance of the overdue fees, it is appropriate for the firm to be reappointed or continue the audit engagement.

Contingent Fees

290. 223A The fees which are based on a percentage of profits or which are contingent upon the findings, or results of such work, is not permissible except in cases which are permitted under Regulation 192 of The Chartered Accountants Regulations, 1988, as under:-

(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.

290.224 Contingent fees are fees calculated on a predetermined basis relating to the outcome of a transaction or the result of the services performed by the firm. For the purposes of this section, a fee is not regarded as being contingent if established by a court or other public authority.

~~**290.225 A contingent fee charged directly or indirectly, for example through an intermediary, by a firm in respect of an audit engagement creates a self-interest threat that is so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, a firm shall not enter into any such fee arrangement.**~~

~~**290.226 A contingent fee charged directly or indirectly, for example through an intermediary, by a firm in respect of a non-assurance service provided to an audit client may also create a self-interest threat. The threat created would be so significant that no safeguards could reduce the threat to an acceptable level if:**~~

~~**(a) The fee is charged by the firm expressing the opinion on the financial statements and the fee is material or expected to be material to that firm;**~~

~~**(b) The fee is charged by a network firm that participates in a significant part of the audit and the fee is material or expected to be material to that firm; or**~~

~~**(c) The outcome of the non-assurance service, and therefore the amount of the fee, is dependent on a future or contemporary judgment related to the audit of a material amount in the financial statements.**~~

~~**Accordingly, such arrangements shall not be accepted.**~~

~~**290.227 For other contingent fee arrangements charged by a firm for a non-assurance service to an audit client, the existence and significance of any threats will depend on factors such as:**~~

~~**• The range of possible fee amounts;**~~

~~• Whether an appropriate authority determines the outcome of the matter upon which the contingent fee will be determined;~~

~~• The nature of the service; and~~

~~• The effect of the event or transaction on the financial statements.~~

~~The significance of any threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:~~

~~• Having a professional accountant review the relevant audit work or otherwise advise as necessary; or~~

~~• Using professionals who are not members of the audit team to perform the non-assurance service.~~

Compensation and Evaluation Policies

290.228 A self-interest threat is created when a member of the audit team is evaluated on or compensated for selling non-assurance services to that audit client. The significance of the threat will depend on:

- The proportion of the individual's compensation or performance evaluation that is based on the sale of such services;
- The role of the individual on the audit team; and
- Whether promotion decisions are influenced by the sale of such services.

The significance of the threat shall be evaluated and, if the threat is not at an acceptable level, the firm shall either revise the compensation plan or evaluation process for that individual or apply safeguards to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Removing such members from the audit team; or
- Having a professional accountant review the work of the member of the audit team.

290.229 A key audit partner shall not be evaluated on or compensated based on that partner's success in selling non-assurance services to the partner's audit client. This is not intended to prohibit normal profit-sharing arrangements between partners of a firm.

Gifts and Hospitality

290.230 Accepting gifts or hospitality from an audit client may create self-interest and familiarity threats. If a firm or a member of the audit team accepts gifts or hospitality, unless the value is trivial and inconsequential, the threats created would be so significant that no safeguards could reduce the threats to an acceptable level. Consequently, a firm or a member of the audit team shall not accept such gifts or hospitality.

Actual or Threatened Litigation

290.231 When litigation takes place, or appears likely, between the firm or a member of the audit team and the audit client, self-interest and intimidation threats are created. The relationship between client management and the members of the audit team must be characterized by complete candor and full disclosure regarding all aspects of a client's business operations. When the firm and the client's management are placed in adversarial positions by actual or threatened litigation, affecting management's willingness to make complete disclosures, self-interest and intimidation threats are created. The significance of the threats created will depend on such factors as:

- The materiality of the litigation; and
- Whether the litigation relates to a prior audit engagement.

The significance of the threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- If the litigation involves a member of the audit team, removing that individual from the audit team; or
- Having a professional review the work performed.

If such safeguards do not reduce the threats to an acceptable level, the only appropriate action is to withdraw from, or decline, the audit engagement.

~~Paragraphs 290.232 to 290.499 are intentionally left blank.~~

Reports that Include a Restriction on Use and Distribution

Introduction

290.500 The independence requirements in Section 290 apply to all audit engagements. However, in certain circumstances involving audit engagements where the report includes a restriction on use and distribution, and provided the conditions described in paragraphs 290.501 to 290.502 are met, the independence requirements in this section may be modified as provided in paragraphs 290.505 to 290.514. These paragraphs are only applicable to an audit engagement on special purpose financial statements (a) that is intended to provide a conclusion in positive or negative form that the financial statements are prepared in all material respects, in accordance with the applicable financial reporting framework, including, in the case of a fair presentation framework, that the financial statements give a true and fair view or are presented fairly, in all material respects, in accordance with the applicable financial reporting framework, and (b) where the audit report includes a restriction on use and distribution. The modifications are not permitted in the case of an audit of financial statements required by law or regulation.

290.501 The modifications to the requirements of Section 290 are permitted if the intended users of the report (a) are knowledgeable as to the purpose and limitations of the report, and (b) explicitly agree to the application of the modified independence requirements. Knowledge as to the purpose and limitations of the report may be obtained by the intended users through their participation, either directly or indirectly through their representative who has the authority to act for the intended users, in establishing the nature and scope of the engagement. Such participation enhances the ability of the firm to communicate with intended users about independence matters, including the circumstances that are relevant to the evaluation of the threats to independence and the applicable safeguards necessary to eliminate the threats or reduce them to an acceptable level, and to obtain their agreement to the modified independence requirements that are to be applied.

290.502 The firm shall communicate (for example, in an engagement letter) with the intended users regarding the independence requirements that are to be applied with respect to the provision of the audit engagement. Where the intended users are a class of users (for example, lenders in a syndicated loan arrangement) who are not specifically identifiable by name at the time the engagement terms are established, such users shall subsequently be made aware of the independence requirements agreed to by

the representative (for example, by the representative making the firm's engagement letter available to all users).

290.503 If the firm also issues an audit report that does not include a restriction on use and distribution for the same client, the provisions of paragraphs 290.500 to 290.514 do not change the requirement to apply the provisions of paragraphs 290.1 to 290.232 to that audit engagement.

290.504 The modifications to the requirements of Section 290 that are permitted in the circumstances set out above are described in paragraphs 290.505 to 290.514.

Compliance in all other respects with the provisions of Section 290 is required.

Public Interest Entities

290.505 When the conditions set out in paragraphs 290.500 to 290.502 are met, it is not necessary to apply the additional requirements in paragraphs 290.100 to

290.232 that apply to audit engagements for public interest entities.

Related Entities

290.506 When the conditions set out in paragraphs 290.500 to 290.502 are met, references to audit client do not include its related entities. However, when the audit team knows or has reason to believe that a relationship or circumstance involving a related entity of the client is relevant to the evaluation of the firm's independence of the client, the audit team shall include that related entity when identifying and evaluating threats to independence and applying appropriate safeguards.

Networks and Network Firms

290.507 When the conditions set out in paragraphs 290.500 to 290.502 are met, reference to the firm does not include network firms. However, when the firm knows or has reason to believe that threats are created by any interests and relationships of a network firm, they shall be included in the evaluation of threats to independence.

Financial Interests, Loans and Guarantees, Close Business Relationships and

Family and Personal Relationships

290.508 When the conditions set out in paragraphs 290.500 to 290.502 are met, the relevant provisions set out in paragraphs 290.102 to 290.145 apply only to the members of the engagement team, their immediate family members and close family members.

290.509 In addition, a determination shall be made as to whether threats to independence are created by interests and relationships, as described in paragraphs 290.102 to 290.145, between the audit client and the following members of the audit team:

(a) Those who provide consultation regarding technical or industry specific issues, transactions or events; and

(b) Those who provide quality control for the engagement, including those who perform the engagement quality control review.

An evaluation shall be made of the significance of any threats that the engagement team has reason to believe are created by interests and relationships between the audit client and others within the firm who can directly influence the outcome of the audit engagement, including those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the audit engagement partner in connection with the performance of the audit engagement (including those at all successively senior levels above the engagement partner through to the individual who is the firm's Senior or Managing Partner (Chief Executive or equivalent))

290.510 An evaluation shall also be made of the significance of any threats that the engagement team has reason to believe are created by financial interests in the audit client held by individuals, as described in paragraphs 290.108 to 290.111 and paragraphs 290.113 to 290.115.

290.511 Where a threat to independence is not at an acceptable level, safeguards shall be applied to eliminate the threat or reduce it to an acceptable level.

290.512 In applying the provisions set out in paragraphs 290.106 and 290.115 to interests of the firm, if the firm has a material financial interest, whether direct or indirect, in the audit client, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, the firm shall not have such a financial interest.

Employment with an Audit Client

290.513 An evaluation shall be made of the significance of any threats from any employment relationships as described in paragraphs 290.134 to 290.138.

Where a threat exists that is not at an acceptable level, safeguards shall be applied to eliminate the threat or reduce it to an acceptable level. Examples of safeguards that might be appropriate include those set out in paragraph 290.136.

Provision of Non-Assurance Services

290.514 If the firm conducts an engagement to issue a restricted use and distribution report for an audit client and provides a non-assurance service to the audit client, the provisions of paragraphs 290.156 to 290.232 shall be complied with, subject to paragraphs 290.504 to 290.507.

SECTION 291
INDEPENDENCE—OTHER ASSURANCE ENGAGEMENTS

Structure of Section

291.1 This section addresses independence requirements for assurance engagements that are not audit or review engagements. Independence requirements for audit and review engagements are addressed in Section 290. If the assurance client is also an audit or review client, the requirements in Section 290 also apply to the firm, network firms and members of the audit or review team. In certain circumstances involving assurance engagements where the assurance report includes a restriction on use and distribution and provided certain conditions are met, the independence requirements in this section may be modified as provided in paragraphs 291.21 to 291.27.

291.2 Assurance engagements are designed to enhance intended users' degree of confidence about the outcome of the evaluation or measurement of a subject matter against criteria. The ~~**International**~~ Framework for Assurance Engagements (the Assurance Framework) issued by the ~~**International**~~ Auditing and Assurance Standards Board describes the elements and objectives of an assurance engagement and identifies engagements to which ~~**International**~~ Standards on Assurance Engagements (~~**I**~~SAEs) apply. For a description of the elements and objectives of an assurance engagement, refer to the Assurance Framework.

291.3 Compliance with the fundamental principle of objectivity requires being independent of assurance clients. In the case of assurance engagements, it is in the public interest and, therefore, required by this ~~**Code of Ethics**~~ **Framework,** that members of assurance teams and firms be independent of assurance clients and that any threats that the firm has reason to believe are created by a network firm's interests and relationships be evaluated. In addition, when the assurance team knows or has reason to believe that a relationship or circumstance involving a related entity of the assurance client is relevant to the evaluation of the firm's independence from the client, the assurance team shall include that related entity when identifying and evaluating threats to independence and applying appropriate safeguards.

A ~~Conceptual~~ Framework ~~Approach~~ to Independence

291.4 The objective of this section is to assist firms and members of assurance teams in applying the ~~**conceptual**~~ framework ~~**approach**~~ described below achieving and maintaining independence.

291.5 Independence comprises:

(a) Independence of Mind

The state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgment, thereby allowing an individual to act

with integrity and exercise objectivity and professional skepticism.

(b) Independence in Appearance

The avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that a firm's, or a member of the assurance team's, integrity, objectivity or professional skepticism has been compromised.

291.6 The ~~**conceptual**~~ framework ~~**approach**~~ shall be applied by professional accountants to:

(a) Identify threats to independence;

(b) Evaluate the significance of the threats identified; and

(c) Apply safeguards when necessary to eliminate the threats or reduce them to an acceptable level.

When the professional accountant determines that appropriate safeguards are not available or cannot be applied to eliminate the threats or reduce them to an acceptable level, the professional accountant shall eliminate the circumstance or relationship creating the threats or decline or terminate the assurance engagement.

A professional accountant shall use professional judgment in applying this conceptual framework.

291.7 Many different circumstances, or combinations of circumstances, may be relevant in assessing threats to independence. It is impossible to define every situation that creates threats to independence and to specify the appropriate action. Therefore, this ~~**Code**~~ **Framework** establishes a conceptual framework that requires firms and members of assurance teams to identify, evaluate, and address threats to independence. The ~~**conceptual**~~ framework ~~**approach**~~ assists professional accountants in public practice in complying with the ethical requirements in this ~~**Code**~~ **Framework**. It accommodates many variations in circumstances that create threats to independence and can deter a professional accountant from concluding that a situation is permitted if it is not specifically prohibited.

291.8 Paragraphs 291.100 and onwards describe how the ~~**conceptual**~~ framework ~~**approach**~~ to independence is to be applied. These paragraphs do not address all the circumstances and relationships that create or may create threats to independence.

291.9 In deciding whether to accept or continue an engagement, or whether a particular individual may be a member of the assurance team, a firm shall identify and evaluate any threats to independence. If the threats are not at an acceptable level, and the decision is whether to accept an engagement or include a particular individual on the assurance team, the firm shall determine whether safeguards are available to eliminate the threats or reduce them to an acceptable level. If the decision is whether to continue an engagement, the firm shall determine whether any existing safeguards will continue to be effective to eliminate the threats or reduce them to an acceptable level or whether other safeguards will need to be applied or whether the engagement needs to be terminated. Whenever new information about a threat comes to the attention of the firm during the engagement, the firm shall evaluate the significance of the threat in accordance with the ~~**conceptual**~~ framework ~~**approach**~~.

291.10 Throughout this section, reference is made to the significance of threats to independence. In evaluating the significance of a threat, qualitative as well as quantitative factors shall be taken into account.

291.11 This section does not, in most cases, prescribe the specific responsibility of individuals within the firm for actions related to independence because responsibility may differ depending on the size, structure and organization of a firm. The firm is required by ISQCs to establish policies and procedures designed to provide it with reasonable assurance that independence is maintained when required by relevant ethical standards.

Assurance Engagements

291.12 As further explained in the Assurance Framework, in an assurance engagement the professional accountant in public practice expresses a conclusion designed to enhance the degree of confidence of the intended users (other than the responsible party) about the outcome of the evaluation or measurement of a subject matter against criteria.

291.13 The outcome of the evaluation or measurement of a subject matter is the information that results from applying the criteria to the subject matter. The term "subject matter information" is used to mean the outcome of the evaluation or measurement of a subject matter. ~~**For example, the Framework states that an assertion about the effectiveness of internal control (subject matter information) results from applying a framework for evaluating the effectiveness of internal control, such as**~~

~~**COSO or CoCo[2] (criteria), to internal control, a process (subject matter).**~~

291.14 Assurance engagements may be assertion-based or direct reporting. In either case, they involve three separate parties: a professional accountant in public practice, a responsible party and intended users.

291.15 In an assertion-based assurance engagement, the evaluation or measurement of the subject matter is performed by the responsible party, and the subject matter information is in the form of an assertion by the responsible party that is made available to the intended users.

291.16 In a direct reporting assurance engagement, the professional accountant in public practice either directly performs the evaluation or measurement of the subject matter, or obtains a representation from the responsible party that has performed the evaluation or measurement that is not available to the intended users. The subject matter information is provided to the intended users in the assurance report.

Assertion-Based Assurance Engagements

291.17 In an assertion-based assurance engagement, the members of the assurance team and the firm shall be independent of the assurance client (the party responsible for the subject matter information, and which may be responsible for the subject matter). Such independence requirements prohibit certain relationships between members of the assurance team and (a) directors or officers, and (b) individuals at the client in a position to exert significant influence over the subject matter information. Also, a determination shall be made as to whether threats to independence are created by relationships with individuals at the client in a position to exert significant influence over the subject matter of the engagement. An evaluation shall be made of the significance of any threats that the firm has reason to believe are created by network firm[3] interests and relationships.

291.18 In the majority of assertion-based assurance engagements, the responsible party is responsible for both the subject matter information and the subject matter. However, in some engagements, the responsible party may not be responsible for the subject matter. For example, when a professional accountant in public practice is engaged to perform an assurance engagement

~~[2] "Guidance on Assessing Control – The CoCo Principles" Criteria of Control Board, The Canadian Institute of Chartered Accountants.~~

[3] ~~See paragraphs 290.13 to 290.24 for guidance on what constitutes a network firm.~~

regarding a report that an environmental consultant has prepared about a company's sustainability practices for distribution to intended users, the environmental consultant is the responsible party for the subject matter information but the company is responsible for the subject matter (the sustainability practices).

291.19 In assertion-based assurance engagements where the responsible party is responsible for the subject matter information but not the subject matter, the members of the assurance team and the firm shall be independent of the party responsible for the subject matter information (the assurance client). In addition, an evaluation shall be made of any threats the firm has reason to believe are created by interests and relationships between a member of the assurance team, the firm, a network firm and the party responsible for the subject matter.

Direct Reporting Assurance Engagements

291.20 In a direct reporting assurance engagement, the members of the assurance team and the firm shall be independent of the assurance client (the party responsible for the subject matter). An evaluation shall also be made of any threats the firm has reason to believe are created by network firm interests and relationships.

Reports that Include a Restriction on Use and Distribution

291.21 In certain circumstances where the assurance report includes a restriction on use and distribution, and provided the conditions in this paragraph and in paragraph 291.22 are met, the independence requirements in this section may be modified. The modifications to the requirements of Section 291 are permitted if the intended users of the report (a) are knowledgeable as to the purpose, subject matter information and limitations of the report and (b) explicitly agree to the application of the modified independence requirements. Knowledge as to the purpose, subject matter information, and limitations of the report may be obtained by the intended users through their participation, either directly or indirectly through their representative who has the authority to act for the intended users, in establishing the nature and scope of the engagement. Such participation enhances the ability of the firm to communicate with intended users about independence matters, including the circumstances that are relevant to the evaluation of the threats to independence and the applicable safeguards necessary to eliminate the threats or reduce them to an acceptable level, and to obtain their agreement to the modified independence requirements that are to be applied.

