

Professional Ethics

Schedules to the Act

Acts or omissions which comprise professional misconduct within the meaning of Section 22 of the Chartered Accountants Act are defined in two Schedules viz. The First Schedule and the Second Schedule.

The First Schedule is divided into four parts, Part I of the First Schedule deals with the misconduct of a member in practice which would have the effect generally of compromising his position as an independent person. Part II deals with misconduct of members in services. Part-III deals with the misconduct of members generally and part IV deals with other misconduct in relation to members of the institute generally. The Second Schedule is divided into three parts. Part I deals with misconduct in relation to a member in practice, Part II deals with misconduct of members generally and part III deals with other misconduct in relation to members of the Institute generally. The implication of the different clauses in the schedules are discussed below:

The First Schedule -

PART I - Professional misconduct in relation to Chartered Accountants in practice

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

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

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

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

Clause (4) enters into partnership, in or outside India, with any person other than Chartered Accountant in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (V) of sub-section (1) of section 4 or whose qualifications are recognized by the Central Government or the Council for the purpose of permitting such partnerships;

Clause (5) Secures either through the services of a person who is not an employee of such Chartered Accountant or who is not his partner or by means which are not open to a Chartered Accountant, any professional business ;

Provided that nothing herein contained shall be construed as prohibiting any agreement permitted in terms of item (2), (3) and (4) of this part.

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

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

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

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

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

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

Clause (9) Accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 of the Companies Act, 1956, In respect of such appointment have been duly complied with".

Clause (10) "Charges or offers to charge, accepts or offers to accept In respect of any professional employment fees which are based on a percentage of profits or which are contingent upon the findings, or results of such employment, except as permitted under any regulations made under this Act."

The Council of the Institute has however framed Regulation 192 which exempts members from the operation of this clause in certain professional services. The said Regulation 192 is reproduced -

192. *Restriction on fees - No Chartered Accountant in practice shall charge or offer to charge, accept or offer to accept, in respect of any professional work, fees which are based on a percentage of profits, or which are contingent upon the findings or results of such work, provided that*

- (a) *"In the case of a receiver or a liquidator, the fees may be based on a percentage of the realization or disbursement of the assets;*
- (b) *In the case of an auditor of a co-operative society, the fees may be based on a percentage of the paid up capital or the working capital or the gross or net income or profits; 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 property valued."*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;*
- (2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.*

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

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

The Second Schedule -

Part I - Professional misconduct in relation to chartered Accountant in practice

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

Clause (1) "Discloses Information acquired in the course of his professional engagement to any person other than his client so engaging him without the consent of his client or otherwise than as required by any law for the time being in force".

Clause (2) "If he certifies or submits in his name or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice".

Clause (3) "Permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in manner which may lead to the belief that he vouches for the accuracy of the forecast".

Clause (4) Expresses his opinion on financial statements of any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest;

Clause (5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement not misleading where he is concerned with that financial statement in a professional capacity.

Clause(6) "Fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity".

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

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

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

Clause (10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

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

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

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

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

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

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

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

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

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

Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the second schedule or in both the Schedule, he shall place the matter before the Disciplinary Committee.

Question 1

Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules there to:

- (a) *CA X was appointed as the Auditor of ABC Ltd. for 2007-08. Since he declined to accept the appointment, the Board of Directors appointed CA Y as the auditor in the place of CA X, which was also accepted by CA Y.*
- (b) *CA Z who is a leading Income Tax Practitioner and consultant in Jaipur is also trading in derivatives.*
- (c) *CA D, a Chartered Accountant prepared a project report for one of his clients to obtain bank finance (long-term) of ₹ 50 lakhs from a Commercial Bank. Consequent to the sanction of the loan by the bank CA D raised a bill for his services @ 2% of the loan sanctioned.*
- (d) *CA ZZ who conducted ABC audit of a Marathi daily 'New Era' certified the circulation figures based on Management Information System Report (M.I.S Report) without examining the books of Account.*

Answer

- (a) Board can appoint the auditor in the case of casual vacancy under Sections 224 (5) & 6(a) of the Companies Act, 1956. The non-acceptance of appointment by CA. X does not constitute a casual vacancy to be filled by the Board.

In this case, it will be deemed that no auditor was appointed in the AGM. Hence the appointment of auditor can be made only by the Central Government and the Board appointment is defective in law.

Clause 9 of Part-I of First Schedule states that a chartered accountant is deemed to be guilty of professional misconduct if he "Accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of section 225 of the Companies Act, 1956 in respect of such appointment have been fully complied with".

Hence CA. Y is guilty of professional misconduct since he accepted the appointment without verification.

- (b) As per clause 11 of Part-I of First Schedule of CA Act, 1949, a Chartered Accountant is deemed to be guilty of professional misconduct if he "engages in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council so to engage".

However, the Council has granted general permission to the members to engage in certain specific occupation. In respect of all other occupations specific permission of the Institute is necessary.

In this case CA Z is engaged in the occupation of trading in derivatives which is not covered under the general permission.

Hence specific permission of the Institute has to be obtained otherwise he will be deemed to be guilty of professional misconduct under clause 11 of Part-I of First Schedule of CA Act, 1949.

- (c) Clause 10 of part I to First Schedule to the Chartered Accountants Act prohibits a Chartered Accountant in practice to charge, to offer, to accept or accept fees which are based on a percentage of profits or which are contingent upon the findings or results of such work done by him.

However, this restriction is not applicable where such payment is permitted by the Chartered Accountants Act, 1949, the Council of the Institute has framed regulation 192 which exempts certain professional services from the operation of clause 10.

The services rendered by CA. D are not covered under the said exemption and hence CA. D is liable for professional misconduct.

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

In the instant case CA ZZ did not exercise due diligence and is grossly negligent in the conduct of his professional duties since he certified the circulation figures without examining the books of accounts.

To ascertain the number of paid copies verification of remittances from the agents, credit allowed to the agents for unsold copies returned, examination of books of account is essential. Further certification of circulation figures based on statistical information without cross verification with financial records amounts to gross negligence and failure to exercise due diligence.

Hence CA ZZ is guilty of professional misconduct as per clause 7 of part I of Second Schedule of Chartered Accountants Act, 1949.

Question 2

Comment with reference to the Chartered Accountants Act, 1949 and Schedules thereto:

- (a) *H, a Chartered Accountant in practice is a partner in 3 firms. On the personal Letter Heads of H, names/address of all the 3 firms are mentioned.*
- (b) *D, who conducts the tax audit u/s 44AB of the Income Tax Act, 1961 of M/s ABC, a partnership firm, has received the entire audit fees of ₹ 25,000 in April, 2009 in respect of the tax audit for the year ended 31.3.2009. The audit report was, however, signed on 25.5.2009.*
- (c) *P, a Chartered Accountant in practice, accepts appointment as statutory auditor for LMN Pvt. Ltd. Q, brother of P has substantial interest in LMN Pvt. Ltd. (5 Marks) (June 2009)*

Answer

- (a) Under clause (7) of part -1 of First Schedule, a CA in practice is deemed to be guilty of professional misconduct if he (i) advertises his professional attainments or services