291.22 The firm shall communicate (for example, in an engagement letter) with the intended users regarding the independence requirements that are to be applied with respect to the provision of

the assurance engagement. Where the intended users are a class of users (for example, lenders in a syndicated loan arrangement) who are not specifically identifiable by name at the time the engagement terms are established, such users shall subsequently be made aware of the independence requirements agreed to by the representative (for example, by the representative making the firm's engagement letter available to all users).

291.23 If the firm also issues an assurance report that does not include a restriction on use and distribution for the same client, the provisions of paragraphs 291.25 to 291.27 do not change the requirement to apply the provisions of paragraphs 291.1 to 291.159 to that assurance engagement. If the firm also issues an audit report, whether or not it includes a restriction on use and distribution, for the same client, the provisions of Section 290 shall apply to that audit engagement.

291.24 The modifications to the requirements of Section 291 that are permitted in the circumstances set out above are described in paragraphs 291.25 to 291.27. Compliance in all other respects with the provisions of Section 291 is required.

291.25 When the conditions set out in paragraphs 291.21 and 291.22 are met, the relevant provisions set out in paragraphs 291.104 to 291.134 apply to all members of the engagement team, and their immediate and close family members. In addition, a determination shall be made as to whether threats to independence are created by interests and relationships between the assurance client and the following other members of the assurance team:

(a) Those who provide consultation regarding technical or industry specific issues, transactions or events; and

(b) Those who provide quality control for the engagement, including those who perform the engagement quality control review.

An evaluation shall also be made, by reference to the provisions set out in paragraphs 291.104 to 291.134, of any threats that the engagement team has reason to believe are created by interests and relationships between the assurance client and others within the firm who can directly influence the outcome of the assurance engagement, including those who recommend the compensation, or who provide direct supervisory, management or other oversight, of the assurance engagement partner in connection with the performance of the assurance engagement.

291.26 Even though the conditions set out in paragraphs 291.21 to 291.22 are met, if the firm had a material financial interest, whether direct or indirect, in the assurance client, the self-interest

threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, the firm shall not have such a financial interest. In addition, the firm shall comply with the other applicable provisions of this section described in paragraphs 291.113 to 291.159.

291.27 An evaluation shall also be made of any threats that the firm has reason to believe are created by network firm interests and relationships.

Multiple Responsible Parties

291.28 In some assurance engagements, whether assertion-based or direct reporting, there might be several responsible parties. In determining whether it is necessary to apply the provisions in this section to each responsible party in such engagements, the firm may take into account whether an interest or relationship between the firm, or a member of the assurance team, and a particular responsible party would create a threat to independence that is not trivial and inconsequential in the context of the subject matter information. This will take into account factors such as:

- The materiality of the subject matter information (or of the subject matter) for which the particular responsible party is responsible; and
- The degree of public interest associated with the engagement.

If the firm determines that the threat to independence created by any such interest or relationship with a particular responsible party would be trivial and inconsequential, it may not be necessary to apply all of the provisions of this section to that responsible party.

Documentation

291.29 Documentation provides evidence of the professional accountant's judgments in forming conclusions regarding compliance with independence requirements. The absence of documentation is not a determinant of whether a firm considered a particular matter nor whether it is independent.

The professional accountant shall document conclusions regarding compliance with independence requirements, and the substance of any relevant discussions that support those conclusions. Accordingly:

(a) When safeguards are required to reduce a threat to an acceptable level, the professional accountant shall document the nature of the threat and the safeguards in place or applied that reduce the threat to an acceptable level; and

(b) When a threat required significant analysis to determine whether safeguards were necessary and the professional accountant concluded that they were not because the threat was already at an acceptable level, the professional accountant shall document the nature of the threat and the rationale for the conclusion.

Engagement Period

291.30 Independence from the assurance client is required both during the engagement period and the period covered by the subject matter information. The engagement period starts when the assurance team begins to perform assurance services with respect to the particular engagement.

The engagement period ends when the assurance report is issued. When the engagement is of a recurring nature, it ends at the later of the notification by either party that the professional relationship has terminated or the issuance of the final assurance report.

291.31 When an entity becomes an assurance client during or after the period covered by the subject matter information on which the firm will express a conclusion, the firm shall determine whether any threats to independence are created by:

(a) Financial or business relationships with the assurance client during or after the period covered by the subject matter information but before accepting the assurance engagement; or

(b) Previous services provided to the assurance client.

291.32 If a non-assurance service was provided to the assurance client during or after the period covered by the subject matter information but before the assurance team begins to perform assurance services and the service would not be permitted during the period of the assurance engagement, the firm shall evaluate any threat to independence created by the service. If any threat is not at an acceptable level, the assurance engagement shall only be accepted if safeguards are applied to eliminate any threats or reduce them to an acceptable level. Examples of such safeguards include:

- Not including personnel who provided the non-assurance service as members of the assurance team;
- Having a professional accountant review the assurance and non-assurance work as appropriate; or
- Engaging another firm to evaluate the results of the non-assurance service or having another firm re-perform the non-

assurance service to the extent necessary to enable it to take responsibility for the service.

However, if the non-assurance service has not been completed and it is not practical to complete or terminate the service before the commencement of professional services in connection with the assurance engagement, the firm shall only accept the assurance engagement if it is satisfied:

(a) The non-assurance service will be completed within a short period of time; or

(b) The client has arrangements in place to transition the service to another provider within a short period of time.

During the service period, safeguards shall be applied when necessary. In addition, the matter shall be discussed with those charged with governance.

Breach of a Provision of this Section

291.33 When a breach of a provision of this section is identified, the firm shall terminate, suspend or eliminate the interest or relationship that caused the breach, and shall evaluate the significance of that breach and its impact on the firm's objectivity and ability to issue an assurance report. The firm shall determine whether action can be taken that satisfactorily addresses the consequences of the breach. In making this determination, the firm shall exercise professional judgment and take into account whether a reasonable and informed third party, weighing the significance of the breach, the action to be taken and all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude that the firm's objectivity would be compromised such that the firm is unable to issue an assurance report.

291.34 If the firm determines that action cannot be taken to satisfactorily address the consequences of the breach, the firm shall, as soon as possible, inform the party that engaged the firm or those charged with governance, as appropriate, and take the steps necessary to terminate the assurance engagement in compliance with any applicable legal or regulatory requirements relevant to terminating the assurance engagement.

291.35 If the firm determines that action can be taken to satisfactorily address the consequences of the breach, the firm shall discuss the breach and the action it has taken or proposes to take with the party that engaged the firm or

those charged with governance, as appropriate. The firm shall discuss the breach and the proposed action on a timely basis, taking into account the circumstances of the engagement and the breach.

291.36 If the party that engaged the firm or those charged with governance, as appropriate, do not concur that the action satisfactorily addresses the consequences of the breach, the firm shall take the steps necessary to terminate the assurance engagement in compliance with any applicable legal or regulatory requirements relevant to terminating the assurance engagement.

291.37 The firm shall document the breach, the actions taken, key decisions made and all the matters discussed with the party that engaged the firm or those charged with governance. When the firm continues with the assurance engagement, the matters to be documented shall also include the conclusion that, in the firm's professional judgment, objectivity has not been compromised and the rationale for why the action taken satisfactorily addressed the consequences of the breach such that the firm could issue an assurance report.

Application of the ~~Conceptual~~ Framework ~~Approach~~ to Independence

291.100 Paragraphs 291.104 to 291.159 describe specific circumstances and relationships that create or may create threats to independence. The paragraphs describe the potential threats and the types of safeguards that may be appropriate to eliminate the threats or reduce them to an acceptable level and identify certain situations where no safeguards could reduce the threats to an acceptable level. The paragraphs do not describe all of the circumstances and relationships that create or may create a threat to independence. The firm and the members of the assurance team shall evaluate the implications of similar, but different, circumstances and relationships and determine whether safeguards, including the safeguards in paragraphs 200.11 to 200.14 can be applied when necessary to eliminate the threats to independence or reduce them to an acceptable level.

291.101 The paragraphs demonstrate how the **~~conceptual~~** framework **~~approach~~** applies to assurance engagements and are to be read in conjunction with paragraph 291.28 which explains that, in the majority of assurance engagements, there is one responsible party and that responsible party is the assurance client. However, in some assurance engagements there are two or more responsible parties. In such circumstances, an evaluation shall be made of any

threats the firm has reason to believe are created by interests and relationships between a member of the assurance team, the firm, a network firm and the party responsible for the subject matter. For assurance reports that include a restriction on use and distribution, the paragraphs are to be read in the context of paragraphs 291.21 to 291.27.

291.102 Interpretation 2005–01 provides further guidance on applying the independence requirements contained in this section to assurance engagements.

291.103 Paragraphs 291.104 to 291.120 contain references to the materiality of a financial interest, loan, or guarantee, or the significance of a business relationship. For the purpose of determining whether such an interest is material to an individual, the combined net worth of the individual and the individual's immediate family members may be taken into account.

Financial Interests

291.104 Holding a financial interest in an assurance client may create a self-interest threat. The existence and significance of any threat created depends on:

(a) The role of the person holding the financial interest,

(b) Whether the financial interest is direct or indirect, and

(c) The materiality of the financial interest.

291.105 Financial interests may be held through an intermediary (for example, a collective investment vehicle, estate or trust). The determination of whether such financial interests are direct or indirect will depend upon whether the beneficial owner has control over the investment vehicle or the ability to influence its investment decisions. When control over the investment vehicle or the ability to influence investment decisions exists, this ~~**Code**~~ **Framework** defines that financial interest to be a direct financial interest. Conversely, when the beneficial owner of the financial interest has no control over the investment vehicle or ability to influence its investment decisions, this ~~**Code**~~ **Framework** defines that financial interest to be an indirect financial interest.

291.106 If a member of the assurance team, a member of that individual's immediate family, or a firm has a direct financial interest or a material indirect financial interest in the assurance

client, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Therefore, none of the following shall have a direct financial interest or a material indirect financial interest in the client: a member of the assurance team; a member of that individual's immediate family member; or the firm.

291.107 When a member of the assurance team has a close family member who the assurance team member knows has a direct financial interest or a material indirect financial interest in the assurance client, a self-interest threat is created. The significance of the threat will depend on factors such as

- The nature of the relationship between the member of the assurance team and the close family member; and

- The materiality of the financial interest to the close family member.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.

Examples of such safeguards include:

- The close family member disposing, as soon as practicable, of all of the financial interest or disposing of a sufficient portion of an indirect financial interest so that the remaining interest is no longer material;

- Having a professional accountant review the work of the member of the assurance team; or

- Removing the individual from the assurance team.

291.108 If a member of the assurance team, a member of that individual's immediate family, or a firm has a direct or material indirect financial interest in an entity that has a controlling interest in the assurance client, and the client is material to the entity, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Therefore, none of the following shall have such a financial interest: a member of the assurance team; a member of that individual's immediate family; and the firm.

291.109 The holding by a firm or a member of the assurance team, or a member of that individual's immediate family, of a direct financial interest or a material indirect financial interest in the assurance

client as a trustee creates a self-interest threat. Such an interest shall not be held unless:

(a) Neither the trustee, nor an immediate family member of the trustee, nor the firm are beneficiaries of the trust;

(b) The interest in the assurance client held by the trust is not material to the trust;

(c) The trust is not able to exercise significant influence over the assurance client; and

(d) The trustee, an immediate family member of the trustee, or the firm cannot significantly influence any investment decision involving a financial interest in the assurance client.

291.110 Members of the assurance team shall determine whether a self-interest threat is created by any known financial interests in the assurance client held by other individuals including:

- Partners and professional employees of the firm, other than those referred to above, or their immediate family members; and
- Individuals with a close personal relationship with a member of the assurance team.

Whether these interests create a self-interest threat will depend on factors such as:

- The firm’s organizational, operating and reporting structure; and
- The nature of the relationship between the individual and the member of the assurance team.

The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.

Examples of such safeguards include:

- Removing the member of the assurance team with the personal relationship from the assurance team;
- Excluding the member of the assurance team from any significant decision-making concerning the assurance engagement; or
- Having a professional accountant review the work of the member of the assurance team.

291.111 If a firm, a member of the assurance team, or an immediate family member of the individual, receives a direct financial interest or a material indirect financial interest in an assurance client, for example, by way of an inheritance, gift or as a result of a merger, and such interest would not be permitted to be held under this section, then:

(a) If the interest is received by the firm, the financial interest shall be disposed of immediately, or a sufficient amount of an indirect financial interest shall be disposed of so that the remaining interest is no longer material, or

(b) If the interest is received by a member of the assurance team, or a member of that individual's immediate family, the individual who received the financial interest shall immediately dispose of the financial interest, or dispose of a sufficient amount of an indirect financial interest so that the remaining interest is no longer material.

291.112 When an inadvertent violation of this section as it relates to a financial interest in an assurance client occurs, it is deemed not to compromise independence if:

(a) The firm has established policies and procedures that require prompt notification to the firm of any breaches resulting from the purchase, inheritance or other acquisition of a financial interest in the assurance client;

(b) The actions taken in paragraph 291.111(a)–(b) are taken as applicable; and

(c) The firm applies other safeguards when necessary to reduce any remaining threat to an acceptable level. Examples of such safeguards include:

- Having a professional accountant review the work of the member of the assurance team; or
- Excluding the individual from any significant decision-making concerning the assurance engagement.

The firm shall determine whether to discuss the matter with those charged with governance.

Loans and Guarantees

291.113 A loan, or a guarantee of a loan, to a member of the assurance team, or a member of that individual's immediate family, or the firm from an assurance client that is a bank or a similar institution, may create a threat to independence. If the loan or guarantee is

not made under normal lending procedures, terms and conditions, a self-interest threat would be created that would be so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, neither a member of the assurance team, a member of that individual's immediate family, nor a firm shall accept such a loan or guarantee.

291.114 If a loan to a firm from an assurance client that is a bank or similar institution is made **within the terms of statutory provisions and guidelines/ guidance notes issued by the Council from time to time** ~~**under normal lending procedures, terms and conditions**~~ and it is material to the assurance client or firm receiving the loan, it may be possible to apply safeguards to reduce the self-interest threat to an acceptable level. An example of such a safeguard is having the work reviewed by a professional accountant from a network firm that is neither involved with the assurance engagement nor received the loan.

291.115 **Subject to statutory provisions and the RBI Guidelines issued from time to time in regard to the Banking Companies , a** ~~**A**~~ loan, or a guarantee of a loan, from an assurance client that is a bank or a similar institution to a member of the assurance team, or a member of that individual's immediate family, does not create a threat to independence if the loan or guarantee is made under normal lending procedures, terms and conditions. Examples of such loans include home mortgages, bank overdrafts, car loans and credit card balances.

291.116 If the firm or a member of the assurance team, or a member of that individual's immediate family, accepts a loan from, or has a borrowing guaranteed by, an assurance client that is not a bank or similar institution, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level, unless **the loan or guarantee is within the limits specified by the statute and guidelines/guidance notes issued by the Council from time to time and** the loan or guarantee is immaterial to both the firm, or the member of the assurance team and the immediate family member, and the client.

291.117 Similarly, if the firm, or a member of the assurance team, or a member of that individual's immediate family, makes or guarantees a loan to an assurance client, the self-interest threat created would be so significant that no safeguards could reduce the threat to an acceptable level, unless the loan or guarantee is immaterial to both the firm, or the member of the assurance team and the immediate family member, and the client.

291.118 **Subject to the provisions of Council General Guidelines, if ~~If~~** a firm or a member of the assurance team, or a member of that individual's immediate family, has deposits or a brokerage account with an assurance client that is a bank, broker, or similar institution, a threat to independence is not created if the deposit or account is held under normal commercial terms.

Business Relationships

291.119 A close business relationship between a firm, or a member of the assurance team, or a member of that individual's immediate family, and the assurance client or its management arises from a commercial relationship or common financial interest and may create self-interest or intimidation threats.
Examples of such relationships include:

- Having a financial interest in a joint venture with either the client or a controlling owner, director or officer or other individual who performs senior managerial activities for that client.
- Arrangements to combine one or more services or products of the firm with one or more services or products of the client and to market the package with reference to both parties.
- Distribution or ~~**marketing**~~ **promoting** arrangements under which the firm distributes or markets the client's products or services, or the client distributes or ~~**markets**~~ **promotes** the firm's products or services.

Unless any financial interest is immaterial and the business relationship is insignificant to the firm and the client or its management, the threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Therefore, unless the financial interest is immaterial and the business relationship is insignificant, the business relationship shall not be entered into, or shall be reduced to an insignificant level or terminated.

In the case of a member of the assurance team, unless any such financial interest is immaterial and the relationship is insignificant to that member, the individual shall be removed from the assurance team.

If the business relationship is between an immediate family member of a member of the assurance team and the assurance client or its management, the significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.

291.120 The purchase of goods and services from an assurance client by the firm, or a member of the assurance team, or a member of that individual's immediate family, does not generally create a threat to independence if the transaction is in the normal course of business and at arm's length. However, such transactions may be of such a nature or magnitude that they create a self-interest threat. The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Eliminating or reducing the magnitude of the transaction; or
- Removing the individual from the assurance team.

Family and Personal Relationships

291.121 Family and personal relationships between a member of the assurance team and a director or officer or certain employees (depending on their role) of the assurance client, may create self-interest, familiarity or intimidation threats. The existence and significance of any threats will depend on a number of factors, including the individual's responsibilities on the assurance team, the role of the family member or other individual within the client, and the closeness of the relationship.

291.122 When an immediate family member of a member of the assurance team is:

(a) A director or officer of the assurance client, or
(b) An employee in a position to exert significant influence over the subject matter information of the assurance engagement, or was in such a position during any period covered by the engagement or the subject matter information, the threats to independence can only be reduced to an acceptable level by removing the individual from the assurance team. The closeness of the relationship is such that no other safeguards could reduce the threat to an acceptable level. Accordingly, no individual who has such a relationship shall be a member of the assurance team.

291.123 Threats to independence are created when an immediate family member of a member of the assurance team is an employee in a position to exert significant influence over the subject matter of the engagement. The significance of the threats will depend on factors such as:

- The position held by the immediate family member; and
- The role of the professional on the assurance team.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.

Examples of such safeguards include:

- Removing the individual from the assurance team; or
- Structuring the responsibilities of the assurance team so that the professional does not deal with matters that are within the responsibility of the immediate family member.

291.124 Threats to independence are created when a close family member of a member of the assurance team is:

- A director or officer of the assurance client; or
- An employee in a position to exert significant influence over the subject matter information of the assurance engagement.

The significance of the threats will depend on factors such as:

- The nature of the relationship between the member of the assurance team and the close family member;
- The position held by the close family member; and
- The role of the professional on the assurance team.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.

Examples of such safeguards include:

- Removing the individual from the assurance team; or
- Structuring the responsibilities of the assurance team so that the professional does not deal with matters that are within the responsibility of the close family member.

291.125 Threats to independence are created when a member of the assurance team has a close relationship with a person who is not an immediate or close family member, but who is a director or officer or an employee in a position to exert significant influence over the subject matter information of the assurance engagement. A member of the assurance team who has such a relationship shall consult in accordance with firm policies and procedures.

The significance of the threats will depend on factors such as:

- The nature of the relationship between the individual and the member of the assurance team;
- The position the individual holds with the client; and
- The role of the professional on the assurance team.

The significance of the threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- Removing the professional from the assurance team; or
- Structuring the responsibilities of the assurance team so that the professional does not deal with matters that are within the responsibility of the individual with whom the professional has a close relationship.

291.126 Self-interest, familiarity or intimidation threats may be created by a personal or family relationship between (a) a partner or employee of the firm who is not a member of the assurance team and (b) a director or officer of the assurance client or an employee in a position to exert significant influence over the subject matter information of the assurance engagement.

The existence and significance of any threat will depend on factors such as:

- The nature of the relationship between the partner or employee of the firm and the director or officer or employee of the client;
- The interaction of the partner or employee of the firm with the assurance team;
- The position of the partner or employee within the firm; and
- The role of the individual within the client.

The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.
Examples of such safeguards include:

- Structuring the partner's or employee's responsibilities to reduce any potential influence over the assurance engagement; or
- Having a professional accountant review the relevant assurance work performed.

291.127 When an inadvertent violation of this section as it relates to family and personal relationships occurs, it is deemed not to compromise independence if:

(a) The firm has established policies and procedures that require prompt notification to the firm of any breaches resulting from

changes in the employment status of their immediate or close family members or other personal relationships that create threats to independence;

(b) The inadvertent violation relates to an immediate family member of a member of the assurance team becoming a director or officer of the assurance client or being in a position to exert significant influence over the subject matter information of the assurance engagement, and the relevant professional is removed from the assurance team; and

(c) The firm applies other safeguards when necessary to reduce any remaining threat to an acceptable level. Examples of such safeguards include:

- Having a professional accountant review the work of the member of the assurance team; or
- Excluding the relevant professional from any significant decision-making concerning the engagement.

The firm shall determine whether to discuss the matter with those charged with governance.

Employment with an Assurance Client

291.128 Familiarity or intimidation threats may be created if a director or officer of the assurance client, or an employee who is in a position to exert significant influence over the subject matter information of the assurance engagement, has been a member of the assurance team or partner of the firm.

291.129 If a former member of the assurance team or partner of the firm has joined the assurance client in such a position, the existence and significance of any familiarity or intimidation threats will depend on factors such as:

- The position the individual has taken at the client;
- Any involvement the individual will have with the assurance team;
- The length of time since the individual was a member of the assurance team or partner of the firm; and
- The former position of the individual within the assurance team or firm, for example, whether the individual was responsible for maintaining regular contact with the client's management or those charged with governance.

In all cases the individual shall not continue to participate in the firm's business or professional activities.

The significance of any threats created shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- Making arrangements such that the individual is not entitled to any benefits or payments from the firm, unless made in accordance with fixed pre-determined arrangements.
- Making arrangements such that any amount owed to the individual is not material to the firm;
- Modifying the plan for the assurance engagement;
- Assigning individuals to the assurance team who have sufficient experience in relation to the individual who has joined the client; or
- Having a professional accountant review the work of the former member of the assurance team.

291.130 If a former partner of the firm has previously joined an entity in such a position and the entity subsequently becomes an assurance client of the firm, the significance of any threats to independence shall be evaluated and safeguards applied when necessary, to eliminate the threat or reduce it to an acceptable level.

291.131 A self-interest threat is created when a member of the assurance team participates in the assurance engagement while knowing that the member of the assurance team will, or may, join the client some time in the future. Firm policies and procedures shall require members of an assurance team to notify the firm when entering employment negotiations with the client. On receiving such notification, the significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Removing the individual from the assurance team; or
- A review of any significant judgments made by that individual while on the team.

Recent Service with an Assurance Client

291.132 Self-interest, self-review or familiarity threats may be created if a member of the assurance team has recently served as a director, officer, or employee of the assurance client. This would be the case when, for example, a member of the assurance team

has to evaluate elements of the subject matter information the member of the assurance team had prepared while with the client.

291.133 If, during the period covered by the assurance report, a member of the assurance team had served as director or officer of the assurance client, or was an employee in a position to exert significant influence over the subject matter information of the assurance engagement, the threat created would be so significant that no safeguards could reduce the threat to an acceptable level. Consequently, such individuals shall not be assigned to the assurance team.

291.134 Self-interest, self-review or familiarity threats may be created if, before the period covered by the assurance report, a member of the assurance team had served as director or officer of the assurance client, or was an employee in a position to exert significant influence over the subject matter information of the assurance engagement. For example, such threats would be created if a decision made or work performed by the individual in the prior period, while employed by the client, is to be evaluated in the current period as part of the current assurance engagement. The existence and significance of any threats will depend on factors such as:

- The position the individual held with the client;
- The length of time since the individual left the client; and
- The role of the professional on the assurance team.

The significance of any threat shall be evaluated and safeguards applied when necessary to reduce the threat to an acceptable level. An example of such a safeguard is conducting a review of the work performed by the individual as part of the assurance team.

Serving as a Director or Officer of an Assurance Client

291.135 If a partner or employee of the firm serves a director or officer of an assurance client, the self-review and self-interest threats would be so significant that no safeguards could reduce the threats to an acceptable level. Accordingly, no partner or employee shall serve as a director or officer of an assurance client.

291.136 The position of Company Secretary has different implications in different jurisdictions. Duties may range from administrative duties, such as personnel management and the maintenance of company records and registers, to duties as diverse as ensuring that the company complies with regulation or providing advice on corporate governance matters. Generally, this position is seen to imply a close association with the entity.

291.137 If a partner or employee of the firm serves as Company Secretary for an assurance client, self-review and advocacy threats are created that would generally be so significant that no safeguards could reduce the threats to an acceptable level. ~~**Despite paragraph 291.135, when this practice is specifically permitted under local law, professional rules or practice, and provided management makes all relevant decisions, the duties and activities shall be limited to those of a routine and administrative nature, such as preparing minutes and maintaining statutory returns. In those circumstances, the significance of any threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level.**~~

291.138 Performing routine administrative services to support a company secretarial function or providing advice in relation to company secretarial administration matters does not generally create threats to independence, as long as client management makes all relevant decisions.

Long Association of Senior Personnel with an Assurance Client

291.139 Familiarity and self-interest threats are created by using the same senior personnel on an assurance engagement over a long period of time. The significance of the threats will depend on factors such as:

- How long the individual has been a member of the assurance team;
- The role of the individual on the assurance team;
- The structure of the firm;
- The nature of the assurance engagement;
- Whether the client's management team has changed; and
- Whether the nature or complexity of the subject matter information has changed.

The significance of the threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- Rotating the senior personnel off the assurance team;
- Having a professional accountant who was not a member of the assurance team review the work of the senior personnel; or

- Regular independent internal or external quality reviews of the engagement.

Provision of Non-assurance Services to an Assurance Client

291.140 Firms have traditionally provided to their assurance clients a range of non-assurance services that are consistent with their skills and expertise. Providing non-assurance services may, however, create threats to the independence of the firm or members of the assurance team. The threats created are most often self-review, self-interest and advocacy threats.

291.141 When specific guidance on a particular non-assurance service is not included in this section, the conceptual framework shall be applied when evaluating the particular circumstances.

291.142 Before the firm accepts an engagement to provide a non-assurance service to an assurance client, a determination shall be made as to whether providing such a service would create a threat to independence. In evaluating the significance of any threat created by a particular non-assurance service, consideration shall be given to any threat that the assurance team has reason to believe is created by providing other related non-assurance services. If a threat is created that cannot be reduced to an acceptable level by the application of safeguards the non-assurance service shall not be provided.

Management Responsibilities

291.143 Management of an entity performs many activities in managing the entity in the best interests of stakeholders of the entity. It is not possible to specify every activity that is a management responsibility. However, management responsibilities involve leading and directing an entity, including making significant decisions regarding the acquisition, deployment and control of human, financial, physical and intangible resources.

291.144 Whether an activity is a management responsibility depends on the circumstances and requires the exercise of judgment. Examples of activities that would generally be considered a management responsibility include:

- Setting policies and strategic direction;
- Directing and taking responsibility for the actions of the entity's employees;
- Authorizing transactions;

- Deciding which recommendations of the firm or other third parties to implement; and
- Taking responsibility for designing, implementing and maintaining internal control.

291.145 Activities that are routine and administrative, or involve matters that are insignificant, generally are deemed not to be a management responsibility.

For example, executing an insignificant transaction that has been authorized by management or monitoring the dates for filing statutory returns and advising an assurance client of those dates is deemed not to be a management responsibility. Further, providing advice and recommendations to assist management in discharging its responsibilities is not assuming a management responsibility.

291.146 Assuming a management responsibility for an assurance client may create threats to independence. If a firm were to assume a management responsibility as part of the assurance service, the threats created would be so significant that no safeguards could reduce the threats to an acceptable level. Accordingly, in providing assurance services to an assurance client, a firm shall not assume a management responsibility as part of the assurance service. If the firm assumes a management responsibility as part of any other services provided to the assurance client, it shall ensure that the responsibility is not related to the subject matter and subject matter information of an assurance engagement provided by the firm.

291.147 To avoid the risk of assuming a management responsibility related to the subject matter or subject matter information of the assurance engagement, the firm shall be satisfied that a member of management is responsible for making the significant judgments and decisions that are the proper responsibility of management, evaluating the results of the service and accepting responsibility for the actions to be taken arising from the results of the service. This reduces the risk of the firm inadvertently making any significant judgments or decisions on behalf of management. This risk is further reduced when the firm gives the client the opportunity to make judgments and decisions based on an objective and transparent analysis and presentation of the issues.

Other Considerations

291.148 Threats to independence may be created when a firm provides a non-assurance service related to the subject matter information of an assurance engagement. In such cases, an evaluation of the

significance of the firm's involvement with the subject matter information of the engagement shall be made, and a determination shall be made of whether any self-review threats that are not at an acceptable level can be reduced to an acceptable level by the application of safeguards.

291.149 A self-review threat may be created if the firm is involved in the preparation of subject matter information which is subsequently the subject matter information of an assurance engagement. For example, a self-review threat would be created if the firm developed and prepared prospective financial information and subsequently provided assurance on this information. Consequently, the firm shall evaluate the significance of any self-review threat created by the provision of such services and apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level.

291.150 When a firm performs a valuation that forms part of the subject matter information of an assurance engagement, the firm shall evaluate the significance of any self-review threat and apply safeguards when necessary to eliminate the threat or reduce it to an acceptable level.

Fees

Fees—Relative Size

291.151 When the total fees from an assurance client represent a large proportion of the total fees of the firm expressing the conclusion, the dependence on that client and concern about losing the client creates a self-interest or intimidation threat. The significance of the threat will depend on factors such as:

- The operating structure of the firm;
- Whether the firm is well established or new; and
- The significance of the client qualitatively and/or quantitatively to the firm.

The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.
Examples of such safeguards include:

- Reducing the dependency on the client;
- External quality control reviews; or

- Consulting a third party, such as a professional regulatory body or a professional accountant, on key assurance judgments.

291.152 A self-interest or intimidation threat is also created when the fees generated from an assurance client represent a large proportion of the revenue from an individual partner's clients. The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. An example of such a safeguard is having an additional professional accountant who was not a member of the assurance team review the work or otherwise advise as necessary.

Fees—Overdue

291.153 A self-interest threat may be created if fees due from an assurance client remain unpaid for a long time, especially if a significant part is not paid before the issue of the assurance report, if any, for the following period. Generally the firm is expected to require payment of such fees before any such report is Issued. If fees remain unpaid after the report has been issued, the existence and significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. An example of such a safeguard is having another professional accountant who did not take part in the assurance engagement provide advice or review the work performed. The firm shall determine whether the overdue fees might be regarded as being equivalent to a loan to the client and whether, because of the significance of the overdue fees, it is appropriate for the firm to be re-appointed or continue the assurance engagement.

~~Contingent Fees~~

~~291.154 Contingent fees are fees calculated on a predetermined basis relating to the outcome of a transaction or the result of the services performed by the firm. For the purposes of this section, fees are not regarded as being contingent if established by a court or other public authority.~~

~~291.155 A contingent fee charged directly or indirectly, for example through an intermediary, by a firm in respect of an assurance engagement creates a self-interest threat that is so significant that no safeguards could reduce the threat to an acceptable level. Accordingly, a firm shall not enter into any such fee arrangement.~~

~~**291.156 A contingent fee charged directly or indirectly, for example through an intermediary, by a firm in respect of a non-assurance service provided to an assurance client may also create a self-interest threat. If the outcome of the non-assurance service, and therefore, the amount of the fee, is dependent on a future or contemporary judgment related to a matter that is material to the subject matter information of the assurance engagement, no safeguards could reduce the threat to an acceptable level. Accordingly, such arrangements shall not be accepted.**~~

~~**291.157 For other contingent fee arrangements charged by a firm for a non-assurance service to an assurance client, the existence and significance of any threats will depend on factors such as:**~~

~~**• The range of possible fee amounts;**~~

~~**• Whether an appropriate authority determines the outcome of the matter upon which the contingent fee will be determined;**~~

~~**• The nature of the service; and**~~

~~**• The effect of the event or transaction on the subject matter information.**~~

~~**The significance of any threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:**~~

~~**• Having a professional accountant review the relevant assurance work or otherwise advise as necessary; or**~~

~~**• Using professionals who are not members of the assurance team to perform the non-assurance service.**~~

Gifts and Hospitality

291.158 Accepting gifts or hospitality from an assurance client may create selfinterest and familiarity threats. If a firm or a member of the assurance team accepts gifts or hospitality, unless the value is trivial and inconsequential, the threats created would be so significant that no safeguards could reduce the threats to an acceptable level. Consequently, a firm or a member of the assurance team shall not accept such gifts or hospitality.

Actual or Threatened Litigation

291.159 When litigation takes place, or appears likely, between the firm or a member of the assurance team and the assurance client, self-interest and intimidation threats are created. The relationship between client management and the members of the assurance team must be characterized by complete candor and full disclosure regarding all aspects of a client's business operations. When the firm and the client's management are placed in adversarial positions by actual or threatened litigation, affecting management's willingness to make complete disclosures self-interest and intimidation threats are created. The significance of the threats created will depend on such factors as:

- The materiality of the litigation; and
- Whether the litigation relates to a prior assurance engagement.

The significance of the threats shall be evaluated and safeguards applied when necessary to eliminate the threats or reduce them to an acceptable level. Examples of such safeguards include:

- If the litigation involves a member of the assurance team, removing that individual from the assurance team; or
- Having a professional review the work performed.

If such safeguards do not reduce the threats to an acceptable level, the only appropriate action is to withdraw from, or decline, the assurance engagement.

Interpretation 2005–01 (Revised July 2009 to conform to changes resulting from the IESBA's project to improve the clarity of the ~~Code~~ Framework)

Application of Section 291 to Assurance Engagements that are Not Financial Statement Audit Engagements

This interpretation provides guidance on the application of the independence requirements contained in Section 291 to assurance engagements that are not financial statement audit engagements.

This interpretation focuses on the application issues that are particular to assurance engagements that are not financial statement audit engagements. There are other matters noted in Section 291 that are relevant in the consideration of independence requirements for all assurance engagements. For example, paragraph 291.3 states that an evaluation shall be made of any threats the firm has reason to believe are created by a network firm's interests and relationships. It also states that when the assurance team has reason to believe that a related entity of such an assurance client is relevant to the evaluation of the firm's independence of the client, the assurance team shall include the related entity when evaluating threats to independence and when necessary applying safeguards. These matters are not specifically addressed in this interpretation.

As explained in the ~~International~~ Framework for Assurance Engagements issued by the ~~International~~ Auditing and Assurance Standards Board, in an assurance engagement, the professional accountant in public practice expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria.

Assertion-Based Assurance Engagements

In an assertion-based assurance engagement, the evaluation or measurement of the subject matter is performed by the responsible party, and the subject matter information is in the form of an assertion by the responsible party that is made available to the intended users.

In an assertion-based assurance engagement independence is required from the responsible party, which is responsible for the subject matter information and may be responsible for the subject matter.

In those assertion-based assurance engagements where the responsible party is responsible for the subject matter information but not the subject matter, independence is required from the responsible party. In addition, an evaluation shall be made of any threats the firm has reason to believe are created by interests and relationships between a member of the assurance team, the firm, a network firm and the party responsible for the subject matter.

Direct Reporting Assurance Engagements

In a direct reporting assurance engagement, the professional accountant in public practice either directly performs the evaluation or measurement of the subject matter, or obtains a representation from the responsible party that has performed the evaluation or measurement that is not available to the intended users. The subject matter information is provided to the intended users in the assurance report.

In a direct reporting assurance engagement independence is required from the responsible party, which is responsible for the subject matter.

Multiple Responsible Parties

In both assertion-based assurance engagements and direct reporting assurance engagements there may be several responsible parties. For example, a public accountant in public practice may be asked to provide assurance on the monthly circulation statistics of a number of independently owned newspapers. The assignment could be an assertion based assurance engagement where each newspaper measures its circulation and the statistics are presented in an assertion that is available to the intended users. Alternatively, the assignment could be a direct reporting assurance engagement, where there is no assertion and there may or may not be a written representation from the newspapers.

In such engagements, when determining whether it is necessary to apply the provisions in Section 291 to each responsible party, the firm may take into account whether an interest or relationship between the firm, or a member of the assurance team, and a particular responsible party would create a threat to independence that is not trivial and inconsequential in the context of the subject matter information. This will take into account:

(a) The materiality of the subject matter information (or the subject matter) for which the particular responsible party is responsible; and
(b) The degree of public interest that is associated with the engagement.

If the firm determines that the threat to independence created by any such relationships with a particular responsible party would be trivial and inconsequential it may not be necessary to apply all of the provisions of this section to that responsible party.

Example

The following example has been developed to demonstrate the application of Section 291. It is assumed that the client is not also a financial statement audit client of the firm, or a network firm.

A firm is engaged to provide assurance on the total proven oil reserves of 10 independent companies. Each company has conducted geographical and engineering surveys to determine their reserves (subject matter). There are established criteria to determine when a reserve may be considered to be proven which the professional accountant in public practice determines to be suitable criteria for the engagement.

The proven reserves for each company as at December 31, 20X0 were as follows:

	Proven oil reserves thousands of barrels
Company 1	5,200
Company 2	725
Company 3	3,260
Company 4	15,000
Company 5	6,700
Company 6	39,126
Company 7	345
Company 8	175
Company 9	24,135
Company 10	9,635
Total	**104,301**

The engagement could be structured in differing ways:

Assertion-Based Engagements

A1 Each company measures its reserves and provides an assertion to the firm and to intended users.

A2 An entity other than the companies measures the reserves and provides an assertion to the firm and to intended users.

Direct Reporting Engagements

D1 Each company measures the reserves and provides the firm with a written representation that measures its reserves against the established criteria for measuring proven reserves. The representation is not available to the intended users.

D2 The firm directly measures the reserves of some of the companies.

Application of Approach

A1 Each company measures its reserves and provides an assertion to the firm and to intended users.

There are several responsible parties in this engagement (Companies 1–10). When determining whether it is necessary to apply the independence provisions to all of the companies, the firm may take into account whether an interest or relationship with a particular company would create a threat to independence that is not at an acceptable level. This will take into account factors such as:

- The materiality of the company's proven reserves in relation to the total reserves to be reported on; and

- The degree of public interest associated with the engagement (paragraph 291.28).

For example Company 8 accounts for 0.17% of the total reserves, therefore a business relationship or interest with Company 8 would create less of a threat than a similar relationship with Company 6, which accounts for approximately 37.5% of the reserves.

Having determined those companies to which the independence requirements apply, the assurance team and the firm are required to be independent of those responsible parties that would be considered to be the assurance client (paragraph 291.28).

A2 An entity other than the companies measures the reserves and provides an assertion to the firm and to intended users.

The firm shall be independent of the entity that measures the reserves and provides an assertion to the firm and to intended users (paragraph 291.19). That entity is not responsible for the subject matter and so an

evaluation shall be made of any threats the firm has reason to believe are created by interests/relationships with the party responsible for the subject matter (paragraph 291.19). There are several parties responsible for the subject matter in this engagement (Companies 1–10). As discussed in example A1 above, the firm may take into account whether an interest or relationship with a particular company would create a threat to independence that is not at an acceptable level.

D1 Each company provides the firm with a representation that measures its reserves against the established criteria for measuring proven reserves. The representation is not available to the intended users.

There are several responsible parties in this engagement (Companies 1–10). When determining whether it is necessary to apply the independence provisions to all of the companies, the firm may take into account whether an interest or relationship with a particular company would create a threat to independence that is not at an acceptable level. This will take into account factors such as:

- The materiality of the company's proven reserves in relation to the total reserves to be reported on; and

- The degree of public interest associated with the engagement (paragraph 291.28).

For example, Company 8 accounts for 0.17% of the reserves, therefore a business relationship or interest with Company 8 would create less of a threat than a similar relationship with Company 6 that accounts for approximately 37.5% of the reserves.

Having determined those companies to which the independence requirements apply, the assurance team and the firm shall be independent of those responsible parties that would be considered to be the assurance client (paragraph 291.28).

D2 The firm directly measures the reserves of some of the companies.

The application is the same as in example D1.

PART C—PROFESSIONAL ACCOUNTANTS IN BUSINESS

SECTION 300

Introduction

300.1 This Part of the ~~Code~~ **Framework** describes how the conceptual framework contained in Part A applies in certain situations to professional accountants in business. This Part does not describe all of the circumstances and relationships that could be encountered by a professional accountant in business that create or may create threats to compliance with the fundamental principles. Therefore, the professional accountant in business is encouraged to be alert for such circumstances and relationships.

300.2 Investors, creditors, employers and other sectors of the business commFrameworky, as well as governments and the public at large, all may rely on the work of professional accountants in business. Professional accountants in business may be solely or jointly responsible for the preparation and reporting of financial and other information, which both their employing organizations and third parties may rely on. They may also be responsible for providing effective financial management and competent advice on a variety of business-related matters.

300.3 A professional accountant in business may be a salaried employee, a partner, director (whether executive or non-executive), an owner manager, a volunteer or another working for one or more employing organization. The legal form of the relationship with the employing organization, if any, has no bearing on the ethical responsibilities incumbent on the professional accountant in business.

300.4 A professional accountant in business has a responsibility to further the legitimate aims of the accountant's employing organization. This ~~Code~~ **Framework** does not seek to hinder a professional accountant in business from properly fulfilling that responsibility, but addresses circumstances in which compliance with the fundamental principles may be compromised.

300.5 A professional accountant in business may hold a senior position within an organization. The more senior the position, the greater will be the ability and opportunity to influence events, practices and attitudes. A professional accountant in business is

expected, therefore, to encourage an ethics-based culture in an employing organization that emphasizes the importance that senior management places on ethical behavio**u**r.

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

300.7 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances and relationships. Threats fall into one or more of the following categories:

(a) Self-interest;

(b) Self-review

(c) Advocacy;

(d) Familiarity; and

(e) Intimidation.

These threats are discussed further in Part A of this **~~Code~~ Framework**.

300.8 Examples of circumstances that may create self-interest threats for a professional accountant in business include:

- Holding a financial interest in, or receiving a loan or guarantee from the employing organization.
- Participating in incentive compensation arrangements offered by the employing organization.
- Inappropriate personal use of corporate assets.
- Concern over employment security.
- Commercial pressure from outside the employing organization.

300.9 An example of a circumstance that creates a self-review threat for a professional accountant in business is determining the appropriate accounting treatment for a business combination after performing the feasibility study that supported the acquisition decision.

300.10 When furthering the legitimate goals and objectives of their employing organizations, professional accountants in business may

promote the organization's position, provided any statements made are neither false nor misleading. Such actions generally would not create an advocacy threat.

300.11 Examples of circumstances that may create familiarity threats for a professional accountant in business include:

- Being responsible for the employing organization's financial reporting when an immediate or close family member employed by the entity makes decisions that affect the entity's financial reporting.

- Long association with business contacts influencing business decisions.

- Accepting a gift or preferential treatment, unless the value is trivial and inconsequential.

300.12 Examples of circumstances that may create intimidation threats for a professional accountant in business include:

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

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

(a) Safeguards created by the profession, legislation or regulation; and

(b) Safeguards in the work environment.

Examples of safeguards created by the profession, legislation or regulation are detailed in paragraph 100.14 of Part A of this ~~Code~~ **Framework**.

300.14 Safeguards in the work environment include:

- The employing organization's systems of corporate oversight or other oversight structures.
- The employing organization's ethics and conduct programs.
- Recruitment procedures in the employing organization emphasizing the importance of employing high caliber competent staff.
- Strong internal controls.
- Appropriate disciplinary processes.

- Leadership that stresses the importance of ethical behavio**u**r and the expectation that employees will act in an ethical manner.
- Policies and procedures to implement and monitor the quality of employee performance.
- Timely communication of the employing organization's policies and procedures, including any changes to them, to all employees and appropriate training and education on such policies and procedures.
- Policies and procedures to empower and encourage employees to communicate to senior levels within the employing organization any ethical issues that concern them without fear of retribution.
- Consultation with another appropriate professional accountant.

300.15 In circumstances where a professional accountant in business believes that unethical behavio**u**r or actions by others will continue to occur within the employing organization, the professional accountant in business may consider obtaining legal advice. In those extreme situations where all available safeguards have been exhausted and it is not possible to reduce the threat to an acceptable level, a professional accountant in business may conclude that it is appropriate to resign from the employing organization.

SECTION 310

Potential Conflicts

310.1 A professional accountant in business may be faced with a conflict of interest when undertaking a professional activity. A conflict of interest creates a threat to objectivity and may create threats to the other fundamental principles. Such threats may be created when:

- ***The professional accountant undertakes a professional activity related to a particular matter for two or more parties whose interests with respect to that matter are in conflict; or***

- ***The interests of the professional accountant with respect to a particular matter and the interests of a party for whom the professional accountant undertakes a professional activity related to that matter are in conflict.***

A party may include an employing organization, a vendor, a customer, a lender, a shareholder, or another party.

A professional accountant shall not allow a conflict of interest to compromise professional or business judgment.

310.2 Examples of situations in which conflicts of interest may arise include:

- ***Serving in a management or governance position for two employing organizations and acquiring confidential information from one employing organization that could be used by the professional accountant to the advantage or disadvantage of the other employing organization.***

- ***Undertaking a professional activity for each of two parties in a partnership employing the professional accountant to assist them to dissolve their partnership.***

- ***Preparing financial information for certain members of management of the entity employing the professional***

accountant who are seeking to undertake a management buy-out.

- ***Being responsible for selecting a vendor for the accountant's employing organization when an immediate family member of the professional accountant could benefit financially from the transaction.***

- ***Serving in a governance capacity in an employing organization that is approving certain investments for the company where one of those specific investments will increase the value of the personal investment portfolio of the professional accountant or an immediate family member.***

310.3 When identifying and evaluating the interests and relationships that might create a conflict of interest and implementing safeguards, when necessary, to eliminate or reduce any threat to compliance with the fundamental principles to an acceptable level, a professional accountant in business shall exercise professional judgment and be alert to all interests and relationships that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at the time, would be likely to conclude might compromise compliance with the fundamental principles.

310.4 When addressing a conflict of interest, a professional accountant in business is encouraged to seek guidance from within the employing organization or from others, such as a professional body, legal counsel or another professional accountant. When making disclosures or sharing information within the employing organization and seeking guidance of third parties, the professional accountant shall remain alert to the fundamental principle of confidentiality.

310.5 If the threat created by a conflict of interest is not at an acceptable level, the professional accountant in business shall apply safeguards to eliminate the threat or reduce it to an acceptable level. If safeguards cannot reduce the threat to an acceptable level, the professional accountant shall decline to undertake or discontinue the professional activity that would result in the conflict of interest; or shall terminate the relevant relationships or dispose of relevant interests to eliminate the threat or reduce it to an acceptable level.

310.6 In identifying whether a conflict of interest exists or may be created, a professional accountant in business shall take reasonable steps to determine:

- ***The nature of the relevant interests and relationships between the parties involved; and***

- ***The nature of the activity and its implication for relevant parties.***

The nature of the activities and the relevant interests and relationships may change over time. The professional accountant shall remain alert to such changes for the purposes of identifying circumstances that might create a conflict of interest.

310.7 If a conflict of interest is identified, the professional accountant in business shall evaluate:

- ***The significance of relevant interests or relationships; and***

- ***The significance of the threats created by undertaking the professional activity or activities. In general, the more direct the connection between the professional activity and the matter on which the parties' interests are in conflict, the more significant the threat to objectivity and compliance with the other fundamental principles will be.***

310.8 The professional accountant in business shall apply safeguards, when necessary, to eliminate the threats to compliance with the fundamental principles created by the conflict of interest or reduce them to an acceptable level. Depending on the circumstances giving rise to the conflict of interest, application of one or more of the following safeguards may be appropriate:

- ***Restructuring or segregating certain responsibilities and duties.***

- ***Obtaining appropriate oversight, for example, acting under the supervision of an executive or non-executive director.***

- ***Withdrawing from the decision-making process related to the matter giving rise to the conflict of interest.***

- ***Consulting with third parties, such as a professional body, legal counsel or another professional accountant.***

310.9 In addition, it is generally necessary to disclose the nature of the conflict to the relevant parties, including to the appropriate levels within the employing organization and, when safeguards are required to reduce the threat to an acceptable level, to obtain their consent to the professional accountant in business undertaking the professional activity. In certain circumstances, consent may be implied by a party's conduct where the professional accountant has sufficient evidence to conclude that parties know the circumstances at the outset and have accepted the conflict of interest if they do not raise an objection to the existence of the conflict.

310.10 When disclosure is verbal, or consent is verbal or implied, the professional accountant in business is encouraged to document the nature of the circumstances giving rise to the conflict of interest, the safeguards applied to reduce the threats to an acceptable level and the consent obtained.

310.11 A professional accountant in business may encounter other threats to compliance with the fundamental principles. This may occur, for example, when preparing or reporting financial information as a result of undue pressure from others within the employing organization or financial, business or personal relationships that close or immediate family members of the professional accountant have with the employing organization. Guidance on managing such threats is covered by Sections 320 and 340 of the ~~Code~~ Framework.

SECTION 320[4]

Preparation and Reporting of Information

320.1 Professional accountants in business are often involved in the preparation and reporting of information that may either be made public or used by others inside or outside the employing organization. Such information may include financial or management information, for example, forecasts and budgets, financial statements, management's discussion and analysis, and the management letter of representation provided to the auditors

[4] ~~Amendments to this section arising from changes to the Code addressing conflicts of interest will be effective on July 1, 2014. See page 160.~~

during the audit of the entity's financial statements. A professional accountant in business shall prepare or present such information fairly, honestly and in accordance with relevant professional standards so that the information will be understood in its context.

320.2 A professional accountant in business who has responsibility for the preparation or approval of the general purpose financial statements of an employing organization shall be satisfied that those financial statements are presented in accordance with the applicable financial reporting standards.

320.3 A professional accountant in business shall take reasonable steps to maintain information for which the professional accountant in business is responsible in a manner that:

(a) Describes clearly the true nature of business transactions, assets, or liabilities;

(b) Classifies and records information in a timely and proper manner; and

(c) Represents the facts accurately and completely in all material respects.

320.4 ***Threats to compliance with the fundamental principles, for example, self-interest or intimidation threats to integrity, objectivity or professional competence and due care, are created where a professional accountant in business is pressured (either externally or by the possibility of personal gain) to prepare or report information in a misleading way or to become associated with misleading information through the actions of others.***

320.5 ***The significance of such threats will depend on factors such as the source of the pressure and the corporate culture within the employing organization. The professional accountant in business shall be alert to the principle of integrity, which imposes an obligation on all professional accountants to be straightforward and honest in all professional and business relationships. Where the threats arise from compensation and incentive arrangements, the guidance in section 340 is relevant.***

320.6 The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Such safeguards include consultation with superiors within the employing

organization, the audit committee or those charged with governance of the organization, or with a relevant professional body.

320.7 Where it is not possible to reduce the threat to an acceptable level, a professional accountant in business shall refuse to be or remain associated with information the professional accountant determines is misleading. A professional accountant in business may have been unknowingly associated with misleading information. Upon becoming aware of this, the professional accountant in business shall take steps to be disassociated from that information. In determining whether there is a requirement to report, the professional accountant in business may consider obtaining legal advice. In addition, the professional accountant may consider whether to resign.

SECTION 330

Acting with Sufficient Expertise

330.1 The fundamental principle of professional competence and due care requires that a professional accountant in business only undertake significant tasks for which the professional accountant in business has, or can obtain, sufficient specific training or experience. A professional accountant in business shall not intentionally mislead an employer as to the level of expertise or experience possessed, nor shall a professional accountant in business fail to seek appropriate expert advice and assistance when required.

330.2 Circumstances that create a threat to a professional accountant in business performing duties with the appropriate degree of professional competence and due care includes having:

- Insufficient time for properly performing or completing the relevant duties.
- Incomplete, restricted or otherwise inadequate information for performing the duties properly.
- Insufficient experience, training and/or education.
- Inadequate resources for the proper performance of the duties.

330.3 The significance of the threat will depend on factors such as the extent to which the professional accountant in business is working with others, relative seniority in the business, and the level of supervision and review applied to the work. The significance of the threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. Examples of such safeguards include:

- Obtaining additional advice or training.

- Ensuring that there is adequate time available for performing the relevant duties.

- Obtaining assistance from someone with the necessary expertise.

- Consulting, where appropriate, with:

  - Superiors within the employing organization;

  - Independent experts; or

  - A relevant professional body.

330.4 When threats cannot be eliminated or reduced to an acceptable level, professional accountants in business shall determine whether to refuse to perform the duties in question. If the professional accountant in business determines that refusal is appropriate, the reasons for doing so shall be clearly communicated.

SECTION 340

Financial Interests

340.1 ***Professional accountants in business may have financial interests, including those arising from compensation or incentive arrangements, or may know of financial interests of immediate or close family members, that, in certain circumstances, may create threats to compliance with the fundamental principles. For example, self-interest threats to objectivity or confidentiality may be created through the existence of the motive and opportFrameworky to manipulate price-sensitive information in order to gain financially. Examples of circumstances that may create self-interest threats include situations where the professional***

accountant in business or an immediate or close family member:

- ***Holds a direct or indirect financial interest in the employing organization and the value of that financial interest could be directly affected by decisions made by the professional accountant in business.***

- ***Is eligible for a profit-related bonus and the value of that bonus could be directly affected by decisions made by the professional accountant in business.***

- ***Holds, directly or indirectly, deferred bonus share entitlements or share options in the employing organization, the value of which could be directly affected by decisions made by the professional accountant in business.***

- ***Otherwise participates in compensation arrangements which provide incentives to achieve performance targets or to support efforts to maximize the value of the employing organization's shares, for example, through participation in long-term incentive plans which are linked to certain performance conditions being met.***

340.2 Self-interest threats arising from compensation or incentive arrangements may be further compounded by pressure from superiors or peers in the employing organization who participate in the same arrangements. For example, such arrangements often entitle participants to be awarded shares in the employing organization at little or no cost to the employee provided certain performance criteria are met. In some cases, the value of the shares awarded may be significantly greater than the base salary of the professional accountant in business.

340.3 A professional accountant in business shall not manipulate information or use confidential information for personal gain or for the financial gain of others. The more senior the position that the professional accountant in business holds, the greater the ability and opportFrameworky to influence financial reporting and decision making and the greater the pressure there might be from superiors and peers to manipulate information. In such situations, the professional accountant in business shall be particularly alert to the principle of integrity, which imposes an obligation on all professional accountants to be

straightforward and honest in all professional and business relationships.

340.4 The significance of any threat created by financial interests, shall be evaluated and safeguards applied, when necessary, to eliminate the threat or reduce it to an acceptable level. In evaluating the significance of any threat, and, when necessary, determining the appropriate safeguards to be applied, a professional accountant in business shall evaluate the nature of the interest. This includes evaluating the significance of the interest. What constitutes a significant interest will depend on personal circumstances. Examples of such safeguards include:

- Policies and procedures for a committee independent of management to determine the level or form of remuneration of senior management.

- Disclosure of all relevant interests and of any plans to exercise entitlements or trade in relevant shares, to those charged with the governance of the employing organization, in accordance with any internal policies.

- Consultation, where appropriate, with superiors within the employing organization.

- Consultation, where appropriate, with those charged with the governance of the employing organization or relevant professional bodies.

- Internal and external audit procedures.

- Up-to-date education on ethical issues and on the legal restrictions and other regulations around potential insider trading.

SECTION 350

Inducements

Receiving Offers

350.1 A professional accountant in business or an immediate or close family member may be offered an inducement. Inducements may take various forms, including gifts, hospitality, preferential treatment, and inappropriate appeals to friendship or loyalty.

350.2 Offers of inducements may create threats to compliance with the fundamental principles. When a professional accountant in business or an immediate or close family member is offered an inducement, the situation shall be evaluated. Self-interest threats to objectivity or confidentiality are created when an inducement is made in an attempt to unduly influence actions or decisions, encourage illegal or dishonest behaviour, or obtain confidential information. Intimidation threats to objectivity or confidentiality are created if such an inducement is accepted and it is followed by threats to make that offer public and damage the reputation of either the professional accountant in business or an immediate or close family member.

350.3 The existence and significance of any threats will depend on the nature, value and intent behind the offer. If a reasonable and informed third party, weighing all the specific facts and circumstances, would consider the inducement insignificant and not intended to encourage unethical behaviour, then a professional accountant in business may conclude that the offer is made in the normal course of business and may generally conclude that there is no significant threat to compliance with the fundamental principles.

350.4 The significance of any threats shall be evaluated and safeguards applied when necessary to eliminate them or reduce them to an acceptable level. When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a professional accountant in business shall not accept the inducement. As the real or apparent threats to compliance with the fundamental principles do not merely arise from acceptance of an inducement but, sometimes, merely from the fact of the offer having been made, additional safeguards shall be adopted. A professional accountant in business shall evaluate any threats created by such offers and determine whether to take one or more of the following actions:

(a) Informing higher levels of management or those charged with governance of the employing organization immediately when such offers have been made;

(b) Informing third parties of the offer – for example, a professional body or the employer of the individual who made the offer; a professional accountant in business may however, consider seeking legal advice before taking such a step; and

(c) Advising immediate or close family members of relevant threats and safeguards where they are potentially in positions

that might result in offers of inducements, for example, as a result of their employment situation; and

(d) Informing higher levels of management or those charged with governance of the employing organization where immediate or close family members are employed by competitors or potential suppliers of that organization.

Making Offers

350.5 A professional accountant in business may be in a situation where the professional accountant in business is expected, or is under other pressure, to offer inducements to influence the judgment or decision-making process of an individual or organization, or obtain confidential information.

350.6 Such pressure may come from within the employing organization, for example, from a colleague or superior. It may also come from an external individual or organization suggesting actions or business decisions that would be advantageous to the employing organization, possibly influencing the professional accountant in business improperly.

350.7 A professional accountant in business shall not offer an inducement to improperly influence professional judgment of a third party.

350.8 Where the pressure to offer an unethical inducement comes from within the employing organization, the professional accountant shall follow the principles and guidance regarding ethical conflict resolution set out in Part A of this ~~**Code**~~ **Framework**.

DEFINITIONS

In this ~~*Code of Ethics for Professional Accountants*~~, **Framework,** the following expressions have the following meanings assigned to them:

Acceptable level	A level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the professional accountant at that time, that compliance with the fundamental principles is not compromised.
Advertising	The communication to the public of information as to the services or skills provided by professional accountants in public practice with a view to procuring professional business.
Assurance client	The responsible party that is the person (or persons) who: (a) In a direct reporting engagement, is responsible for the subject matter; or (b) In an assertion-based engagement, is responsible for the subject matter information and may be responsible for the subject matter.
Assurance engagement	An engagement in which a professional accountant in public practice expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria. (For guidance on assurance engagements see the ~~**International**~~ Framework for Assurance Engagements issued by the International Auditing and Assurance Standards Board which describes the elements and objectives of an assurance engagement and identifies engagements to which ~~**International**~~ Standards on Auditing (~~**I**~~SAs), ~~**International**~~ Standards on Review Engagements (~~**I**~~SREs) and ~~**International**~~ Standards on Assurance Engagements (~~**I**~~SAEs) apply.)
Assurance	(a) All members of the engagement team for the assurance engagement;

(b) All others within a firm who can directly influence the outcome of the assurance engagement, including:

(i) Those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the assurance engagement partner in connection with the performance of the assurance engagement;

(ii) Those who provide consultation regarding technical or industry specific issues, transactions or events for the assurance engagement; and

(iii) Those who provide quality control for the assurance engagement, including those who perform the engagement quality control review for the assurance engagement.

Audit client — An entity in respect of which a firm conducts an audit engagement. When the client is a listed entity, audit client will always include its related entities. When the audit client is not a listed entity, audit client includes those related entities over which the client has direct or indirect control.

Audit engagement — A reasonable assurance engagement in which a professional accountant in public practice expresses an opinion whether financial statements are prepared, in all material respects (or give a true and fair view or are presented fairly, in all material respects,), in accordance with an applicable financial reporting framework, such as an engagement conducted in accordance with ~~**International**~~ Standards on Auditing. This includes a Statutory Audit, which is an audit required by legislation or other regulation.

Audit team

(a) All members of the engagement team for the audit engagement;

(b) All others within a firm who can directly influence the outcome of the audit engagement, including:

(i) Those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the engagement partner in connection with the performance of the audit engagement including those at all successively

senior levels above the engagement partner through to the individual who is the firm's Senior or Managing Partner (Chief Executive or equivalent);

(ii) Those who provide consultation regarding technical or industry-specific issues, transactions or events for the engagement; and

(iii) Those who provide quality control for the engagement, including those who perform the engagement quality control review for the engagement; and

(c) All those within a network firm who can directly influence the outcome of the audit engagement.

Close family — A parent, child or sibling who is not an immediate family member.

Contingent fee — A fee calculated on a predetermined basis relating to the outcome of a transaction or the result of the services performed by the firm. A fee that is established by a court or other public authority is not a contingent fee.

Direct financial interest — A financial interest:

(a) Owned directly by and under the control of an individual or entity (including those managed on a discretionary basis by others); or

(b) Beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has control, or the ability to influence investment decisions.

Director or officer — Those charged with the governance of an entity, or acting in an equivalent capacity, regardless of their title, which may vary from jurisdiction to jurisdiction.

Engagement partner — The partner or other person in the firm who is responsible for the engagement and its performance, and for the report that is issued on behalf of the firm, and who, where required, has the appropriate authority from a professional, legal or regulatory body.

Engagement quality control review — A process designed to provide an objective evaluation, on or before the report is issued, of the significant judgments the engagement team made and the

conclusions it reached in formulating the report.

Engagement team — ***All partners and staff performing the engagement, and any individuals engaged by the firm or a network firm who perform assurance procedures on the engagement. This excludes external experts engaged by the firm or by a network firm.***

The term "engagement team" also excludes individuals within the client's internal audit function who provide direct assistance on an audit engagement when the external auditor complies with the requirements of ~~I~~ISA 610 ~~(Revised 2013),~~ Using the Work of Internal Auditors.

Existing accountant — A professional accountant in public practice currently holding an audit appointment or carrying out accounting, taxation, consulting or similar professional services for a client.

External expert — An individual (who is not a partner or a member of the professional staff, including temporary staff, of the firm or a network firm) or organization possessing skills, knowledge and experience in a field other than accounting or auditing, whose work in that field is used to assist the professional accountant in obtaining sufficient appropriate evidence.

Financial interest — An interest in an equity or other security, debenture, loan or other debt instrument of an entity, including rights and obligations to acquire such an interest and derivatives directly related to such interest.

Financial statements — A structured representation of historical financial information, including related notes, intended to communicate an entity's economic resources or obligations at a point in time or the changes therein for a period of time in accordance with a financial reporting framework. The related notes ordinarily comprise a summary of significant accounting policies and other explanatory information. The term can relate to a complete set of financial statements, but it can also refer to a single financial statement, for example, a balance sheet, or a statement of revenues and expenses, and related explanatory notes.

Financial statements on which the firm will express an opinion	In the case of a single entity, the financial statements of that entity. In the case of consolidated financial statements, also referred to as group financial statements, the consolidated financial statements.
Firm	(a) A sole practitioner, partnership or corporation of professional accountants; (b) An entity that controls such parties, through ownership, management or other means; and (c) An entity controlled by such parties, through ownership, management or other means.
Historical financial information	Information expressed in financial terms in relation to a particular entity, derived primarily from that entity's accounting system, about economic events occurring in past time periods or about economic conditions or circumstances at points in time in the past.
Immediate family	A spouse (or equivalent) or dependent.
Independence	Independence is: (a) Independence of mind – the state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity, and exercise objectivity and professional skepticism. (b) Independence in appearance – the avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that a firm's, or a member of the audit or assurance team's, integrity, objectivity or professional skepticism has been compromised.
Indirect financial interest	A financial interest beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has no control or ability to influence investment decisions.
Key audit partner	The engagement partner, the individual responsible for the engagement quality control review, and other audit partners, if any, on the engagement team who make key decisions or judgments on significant matters with respect to the audit of the financial statements on which the firm

	will express an opinion. Depending upon the circumstances and the role of the individuals on the audit, "other audit partners" may include, for example, audit partners responsible for significant subsidiaries or divisions.
Listed entity	An entity whose shares, stock or debt are quoted or listed on a recognized stock exchange, or are marketed under the regulations of a recognized stock exchange or other equivalent body.
Network	A larger structure: (a) That is aimed at co-operation; and (b) That is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand-name, or a significant part of professional resources.
Network firm	A firm or entity that belongs to a network.
Office	A distinct sub-group, whether organized on geographical or practice lines.
Professional accountant	An individual who is a member of an IFAC member body.
Professional Accountant in business	A professional accountant employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not for profit sector, regulatory bodies or professional bodies, or a professional accountant contracted by such entities.
Professional accountant in public practice	A professional accountant, irrespective of functional classification (for example, audit, tax or consulting) in a firm that provides professional services. This term is also used to refer to a firm of professional accountants in public practice.
Professional services[5]	Services requiring accountancy or related skills performed by a professional accountant including accounting, auditing, taxation, management consulting and financial

[5] ~~Amendments to this definition arising from changes to the Code addressing conflicts of interest will be effective on July 1, 2014. See page 160.~~

management services.

Public interest entity

(a) A listed entity; and

(b) An entity:

(i) Defined by regulation or legislation as a public interest entity; or

(ii) For which the audit is required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to the audit of listed entities. Such regulation may be promulgated by any relevant regulator, including an audit regulator.

Related entity

An entity that has any of the following relationships with the client:

(a) An entity that has direct or indirect control over the client if the client is material to such entity;

(b) An entity with a direct financial interest in the client if that entity has significant influence over the client and the interest in the client is material to such entity;

(c) An entity over which the client has direct or indirect control;

(d) An entity in which the client, or an entity related to the client under (c) above, has a direct financial interest that gives it significant influence over such entity and the interest is material to the client and its related entity in (c); and

(e) An entity which is under common control with the client (a "sister entity") if the sister entity and the client are both material to the entity that controls both the client and sister entity.

Review client

An entity in respect of which a firm conducts a review engagement.

Review engagement

An assurance engagement, conducted in accordance with ~~**International**~~ Standards on Review Engagements or equivalent, in which a professional accountant in public practice expresses a conclusion on whether, on the basis of the procedures which do not provide all the evidence that would be required in an audit, anything has come to the accountant's attention that causes the accountant to

believe that the financial statements are not prepared, in all material respects, in accordance with an applicable financial reporting framework.

Review team

(a) All members of the engagement team for the review engagement; and

(b) All others within a firm who can directly influence the outcome of the review engagement, including:

(i) Those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the engagement partner in connection with the performance of the review engagement including those at all successively senior levels above the engagement partner through to the individual who is the firm's Senior or Managing Partner (Chief Executive or equivalent);

(ii) Those who provide consultation regarding technical or industry specific issues, transactions or events for the engagement; and

(iii) Those who provide quality control for the engagement, including those who perform the engagement quality control review for the engagement; and

(c) All those within a network firm who can directly influence the outcome of the review engagement.

Special purpose financial statements

Financial statements prepared in accordance with a financial reporting framework designed to meet the financial information needs of specified users.

Those charged with governance

The persons with responsibility for overseeing the strategic direction of the entity and obligations related to the accountability of the entity. This includes overseeing the financial reporting process.

*****

~~A. Council~~ Chapter II : General

~~Guidelines, 2008~~

~~GUIDELINES FOR THE MEMBERS OF ICAI~~

~~(Issued under~~ ~~Clause 1 of Part II of the Second Schedule~~ ~~the provisions~~ ~~of The Chartered Accountants Act, 1949)~~

~~Chapter~~ I

Preliminary

1.0 Short title, commencement, etc.

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

~~(b) These Guidelines be called the 'Council General Guidelines, 2008'.~~

1.1 Definitions

1.1.1 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.

1.1.2 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.

1.2 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.

~~Chapter~~ II

Conduct of a Member ~~being an employee~~

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

~~Chapter~~ III

Appointment of a Member as Cost auditor

3.0 A member of the Institute shall not accept:-

(i) The appointment as Cost auditor of a Company under Section 233B of the Companies Act, 1956 while he-

(a) is an auditor of the Company appointed under Section 224 of the Companies Act or

(b) is an officer or employee of the Company; or

(c) is a partner, of any employee or officer of the Company; or

(d) is a partner or is in the employment of the Company's auditor appointed under Section 224 of the Companies Act, 1956; or

(e) is indebted to the Company for an amount exceeding one thousand rupees, or has given any guarantee or provided any security in connection with the indebtedness of any third person to the Company for an amount exceeding one thousand rupees;

OR

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

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

~~Chapter~~ IV

Opinion on financial statements when there is substantial interest

4.0 A member of the Institute shall not express his opinion on financial statements of any business or enterprise in which one or more persons who are his "relatives" within the meaning of **AS-18**[6] ~~**Section 6 of the Companies Act, 1956**~~ have, either by themselves or in conjunction with such member, a substantial interest in the said business or enterprise.

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

[6] The Council at its 299th meeting held from 27th to 28th October, 2010 decided that for the purpose of Chapter IV of the Council General Guidelines, 2008 (Opinion on financial statements when there is substantial interest) the term 'relative' shall have the same meaning as assigned to it in AS-18.

Chartered Accountants Regulations, 1988.

~~Chapter~~ V

Maintenance of books of account

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

(i) a Cash Book;

(ii) a Ledger.

~~Chapter~~ VI

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

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

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

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

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

Provided also that the audits conducted under Section 44AD, 44AE and ~~**44AF**~~[7] of the Income Tax Act, 1961 shall not be taken into account for the purpose of reckoning the "specified number of tax audit assignments".

6.1 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, 45 tax audit assignments, in a financial year, whether in respect of corporate or non-corporate assesses.

[7] Section 44AF is not applicable from the assessment year 2011-12

(b) in the case of firm of Chartered Accountants in practice, 45 tax audit assignments per partner in the firm, in a financial year, whether in respect of corporate or non-corporate assesses.

6.1.1 In computing the "specified number of tax audit assignments" each year's audit would be taken as a separate assignment.

6.1.2 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.

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

6.1.4 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.

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

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

~~Chapter~~ VII

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

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

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

7.1 Explanation 1:

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

7.2 Explanation 2:

For this purpose, "sick unit" shall mean **a unit** ~~**where**~~ the net worth **of which**

is negative.

~~Chapter~~ VIII

Specified number of audit assignments

8.0 A member of the Institute in practice shall not hold at any time

appointment of more than the "specified number of audit assignments" of Companies under Section 224 and/or Section 228 of the Companies Act, 1956.

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

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

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

8.1 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.

(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.

Provided that out of such "specified number of audit assignments, the number of audit assignments of public Companies each of which has a paid-up share capital of rupees twenty-five lakhs or more, shall not exceed ten.

8.2 In computing the "specified number of audit assignments"-

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

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

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

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

8.3 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.

8.4 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.

8.5 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 Com-pany	Regis-tration Number	Date of Appoint-ment	Date of Accep-tance	Date on which Form 23-B filed with Registrar of Companies
1	2	3	4	5	6

~~Chapter~~ IX

Appointment as Statutory auditor

9.0 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.

9.1 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.

9.2 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.

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

~~Chapter~~ X

Appointment of an auditor when he is indebted to a concern

10.0 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. 10,000/-

~~Chapter~~ XI

Directions in case of unjustified removal of auditors

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

~~Chapter XII~~[8]

~~Minimum Audit Fee in respect of Audit~~

~~**12.0 A member of the Institute in practice shall not, on behalf of**~~

[8] Chapter XII of the Council General Guidelines, 2008 regarding Minimum Audit Fee in respect of Audit has been repealed by the Council at its 306th Meeting held from 7th to 8th June, 2011

~~the firm of chartered accountants in which he is a partner, accept or carry out any audit work involving receipt of audit fees (excluding reimbursement of expenses, if any) for such work of an amount less than what is specified hereunder:-~~

~~(a) consisting of 5 or more partners but less than 10 partners with at least one partner holding a certificate of practice for five years or more; or~~

~~(b) consisting of 10 or more partners with at least one partner holding a certificate of practice for five years or more~~

		~~Practising firm having 5 or more partners but less than 10 partners~~	~~Practising firm having 10 or more partners~~
~~(i)~~	~~In cities with population of 3 million and above. (as per the last census)~~	~~Rs. 6000/- p.a~~	~~Rs. 12,000/- p.a~~
~~(ii)~~	~~In cities/towns having population of less than 3 million. (as per the last census)~~	~~Rs. 3500/- p.a~~	~~Rs 8000/- p.a~~

~~Provided that such restriction shall not apply in respect of the following:-~~

~~(i) audit of accounts of charitable institutions clubs, provident funds, etc. where the appointment is honorary i.e. without any fees;.~~

~~(ii) statutory audit of branches of banks including regional rural banks;~~

~~(iii) audit of newly formed concerns relating to two accounting years from the date of commencement of their operations;~~

~~(iv) certification or audit under Income tax Act or other attestation work carried out by the Statutory Auditor; and~~

~~(v) Sales Tax Audit and VAT Audit.~~

~~12.1 Explanation:~~

~~For the purpose of these Guidelines, the expression statutory auditor means and includes a chartered accountant appointed as~~

~~an auditor under a Central/State or Provincial Act as well as an auditor appointed under any agreement.~~

~~The Council has clarified that for the above purpose the audit of Provident Fund Trust; Gratuity Fund etc. carried out by the statutory auditor are to be considered as separate and distinct audit so that the above restrictions are applicable to it.~~

~~Chapter~~ XIII

Repeal and Saving

13.0 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.

13.1 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.

~~SCHEDULE~~

~~NOTIFICATIONS ISSUED BY THE COUNCIL UNDER ERSTWHILE CLAUSE (ii) OF PART II OF THE SECOND SCHEDULE TO THE CHARTERED ACCOUNTANTS ACT, 1949.~~

1. ~~No.1-CA(7)/65, dated 6th November, 1965.~~
2. ~~No.1-CA (37)/70, Published in Part III Section 4 of the Gazette of India dated 30th May, 1970.~~
3. ~~No.1-CA (39)/70, Published in Part III Section 4 of the Gazette of India dated 24th October, 1970.~~
4. ~~No.1-CA (44)/71, Published in Part III Section 4 of the Gazette of India dated 20th March, 1971.~~
5. ~~No. 1-CA (153)/86, Published in Part III Section 4 of the Gazette of India dated 30th August, 1986.~~
6. ~~No.1-CA (7)/3/88, Published in Part III Section 4 of the Gazette of India dated 4th February, 1989.~~
7. ~~No.1-CA (7)/9/89, Published in Part III Section 4 of the Gazette of India dated 19th August, 1989 (Since quashed by the Supreme Court vide Order dated 16th May, 2007).~~

~~8. No. 1-CA (7)/43/99, Published in Part III Section 4 of the Gazette of India dated 31st July, 1999.~~

~~9. No. 1-CA (7)/46/99, Published in Part III Section 4 of the Gazette of India dated 13th November, 1999.~~

~~10. No. 1-CA (7)/53/2001, Published in Part III Section 4 of the Gazette of India dated 12th May, 2001.~~

~~11. No.1-CA (7)/60/2002, Published in Part III Section 4 of the Gazette of India dated 23rd March, 2002.~~

~~12. No.1-CA (7)/63/2002, Published in Part III Section 4 of the Gazette of India dated 7th September, 2002.~~

~~13. No.1-CA (7)/67/2002, Published in Part III Section 4 of the Gazette of India dated 19th October, 2002.~~

~~14. No. 1 – CA (7)/75/2004, Published in Part III Section 4 of the Gazette of India dated 22nd May, 2004.~~

CHAPTER ~~6~~ III :ADVERTISEMENT

~~COUNCIL GUIDELINES~~

~~(A) GUIDELINES FOR~~ ADVERTISEMENT

~~THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (ICAI)~~

~~*(Set up under the Chartered Accountants Act, 1949)*~~

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

GUIDELINES FOR ADVERTISEMENT FOR THE MEMBERS IN PRACTICE

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

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

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).

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 (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. The write-up may include ~~only~~ the following information:

(A) For Members

(i) Name …… Chartered Accountant

(ii) Membership No. with Institute **(mandatory)**

(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) Individual logo

(x~~i~~v) ~~**Passportsize**~~ photograph

(xv**i**) Details of Employees (Nos. -)

(a) Chartered Accountants -

(b) Other Professionals –

(c) Articles/Audit Assistants

(d) Other Employees

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

(xvii**i**) **Names of Clients (without clients' logo)/**Services provided

(a) ……

(b) ……

(c) ……

(xix) Award recognized by the Central / State Government / regulatory body.

(xx)Position held in the past in ICAI.

(B) For Firms

(i) Name of the Firm …… Chartered Accountants

(ii) Firm Registration No. with Institute **(mandatory)**

(iii) Year of establishment.

(iv) Professional Address(s)

(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 size photograph.

(xi) C A Logo

(xii) Firm Logo

(xii**i**) Details of Employees (Nos. -)

(a) Chartered Accountants -

(b) Other professionals –

(c) Articles/Audit Assistants

(d) Other employees

(x~~iii~~**iv**) Names of the employees of the firm and their particulars on the lines allowed for a member as stated above.

(x~~iv~~**v**) **Names of Clients (without clients' logo) /** 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.

(C) Significant achievements relating to services other than Audit or review of historical financial information covered by Standards on Auditing (SAs)100 –999 and Standards on Review Engagements (SREs)2000 – 2699 may be included in the write - up.

4. Other Conditions

~~**(vi)**~~ **(i)** The write-up should not violate the provisions of the **Chartered Accountants**' Act, 1949, Rules made there under and 'The Chartered Accountants Regulations, 1988'.

~~**(iii)**~~**(ii)** The write-up should not be indecent, sensational or otherwise of such nature which may likely to bring the profession into disrepute.

~~**(v)**~~ **(iii)** The write-up should not contain any other representation(s) that may like to cause a person to misunderstand and/or to be deceived.

~~**(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).**~~

~~(iv) The write-up should not contain testimonials or endorsements concerning Member(s).~~

~~(vii) The write-up should not include the names of the clients (both past and present)~~

~~(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 (ii) of 3(A) and para (ii) of 3(B) above is mandatory.~~

Chapter IV : WEBSITE

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

(1) The Chartered Accountants and/or Chartered Accountants' Firms would be free to create their own Website subject to the overall guidelines laid down by the Council hereunder. The actual format of the Website is not being prescribed nor is any standard format of the Website being given to provide independence to the Members. There is no restriction on the colours which may be used in the Website.

(2) Individual Members would also be permitted to have their Webpages in their trade name or individual name.

~~**(3) The Chartered Accountants and/or Chartered Accountants' Firms would ensure that their Websites are run on a "pull" model and not a "push" model of the technology to ensure that any person who wishes to locate the Chartered Accountants or Chartered Accountants' firms would only have access to the information and the information should be provided only on the basis of specific "pull" request.**~~

~~**(4) The Chartered Accountants and/or Chartered Accountants' Firms should ensure that none of the information contained in the Website be circulated on their own or through E mail or by any other mode or technique except on a specific "pull" request.**~~

~~**(5) The Chartered Accountants would also not issue any circular or any other advertisement or any other material of any kind whatsoever by virtue of which they solicit people to visit their Website. The Chartered Accountants would, however, be permitted to mention their Website address on their professional stationery.**~~

~~**(6)**~~ **(3)** The following information may be allowed to be displayed on the Firms/Members' Websites:

(A) For Firm's Website

~~**(i)Member/Trade/Firm name.**~~

~~**(ii) Year of establishment.**~~

~~**(iii) Member/Firm's Address (both Head Office and Branches)**~~

~~**Tel. No(s)**~~

~~**Fax No(s)**~~

~~**E mail ID(s)**~~

~~(iv) Nature of services rendered (to be displayable only on specific "pull" request)~~

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

(ii) Firm Registration No. with Institute (mandatory)

(iii) Year of establishment.

(iv) Professional Address(s)

(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 size photograph.

(xi) CA Logo

(xii) Firm Logo

(xiii) Details of Employees (Nos. -)

(a) Chartered Accountants -

(b) Other professionals –

(c) Articles/Audit Assistants

(d) Other employees

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

(xv) Names of Clients (without clients logo) / 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.

~~(iv)~~ **(xvi)** Partners

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

~~(vi)~~ **(xvii)** Details of Employees -

Professional	Others	Name	Designation	Area of experience ~~(to be displayable only on specific "pull" request)~~

~~(vii)~~ **(xviii)** Job vacancies for the Chartered Accountant/firm of Chartered Accountants (including articleship).

~~(viii)~~ **(xix)** No. of articled clerks. (~~to be displayable only on specific "pull" request).~~

~~(ix) Nature of assignments handled (to be displayable only on specific "pull" request). Names of clients and fee charged cannot be given.~~

(B) For Member's Website

(i) Name ..... Chartered Accountant

(ii) Membership No. with Institute (mandatory)

(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) Individual logo

(xiv) photograph

(xvi) Details of Employees (Nos. -)

(a) Chartered Accountants -

(b) Other Professionals –

(c) Articles/Audit Assistants

(d) Other Employees

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

(xvii) Names of Clients (without clients logo) / Services provided.

(a).....

(b)……

(c)……

(xviii) Award recognized by Central / State Government / regulatory body.

(xix) Any position held in the past in ICAI.

(C) Significant achievements relating to services other than Audit or review of historical financial information covered by Standards on Auditing (SAs)100 –999 and Standards on Review Engagements (SREs)2000 – 2699 may be mentioned .

~~**(7) Since Chartered Accountants in practice/firms of Chartered Accountants are not permitted to use logo with effect from 1st July, 1998, they cannot use logo on Website also.**~~

~~**(8) Display of Passport size photograph is permitted.**~~

~~**(9)**~~ **(4)** The members may include articles, professional information, professional updation and other matters of larger importance or of professional interest.

~~**(10)**~~ **(5)** The bulletin boards can be provided.

~~**(11)**~~ **(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.

~~**(12)**~~ **(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.

~~**(13)**~~ **(8)** The listing on suitable search engine should be permitted. ~~**However, the field of search should be restricted only to the field of "Chartered Accountants" or "CA" or "Indian CA", "Indian CPA", "Indian Chartered Accountant" or any permutation or combination related thereto.**~~ The Websites would be subjected to the guidelines contained herein and normally would not be vetted by the Institute of Chartered Accountants of India (ICAI). ~~**ICAI at its sole discretion may vet any of the Websites created by its members or individual Chartered Accountant or firms of Chartered Accountants and would have powers to direct deletion of certain portions and/or issue specific directions. In addition, necessary action can be taken in accordance with the Chartered Accountants Act, 1949 and the Regulations framed thereunder, in case there is any violation of the above guidelines.**~~

~~**(14)**~~ **(9)** The details in the Website should be so designed that **no part of the same is in contravention with the Act, Rules and Regulations.** ~~**it does not amount to soliciting client or professional work. In case any content or technical feature of Website is against the professional Code of Conduct and Ethics as well as the restrictions contained in the schedules to the Chartered Accountants Act, 1949 or against the guidelines or directions issued by ICAI from time to time, appropriate action**~~

~~**will be initiated by the ICAI in terms of its disciplinary mechanism either suo-motto or on complaint as provided under the Chartered Accountants Act, 1949.**~~

~~**(15)**~~ **(10)** The Website should ensure adequate secrecy of the matters of the clients handled through Website.

~~**(16)**~~ **(11)** A number of Chartered Accountants Societies or other bodies are creating data-bases of Chartered Accountants or Chartered Accountants' Firms and are offering listing to Chartered Accountants. Such listing would be permitted with or without payment. In case a Chartered Accountant or Chartered Accountants' Firm is a member of a professional body or association or Chamber of Commerce and they offer listing to the members or firm, the same would be permitted.

~~**(17) The Institute of Chartered Accountants of India will regularly inform the aforesaid guidelines to the members and the Chartered Accountants' Firms to ensure the strict compliance of the guidelines. The guidelines may be revised from time to time.**~~

~~**(18) No Advertisement in the nature of banner or any other nature will be permitted on the Website.**~~

~~**(19) The Website should be befitting the profession of Chartered Accountants and should not contain any information or material which is unbecoming of a Chartered Accountant.**~~

~~**(20)**~~ **(12)** The Website may provide a link to the Website of ICAI, its Regional Councils and Branches and also the Website of Govt./Govt. Departments/Regulatory authorities/other Professional Bodies. ~~**such as, American Institute of Certified Public Accountants (AICPA), the Institute of Chartered Accountants of England & Wales (ICAEW) and The Canadian Institute of Chartered Accountants (CICA).**~~

~~**(21)**~~ **(13)** The address of the Website can be different from the name of the firm. But it should not amount to soliciting clients or professional work or advertisement of professional attainments or services. The Website address should be as near as possible to the individual name/trade name, firm name of the Chartered Accountant in practice or firm of Chartered Accountants in practice. ~~**The Ethical Standards Board (ESB) of ICAI will decide in case there is any difficulty.**~~

~~**(22)**~~ **(14)** The Website should mention the date upto which it is updated and the information should not be at material variance from the information as per the ICAI's records.

~~**(23)**~~ **(15)** 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 non-compliance with the guidelines.

~~**(24))**~~ **(16)** 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.**~~ The websites may give contact address and email ids of the chartered accountants/ chartered accountants firm.

Chapter V : 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:

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 stud- ies.

(ix)Price-fixation and other manage- ment 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 de- velopment 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 memo- randum 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 un- derwriting 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 vari- ous 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 Securi- ties 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.

3. 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.

4. 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' .

5.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-pro- prietorship 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 di- rectives 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/Managerof 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.

Chapter VI : 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.

Chapter VII :

CONVERSION OF CA FIRMS INTO LLPs

In terms of the Council decision dated 14 July, 2011, following guidelines for conversion of CA firms into LLPs and constitution of separate LLPs by the practicing Chartered Accountants have been finalized which are applicable for conversion of CA firms into LLPs or formation of new LLPs by the members in practice of the Institute subject to the provisions of the Limited Liability Partnership (LLP) Act, 2008 and Rules & Regulations framed there under:-

(A) Conversion of CA firms into LLPs

1. All existing CA firms who want to convert themselves into LLPs are required to follow the provisions of Chapter-X of the Limited Liability Partnership Act, 2008 read with Second Schedule to the said Act containing provisions ~~of~~ for conversion ~~from~~ of existing firms into LLP[9].

2. In terms of Rule 18(2) (xvi) of LLP Rules- 2009, if the proposed name of LLP includes the words `Chartered Accountant' or ~~c~~Chartered Accountants, as the case may be, as part of the proposed name, the same shall be referred to the Institute of Chartered Accountants of India (ICAI) by the Registrar of LLP and it shall be allowed by the Registrar only if the Secretary, ICAI approves it.

3. If the proposed name of LLP of CA firm resemble with any other non-CA entity as per the naming Guidelines under LLP Act and its Rules, the proposed name of LLP of CA firms may include the word `Chartered Accountant' or `Chartered Accountants', as the case may be in the name of the LLP itself and the Registrar, LLP may allow the same name, subject to compliance of ~~to~~ Rule 18(2) (xvi) of LLP Rules as referred above.

[9] In this reference, the attention of the members is drawn on the General Circular No.40/2012 dated 17th December, 2012 (copy attached), issued by the Ministry of Corporate Affairs, Government of India advising all ROCs to ensure that in-principle approval/NOC of ICAI is to be obtained at the time of incorporation/Conversion into LLP.

4. For the purpose of registration of LLP with ICAI under regulation 190 of the Chartered Accountants Regulations, 1988, the partners of the firm shall apply in ICAI Form No. '117' and the ICAI Form No. '18' along with copy of name registration received from the Registrar of LLP and submit the same with the concerned Regional office of the ICAI. These Forms shall contain all details of the offices and other particulars as called for together with the signatures of all partners or authorized partner of the proposed LLP.

5. The names of the CA firms registered with the ICAI shall remain reserved for the partners as one of the options for LLP names subject to the provisions of LLP Act, Rules and Regulations framed there under[10].

6. The following guidelines relating to seniority and other criteria shall be followed for registration of LLP with ICAI.

(i) Where two similar or identical or nearly similar firm names (whether the partners of such firms are same or not) have been registered by ICAI, under the proposed LLP, only one such firm name shall be approved and remaining firm registered with ICAI, either desires to convert into LLP or not, a change in the firm name shall be required.

(ii) The name of the LLP may be in the form of ~~like~~ `X & Co. LLP' or `X & Associates LLP' and no other suffix shall be approved and registered by ICAI[11].

(iii) The newly converted CA LLPs registered with ICAI shall be allowed to work only in terms of Section 2(2) of the Chartered Accountants Act, 1949 and the object of LLP to be incorporated in Form-2 and Form 17 of the LLP rules, 2009 or in LLP agreement, shall be in the nature of Professional Services allowed under Section 2(2) of the Chartered Accountants Act, 1949. LLP shall be subject to the same regulations, as if they were in

[10] In this reference, the attention of the members is also drawn on the General Circular No.45/2011 dated 8th July, 2011 (copy attached), issued by the Ministry of Corporate Affairs, Government of India regarding the name Availability Guidelines, 2011 to be kept in mind.

[11] In this reference, the attention of the members is also drawn on the General Circular No.45/2011 dated 8th July, 2011 (copy attached), issued by the Ministry of Corporate Affairs, Government of India regarding the name Availability Guidelines, 2011 to be kept in mind.

partnership firm. Mere conversion into LLP does not give any privileges, which were not earlier with the CA firms.

(iv) Inter-se seniority among the firms shall be given to LLP as per existing policy of ICAI. In other words, LLPs shall carry the same seniority, as the firm shall otherwise have under the existing policy of ICAI. In case of merger of 2 LLPs, same rules as applicable to firms merging shall apply.

(v) The non converted firms shall also remain on the same position of seniority in relation to converted LLPs as the converted LLPs shall have the same inter-se seniority as the firms had earlier to conversion.

(vi) Wherever more than one partnership firms with all the partners desire to convert/ form only one LLP, in that case the name and FRN may be selected of only one of such firms for the purpose of registration with ICAI and;

(i) The other such firms shall stand dissolved.

(ii) Seniority shall be decided as per applicable rules of ICAI.

7. These guidelines of conversion of CA firms into LLP shall also be applicable to the conversion of proprietary firms into LLP subject to the provisions of LLP Act, Rules and Regulations framed there under. The conversion of proprietary firms shall be by way of incorporation of new LLPs.

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8. The registration number (with minimum 6 numbers) of LLP with ICAI, shall remain the same Firm Registration Number (FRN) allotted to the firm before the conversion by ICAI with the Regional Code like `W' for Western, `E' for Eastern, `S' for Southern, `N' for Northern and `C' for Central Region as under:-

						Region Code	
FRN	**1**	**0**	**0**	**0**	**0**	**0**	**W**
FRN	**2**	**0**	**0**	**0**	**0**	**0**	**S**
FRN	**3**	**0**	**0**	**0**	**0**	**0**	**E**
FRN	**4**	**0**	**0**	**0**	**0**	**0**	**C**
FRN	**5**	**0**	**0**	**0**	**0**	**0**	**N**

9. Introduction of LLP, shall not affect the existing regulations in force as regards the name allotment to chartered accountants firms.

10. In case there is a merger of a firm and conversion with LLP and vice-versa, seniority may be provided to the surviving entity as per the policy annexed at ~~as per~~ Annexure 'A' attached herewith.

11. The provisions of CA Act, 1949, Chartered Accountants Regulations, 1988 and Code of Ethics issued by ICAI shall be applicable to all partners of the converted CA firms into LLP jointly and severally.

12. As per General circular No. 9/2013 dated 30th April, 2013 issued by Ministry of Corporate Affairs, Government of India, wherever the existing partnership firm has ~~have~~ been appointed as statutory auditor of any company after following the due procedure under the Companies Act, 1956 and the said firm is converted into LLP after complying with the relevant provisions of the LLP Act 2008, then the same FRN will continue and the Board of Directors of the Company may take on record through resolution the conversion of the CA firm into LLP and the new LLP shall be deemed to be an Auditor of the said company for the said financial year in terms of Section 58(4) of the LLP Act, 2008.

(B) Constitution of separate LLPs

13. All members of ICAI in practice who want to constitute separate LLPs are required to follow the provisions of the Limited Liability Partnership Act, 2008 read with the Rules framed there under[12].

14. In terms of Rule 18(2) (xvi) of LLP Rules- 2009, if the proposed name of LLP includes the words `Chartered Accountant' or chartered Accountants, as the case may be, as part of the proposed name, the same shall be referred to the ICAI by the Registrar of LLP and it shall be allowed by the Registrar only if the Secretary, ICAI approves it.

15. For the purpose of registration of LLP with ICAI under regulation 190 of the Chartered Accountants Regulations, 1988, the partners of the firm shall apply in ICAI Form No. '117' and the ICAI Form No. '18' along with copy of name registration received from the Registrar of LLP and submit the same with the concerned Regional office of the ICAI. These Forms shall contain all details of the offices and other particulars as called

[12] In this reference, the attention of the members is also drawn on the General Circular No.45/2011 dated 8th July, 2011 (copy attached), issued by MCA.

for together with the signatures of all partners or authorized partner of the proposed LLP.

16. The following guidelines relating to seniority and other criteria shall be followed for registration of LLP with ICAI.

(i) Inter-se seniority among the firms shall be given to LLP as per existing policy of ICAI. In other words, LLPs shall carry the same seniority, as the firms shall otherwise have under the existing policy of ICAI. In case of merger of two LLPs, same rules, as applicable to firms merging, shall apply.

(ii)The name of the LLP may be like `X & Co. LLP' or `X & Associates LLP' and no other suffix shall be approved and registered by ICAI.

(iii)The newly constituted CA LLPs registered with ICAI shall be allowed to work only in terms of Section 2(2) of the Chartered Accountants Act, 1949 and the object of LLP to be incorporated in Form-2 and Form 17 of the LLP rules, 2009 or in LLP agreement, shall be in the nature of Professional Services allowed under Section 2(2) of the Chartered Accountants Act, 1949. LLP shall be subject to the same regulations, like the partnership firms. Mere conversion into LLP does not give any privileges, which were not earlier with the CA firms.

17. These guidelines of conversion of CA firms into LLP shall also be applicable to the conversion of proprietary firm into LLP subject to the provisions of LLP Act, Rules and Regulations framed there under. The conversion of proprietary firm shall be by way of incorporation of new LLPs.

18.The registration number (with minimum 6 numbers) of LLP with ICAI, shall be like the Firm Registration Number being allotted to the firms by ICAI with the Regional Code like `W' for Western, `E' for Eastern, `S' for Southern, `N' for Northern and `C' for Central Region.

19. Introduction of LLP, shall not affect the existing regulations in force as regards ~~N~~name allotment to chartered accountants firms.

20. The provisions of CA Act, 1949, Chartered Accountants Regulations, 1988 and Code of Ethics issued by ICAI shall be applicable to all partners of the LLP jointly and severally.

21. In case of any dispute in respect of these guidelines, the same shall be referred to the committee of the Institute and the

decision of that committee shall be final and binding on the members of the Institute.

22. For the purpose of any clarification regarding the approval and registration of proposed LLP with the ICAI, the requests can be sent at the following address:-

The Secretary
The Institute of Chartered Accountants of India
P.B No: 7100, "ICAI Bhavan", Indraprastha Marg
New Delhi – 110002

23. These Guidelines came into force w.e.f. 4th November, 2011.

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Chapter VIII : Network

1. Short Title & Commencement

(i) These ~~G~~guidelines may be called 'Guidelines for Networking.' (hereinafter referred to as "Guidelines")
(ii) These Guidelines shall come into force on the 2nd day of September, 2011

2. Definitions.

(i) In these ~~this~~ guidelines, unless there is anything repugnant in the subject or context,

(a) Act – "Act" means The Chartered Accountants Act, 1949.

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

(c) Council – "Council" means the Council of the Institute.

(d) Firm – "Firm" means a sole Practitioner / proprietor, partnership/ limited liability partnership or any such entity of professional accountants as may be permitted by law.

(e) Institute – "Institute" means the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949.

(f) Member – "Member" means a Member of the Institute as defined in Section 2(x) of The Chartered Accountants Regulations, 1988.

(g) Network – "Network" means a ~~A~~ larger structure:

(a) That is aimed at co-operation; and
(b) That is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand name, or a significant part of professional resources.

(h) Network Firm – "Network Firm" means a firm or ~~E~~entity that belongs to a Network.

(h) Regulations – "Regulations" means Chartered Accountants Regulations, 1988.

3. Concept:

The Concept of Network is explained in appendix I, which forms an integral part of these ~~g~~Guidelines.

4. Forms of the Network

The different forms of Network may ~~can~~ be as under:-

4.1 A network may ~~can~~ be constituted as a mutual entity which will act as a facilitator for the constituents of the Network. In such a case the Network itself will not carry out any professional practice.

4.2 A network may ~~can~~ be constituted as a partnership firm subject to the condition that the total number of partners does not exceed twenty.

4.3 A network may ~~can~~ be constituted as a Limited Liability Partnership subject to the provisions of the Chartered Accountant Act, 1949; ~~and Rules~~ the Chartered Accountant Regulations, 1988 and such other laws as may be applicable.

4.4 A network may ~~can~~ be constituted as a company subject to the guidelines prescribed by Institute for corporate form of practice and formation of management consultancy services company.

4.5 Network Firms may ~~shall~~ consist of a *sole Practitioner/proprietor, partnership or ~~any~~ such other entity of professional accountants as may be permitted by law ~~the Act~~*

4.6 A firm is permitted ~~allowed~~ to join only one network.

4.7 Firms having common partners are permitted to ~~shall~~ join only one Network.

5. Approval of Name of Network amongst firms registered with the Institute:

5.1 The Network shall ~~may~~ have a distinct name which shall ~~should~~ be approved by the Institute. To distinguish a "Network" from a "firm" of Chartered Accountants, the words "& Affiliates" shall be used after the name of the network and the words "& Co." /"& Associates" shall not be used. Illustrative examples of names which a network may

have are shown in Appendix II. The prescribed format of application for approval of Name for Network is at Form 'A' (enclosed at Appendix III). ~~The names of the network may be as mentioned in Appendix II.~~

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

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

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

6. Registration of Network with entities in India

6.1 After the name of a Network is approved as per the procedure prescribed ~~provision~~ under Guideline 5, the Institute ~~same~~ shall reserve such name for a period of three (3) months from the date of approval.

6.2 The Network shall get itself registered with the Institute by applying in Form B (enclosed at Appendix IV) within a ~~the~~ period of 3 months, failing which the name assigned shall stand cancelled on the expiry of the said period.

6.3 Registration of Network with the Institute is mandatory.

6.4 If different Indian firms are networked with a common Multinational Accounting Firm, they shall be considered as a part of the same network.

7. Listing of Network with entities outside India

7.1 The duly authorized representative(s) of the Indian Member firm (s)/Member constituting the Network with entities outside India shall file a declaration with the Institute in Form `D' (enclosed at Appendix VI) for Listing of such

Network within 30 days from the date of entering into the Network arrangement.

7.2 Proprietary/individual members, partnership firms as well as members in LLP or ~~any~~ such other entity of members as may be permitted by law~~the Act~~, shall be permitted to join such network with entities outside India provided that the proprietary/individual members, partnership firms as well as members in LLP or any such other entity of members are allowed to join only one network and firms having common partners shall join only one such network.

8. Change in constitution of registered Network:

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

9. Ethical Compliance:

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

9.1 If one firm of the network is the statutory auditor of an entity then the associate [including the networked firm(s)] or the said firm directly/indirectly shall not accept the internal audit or book-keeping or such other professional assignments which are prohibited for the statutory auditor firm.

9.2 The guidelines ~~of~~ on ceiling ~~on~~ of Non-audit fees as provided in Chapter IX of the Council General Guidelines, 2008 (Appointment as Statutory Auditor) are ~~is~~ applicable in relation to a Network as follows: -

i) For a Network firm who is doing statutory audit (including its associate concern and/or firm(s) having common partnership), it shall be the same as mentioned in the said guidelines ~~notification~~; and

ii) For other firms of the same Network collectively, it shall be 3 times of the fee payable for carrying out the statutory audit of the same undertaking/company.

9.3 In those cases where rotation of firms is prescribed by any regulatory authority, no member firm of the network can accept appointment as an auditor in place of any member firm of the network which is retiring.

9.4 The Network may advertise the Network to the extent permitted by the Advertisement Guidelines issued by Institute. The firms constituting the network are permitted to use the words "Network Firms" on their professional stationery.

9.5 The constituent member firms of a Network and the Network shall comply with all the Ethical Standards prescribed by the Council from time to time.

10. Consent of Client:

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

11. Framework of Internal Byelaws of Network:

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

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

(ii) Administration of the network

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

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

(v) Dispute settlement procedures through arbitration and conciliation

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

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

(viii) Development of softwares for different types of assignments

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

(x) Library

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

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

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

(xiv) Peer review of the member firms

These clauses are illustrative.

12. Repeal and Saving:

The erstwhile "Rules/Guidelines of Network" issued by the Institute stands repealed from the date of commencement of these Guidelines.

Provided that notwithstanding such repeal, anything done or any action taken or purported to have been done or taken in respect of the erstwhile Rules/Guidelines prior to the date of applicability of these Guidelines shall be deemed to have been done or taken under the corresponding provisions of these Guidelines.

Appendix-I

(Referred to in para 3 of the Guidelines of Network and forms an integrated part of the Guidelines)

Concept

1.1 To enhance their ability to provide professional services, firms frequently form larger structures with other firms and entities. Whether these larger structures create a network depends on the particular facts and circumstances and does not depend on whether the firms and entities are legally separate and distinct. For example, a larger structure may be aimed only at facilitating the referral of work, which in itself does not meet the criteria necessary to constitute a network. Alternatively, a larger structure might be such that it is aimed at co-operation and the firms share a common brand name, a common system of quality control, or significant professional resources and consequently is deemed to be a network.

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

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

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

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

common quality control policies and procedures are those designed, implemented and monitored across the larger structure.

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

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

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

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

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

1.10 The determination of whether the professional resources shared are significant, and therefore the firms are network firms, shall be made based on the relevant facts and circumstances. Where the shared resources are limited to common audit methodology or audit manuals, with no exchange of personnel or client or market information, it is unlikely that the shared resources would be significant. The same applies to a common training endeavor. Where, however, the shared resources involve the exchange of people or information, such as where staff are

drawn from a shared pool, or a common technical department is created within the larger structure to provide participating firms with technical advice that the firms are required to follow, a reasonable and informed third party is more likely to conclude that the shared resources are significant.

Appendix-II

(Referred to in para 5.1 of the Guidelines of Network and forms an integrated part of the Guidelines)

Illustrative examples of names of Network: -

a) **If the Network is a Mutual Entity or Partnership Firm:**
   AB & Affiliates
b) **If the Network is a LLP:**
   AB Affiliates LLP
c) **If the Network is a Limited Company:**
   AB Affiliates P. Ltd/Limited

Appendix III

Form `A'

APPLICATION FOR APPROVAL OF NAME FOR NETWORK OF FIRMS

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
[See the relevant Rule of Guidelines of Network amongst the firms registered with The Institute of Chartered Accountants of India]

1. Proposed name of Network (in order of preference) if the Network has a distinct name
1. _____
2. _____
3. _____
4. _____

2. Name(s) of the firm(s)/Member(s) forming network

Firm Name/ Member Name	Firm Regn. No./ M.No.
1.	
2.	
3.	
4.	

3. Address of the Office of the Network
_____
_____
_____
Pin _____
E-mail (if any) _____
Phone No. _____

4. We hereby declare that the above firm(s)/Member(s) proposed/have entered into an understanding to form a network in accordance with Guidelines of Network amongst the firms registered with The Institute of Chartered Accountants of India and further affirm and confirm that the partner signing the application has been duly authorised by the other partners of the respective firms.

Place : .....
Name(s) with Membership No(s).

and signature(s) of duly authorized

Date : .....

Partner(s)/Proprietor(s) of the firms/ Member constituting Network

Instruction: A copy of the authorisation to be filed with the Institute by the partner signing the declaration on behalf the firm.

Appendix IV

Form 'B'

APPLICATION FOR REGISTRATION OF NETWORK AMONGST FIRMS WITH INSTITUTE – INDIAN AFFILIATION

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
[See relevant Rule of Guidelines of Network amongst the firms registered with The Institute of Chartered Accountants of India]

PARTICULARS OF NETWORK

1. Name of the Network

2. Address of the Network

3. Names and addresses of firms/Member constituting the Network

Names and addresses of Firm(s)/Member(s)	Firm Registration No./M.No.

4. Date and approval number of network name given by Institute

5. (a) Date of formation of Network

6. We undertake to comply with the guidelines/directions laid down by the Council regarding Network from time to time.

We hereby confirm that all the Network firms have entered into an understanding to work as a network in accordance with the Guidelines of Network amongst the firms registered with the Institute and further affirm and confirm that the partner signing the application has been duly authorized by the other partners of the respective firms.

Place : …… **Name(s) with membership No(s).**
and
Date: …… **signature(s) of duly authorized**

Partner(s)/Proprietor(s) of the firms/Member constituting Network

Chapter IX (Appointment as Statutory auditor) of Council General Guidelines No.1 CA(7)/02/2008, dated 8th August,2008

9.0 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.

9.1 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.

9.2 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.

9.3 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.

Form 'C'

DECLARATION FOR CHANGE IN CONSTITUTION OF REGISTERED NETWORK

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

[See relevant Rule of Guidelines of Network amongst the firms registered with The Institute of Chartered Accountants of India]

1. Name of the Network
2. Address of the Network
3. Names and addresses of firms constituting the Network

Names and addresses	Firm Registration No./M. No. of Firm(s)/Member(s)

4. Name and address of the firm/member willing to enter/exit into/from the Network

Name and address of Firm(s)/Member(s)	Firm Registration No./M. No.

Date of change in the constitution:

We hereby declare that the above firm(s)/Members(s) proposed to have enter/exit into/from the network in accordance with the Guidelines of Network amongst the firms registered with the Institute of Chartered Accountants of India and further affirm and the confirm that the partner signing the application has been duly authorized by the other partners of the respective firms.

Place : ..... **Name(s) with Membership No(s).**

and signature(s) of duly authorized

Date : .....

Partner(s)/Proprietor(s) of the firms

Instruction: A copy of the authorisation to be filed with the Institute by the partner signing the declaration on behalf the firm.

Form `D'

DECLARATION TO BE FILED FOR NETWORK WITH ENTITIES OUTSIDE INDIA

[See relevant rule of Guidelines of Network amongst the firms registered with The Institute of Chartered Accountants of India]

THE INSTITUTE OF CHARTERED ACCOUNTATNS OF INDIA
PARTICULARS OF NETWORK WITH ENTITIES OUTSIDE INDIA

1. Name of the Network

2. Address of the Network

3. Date on which the Indian firms have joined the present Network arrangement:

4. Name(s) & address(es) of all the firm(s) joined/joining the Network

Name(s) of Firm(s) Firm Registration Number(s)

Verification

I/We solemnly declare and affirm that the information provided is true and correct to my/our knowledge and belief.

Place: …… **Name(s) with Membership No(s) and signature(s) of a duly authorised**

Date: ……

Partner of the Indian firm(s)/
Member joining the Network

Note:

(i) All existing Network should file this declaration on or before 30th June .

(ii) Any new network arrangement shall file this declaration within 30 days of entering into the Network arrangement.

(iii) A copy of the authorisation to be filed with the Institute by the Partner signing the declaration on behalf of the firm.

(iv) The declaration may be filed jointly or separately with the Institute by the firms entering the Network.

Chapter IX:

MANDATORY SELF REGULATORY MEASURES

7.1 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 **mandatory** ~~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~~ **measures** are as under:

7.2 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, 1956. 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.

7.3 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.

7.4 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 clerks, typists, peons and other persons not engaged directly in such professional work.

7.5 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.

7.6 Ceiling on the Fees

To ensure that the professional independence of a member in full- time or part-time practice does not appear to be jeopardized he should, as far as possible, take care to see that the professional fees for audit and other services received by the firm in which he is a partner, by him and his partners individually and by firm or firms in which he or his partner are partners from one or more clients or Companies under the same management does not exceed 40% of the gross annual fees of the firm, firms and partners referred to above. Companies under the same management here would refer to the definition of this expression as provided in section 370(1-B) of the Companies Act, 1956.

Provided that no such ceiling on the gross annual professional fees of a member would be applicable where such fees do not exceed two lakhs of rupees in respect of a member or firm including fees received by the member or firm for other services rendered through the medium of a different firm or firms in which such member or firm may be a partner or proprietor.

Provided further that no such ceiling on the gross annual professional fees of a member would be applicable in the case of audit of government Companies, public undertakings, nationalised banks, public financial institutions or where appointments of auditors are made by the Government.

~~7.7 Recommended scale of fees chargeable for the work done by the members of the Institute.~~

~~The Council of the Institute of Chartered Accountants of India recommends from time to time scale of fees chargeable for the work done by the member of the Institute. Such scale of fees were last revised effective from April 1, 2000. Keeping in view the overall increase in the cost of living since then, the Council at its meeting held in January 2006, has revised the existing recommended fees as under (effective from 12th May 2006):~~

		~~Existing~~		~~Revised with effect from (12th May 2006)~~	
		~~Between (Rs.)~~	~~And (Rs.)~~	~~Between (Rs.)~~	~~And (Rs.)~~
~~1.~~	~~For giving expert evidence in courts of law in the Union of India according to professional standing of the witness.~~	~~5,000~~ ~~10,000~~ ~~[For each day or part thereof, spent in attendance and/ or travelling]~~		~~7,500~~ ~~15,000~~ ~~[For each day or part thereof, spent in attendance and/ or travelling]~~	
~~2.~~	~~Other work:~~ ~~(a) Statutory Audit,~~ ~~Tax Audit,~~ ~~Internal Audit,~~ ~~Accountancy and Secretarial Work:~~				
	~~— Principal~~	~~600~~	~~1,200~~	~~900~~	~~1,800~~
	~~— Qualified Assistants~~	~~300~~	~~600~~	~~450~~	~~900~~
	~~— Semi Qualified/ — Other Assistants~~	~~100~~ ~~[Per Hour]~~	~~200~~ ~~[Per Hour]~~	~~150~~ ~~[Per Hour]~~	~~300~~ ~~[Per Hour]~~
	~~(b) Taxation Work:~~ ~~— Principal~~	~~1,000~~	~~2,000~~	~~1,500~~	~~3,000~~
	~~— Qualified Assistants~~	~~500~~	~~1,000~~	~~750~~	~~1,500~~
	~~— Semi-Qualified/ — Other Assistants~~	~~200~~ ~~[Per Hour]~~	~~400~~ ~~[Per Hour]~~	~~300~~ ~~[Per Hour]~~	~~600~~ ~~[Per Hour]~~

	~~(c) Investigation, Management Services or Special Assignments:~~ ~~— Principal~~ ~~— Qualified Assistants~~ ~~— Semi-Qualified/ — Other Assistants~~	~~1,500~~ ~~750~~ ~~250 [Per Hour]~~	~~3,000~~ ~~1,500~~ ~~500 [Per Hour]~~	~~2,250~~ ~~1,125~~ ~~375 [Per Hour]~~	~~4,500~~ ~~2,250~~ ~~750 [Per Hour]~~

~~Note:~~

1. ~~Office time spent in travelling would be chargeable. In case of outstation work, travelling and out-of-pocket expenses would also be chargeable.~~
2. ~~The Council issues for general information the above revised recommended scale of fees which it considers reasonable under present conditions. It will be appreciated that the actual fees charged in individual cases will be a matter of agreement between the member and the client~~

Appendices

APPENDIX 'A'

~~**(Please refer to page 107)**~~

Same as Appendix No. (11) of the Institute's publication, viz., the Chartered Accountants Act, 1949

(1) It was agreed that the Institute's previously recognised* under the Auditor's Certificates Rules, 1932, be recognised for the purposes of Section 7 for the use of letters, F.S.A.A., etc.

(2) The Council decided that letters or description in respect of membership of bodies other than Accountancy Institutes can be used provided such use does not amount to the use of designation and in the case of Accountancy Institutes prior recognition of the Council in this behalf is necessary. It was also decided that in respect of Accountancy Institutes which are recognised and in respect of Institutes other than Accountancy Institutes the word London in brackets may be allowed to be added provided that in each case the respective Institutes had permitted such addition.

The Council also decided that the Institute of Cost and Works Accountants is not an Accountancy Institute within the meaning of Section 7 and therefore there was no bar to the use of these letters by the members of that Institute, if they happen to be our members.

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* List of Institute and Societies recognised under the Auditors Certificates Rules, 1932:
(1) The Institute of Chartered Accountants in England and Wales;
(2) The Society of Incorporated Accountants and Auditors, London;
(3) The Society of Accountants in Edinburgh;
(4) The Institute of Accountants and Actuaries in Glasgow;
(5) The Society of Accountants in Aberdeen; and
(6) The Institute of Chartered Accountants in Ireland.

APPENDIX 'B'

~~**(Please refer to page 133)**~~

Announcement regarding withdrawal of Appendix no. (6) of the Institute's publication viz. the Chartered Accountants Act, 1949 as published at page 53 of February 1998 issue of the Journal.

Resolution passed by the Council of the Institute of Chartered Accountants of India (ICAI) following the decision taken at its 188th meeting held from 8th to 10th December, 1997 to treat persons (who were, on the basis of their UK Qualification, enrolled prior to 8th December, 1995 as members of ICAI under Section 4(1)(v) of the Chartered Accountant Act, 1949 and were also members of the ICAI as on 8th December 1995) at par with persons qualified from ICAI.

For the purpose of removal of doubts in regard to the decision taken by the Council at its 178th meeting held on 6th, 7th and 8th December, 1995, to withdraw the resolution passed by it in February, 1958 u/s 4(1)(v) of the Chartered Accountants Act, 1949 (then appearing as Appendix No. (6) to the Chartered Accountants Act, 1949), the Council has decided to pass the following Resolution:

RESOLVED THAT

1. Further to the resolution passed by the Council in its meeting held on 6th to 8th December, 1995 deciding to withdrew the resolution passed by it in February, 1958 u/s 4(1)(v) of the Chartered Accountants Act, 1949 (then appearing as Appendix No. (6) to the Chartered Accountants Act, 1949), it is clarified that effective from 8th December, 1995 no person who has undergone training in the United Kingdom and has passed the examination conducted by any of the following four Institutes, is entitled to have his name entered in the Registrar of Members maintained by the Institute of Chartered Accountants of India:

   (i) The Institute of Chartered Accountants in England and Wales;

   (ii) The Institute of Chartered Accountants of Scotland;

   (iii) The Institute of Chartered Accountants in Ireland;

   (iv) The Society of Incorporated Accountants and Auditors, London

   In other words, effective from 8th December, 1995 no fresh enrolment of persons with any UK qualification as aforesaid is permissible.

2. Effective from 8th December, 1995 any person whose name has been entered prior to 8th December, 1995, in the Register of Members maintained by the Institute of Chartered Accountants of India u/s 4(1)(v) of the Chartered Accountants Act, 1949 on the basis of his having undergone training in the United Kingdom and having passed the examination conducted by any of the aforementioned four Institutes and was also a member of the

Institute of Chartered Accountants of India as on 8th December, 1995 shall be treated at par with persons having passed such examinations and completed such training prescribed for members of the Institute of Chartered Accountants of India as per section 4(1)(ii) of the Chartered Accountants Act, 1949. Accordingly, such persons are not required to satisfy any of the four conditions listed under the then Appendix No.(6) to the Chartered Accountants Act, 1949, namely:

(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 Accountants 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 cease 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 (ICAI) to practise the profession of Accountancy in the United Kingdom in respect of the audit of public companies as defined in the (UK) Companies Act, 1948.

3. In view of the above, persons covered under (2) above, shall be, effective from 8th December, 1995, deemed to be at par with the persons who have passed such examinations and have completed such training prescribed for the members of Institute of Chartered Accountants of India for all practical purposes and would be so governed by the provisions in force of Chartered Accountants Act, 1949 and Regulations framed thereunder, from time to time - be it restoration of membership, restoration of certificate of practice, removal of names, cancellation of certificate of practice, admission as a follow, opening of a branch office, payment of fees, allotment of firm name etc.

APPENDIX 'C'

~~(Please refer to page 134)~~

Announcement regarding withdrawal of Appendix no. (5) of the Institute's publication viz. the Chartered Accountants Act, 1949 as published at page 93 to 96 of May 1998 issue of the Journal.

The Council at its 189th Meeting Held on January 16 and 17, 1998, is reproduced for the information of Members, Students and Others concerned.

(A) Resolution passed by the Council of the Institute of Chartered Accountants of India (ICAI) at its 189th Meeting held on January 16 and 17, 1998, to treat persons (who were, on the basis of their qualification of certain Institutions/ Organisations listed under the then Appendix No. (5) to the Chartered Accountants Act, 1949, enrolled upto December 7, 1997, as Member of the ICAI under Section 4(1)(v) of the Chartered Accountants Act, 1949 and were also Members of the ICAI as on December 8, 1997) at par with persons qualified from ICAI.

Following the decision taken by the Council at its 188th meeting held on December 8, 9 and 10, 1997, to withdraw the recognition of qualification of certain institutes/bodies listed under Appendix No. (5) to the Chartered Accountants Act, 1949, the Council at its 189th meeting held on January 16 and 17, 1998 has passed the following Resolution relating to treatment to be meted out to persons who were enrolled upto December 7, 1997 as members of the Institute of Chartered Accountants of India on the basis of their qualification of any one of the institutions, organisations, etc. mentioned in the then Appendix No. (5) to the Chartered Accountants Act, 1949 under Section 4(1) (v) and were also members of the ICAI as on December 8, 1997:

"RESOLVED THAT -

1. Further to the resolution passed by the Council at its 188th meeting held on December 8,9 and 10, 1997, deciding to withdraw the resolution passed by it in September, 1966 under Section 4(1)(v) of the Chartered Accountants Act, 1949, (then appearing as Appendix No. (5) to the Chartered Accountants Act, 1949), it is clarified 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 Auditors' 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.

In other words, effective from December 8, 1997, no fresh enrolment of persons with the qualification of any of the above-mentioned institutions, organisations, etc. is permissible.

2. Effective from December 8, 1997, any person whose name has been entered prior to December 8, 1997, in the Register of Members maintained by the Institute of Chartered Accountants of India under Section 4(1)(v) of the Chartered Accountants Act, 1949, on the basis of his having undergone training and having passed the examination conducted by any of the aforementioned five institutions, organisations, etc. and was also a member of the Institute of Chartered Accountants of India as on December 8, 1997 shall be treated at par with persons having passed such examinations and completed such training prescribed for members of the Institute of Chartered Accountants of India as per Section 4(1) (ii) of the Chartered Accountants Act, 1949. Accordingly, such persons are not required to satisfy any of the three conditions listed under the then Appendix No. (5) to the Chartered Accountants Act, 1949, namely:

   (i) That such persons be required to reside in India to practice the profession of Accountancy or to serve as an assistant in a Chartered Accountants office in India; and

   (ii) That such person shall not be eligible for membership of the Council or the Regional Councils nor have a right to vote in elections under the Chartered Accountants Act, 1949 and the Regulations framed thereunder; and

   (iii) that the membership of the Institute will cease if and when the person concerned cease to reside or practice in India.

3. In view of the above, persons covered under (2) above, shall be, effective from December 8, 1997, deemed to be at par with the persons who have passed such examinations and have completed such training prescribed for the members of the Institute of Chartered Accountants of India for all practical purposes and would be so governed by the provisions in force of the Chartered Accountants Act, 1949 and Regulations framed thereunder, from time to time - be it restoration of membership, restoration of certificate of practice, removal of names, cancellation of certificate of practice, admission a fellow, opening of a branch office, payment of fees, allotment of firm name, etc."

(B) Recognition, by the Council of the Institute of Chartered Accountants of India, of training undergone in Institutions/ Organisations mentioned in the then Appendix No. (5) to the Chartered Accountants Act, 1949

The Council of the Institute at its 188th meeting held on December 8,9, and 10, 1997, considered the matter of recognition of training undergone, under the bye-laws/ regulations of one or more of the

Institutions/Organisations specified in the then existing Appendix No.(5) to the Chartered Accountants Act, 1949, by persons who had left India before December 8, 1997 for the purpose of pursuing the Chartered Accountancy Course in the respective countries and are willing to return to India to pursue the same. With a view to mitigating the possible hardship of such persons, the Council passed the following Resolution:-

"RESOLVED THAT -

By virtue of powers vested under Regulation 205 of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India hereby orders that the period of training undergone in the respective countries under the bye-laws/regulations of one or more of the following Institutes, namely-

1. The Institute of Chartered Accountants of Ceylon.
2. The Public Accountants and Auditors' Board of South Africa
3. The Institute of Chartered Accountants of Pakistan.
4. The Registered Accountants of Burma, and
5. The Institute of Chartered Accountants in Australia.

be recognised only in the case of persons who had left India before December, 8, 1997 for the sole purpose of pursuing the Chartered Accountancy Course in any of the aforementioned countries provided:

(a) such persons return to India, register with the Institute on or before March 31, 1999 after fulfilling the requirements of the Chartered Accountants Regulations, 1988 for admission to articleship and producing satisfactory proof that they had completed training - wholly or partly - in the respective country and undergo practical training

(i) for a minimum additional period of 12 months in entirety in the case of those who have already completed the prescribed period of training not being less than three years in the respective country; or

(ii) for a minimum period of 12 months in entirety in the case of those who are not covered under (i) above but have completed 24 months of training or more in the respective country; or

(iii) for the balance period of training in entirety as required under the Chartered Accountants regulations, 1988 in the case of those who have completed less than 24 months of training in the respective country; and

(b) appear in and qualify both the Intermediate and Final examinations of the Institute in their entirety under the Chartered Accountants Regulations, 1988 irrespective of whether they had passed the corresponding examinations, wholly or partly, under the bye-laws/regulations of the aforementioned Institutions, organisations, etc."

It may be noted that the effect and application of the aforementioned Order/Resolution passed by the Council at (B) above shall cease to operate effective from April 1, 1999.

APPENDIX 'D'

~~**(Please refer to page 159)**~~

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., former/past President, membership of national/ international bodies even at personal cost will not be permitted.

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/ViceChairmanship 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 'E'

~~(Please refer to page 197)~~

Ethical Standards Board (ESB)

A. Mission Statement:

"To work 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. 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.
- — To formulate and establish ethical standards for the profession.
- — 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.

C. 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 Division VI of this Code .** ~~**chapter 6 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 a 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 Bhavan
I.P. Marg, New Delhi – 110 002

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 -

* To be filed alongwith a D.D of Rs. 1.000/- in favour of the Secretary, ICAI

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 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, the ……day 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 'F'

~~**(Please refer to pages 212, 240 & 242)**~~

[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, 1956, 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, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of voting power at any time, during the relevant years are owned beneficially by such member or by any one or more of the following persons or partly by such member and partly by one or more of the following persons:

(a) One or more relatives of the member;

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

(ii) in the case of any other concern, if such member is entitled or the other persons referred to above or such member and one or more of the other persons referred to above are entitled in the aggregate, at any time during the relevant years to not less than twenty percent of the profits of such concern.

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(26) of the Companies Act, 1956 under which even where a person is not designated as a managing director or a whole-time director, he can be deemed to be a managing director or a whole-time director if he is entrusted with the whole or substantially the whole of the management of the affairs of the Company.

It may be pointed out that a member cannot accept and hold the office of a managing director or a whole-time director in a Company~~. If~~ , **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."

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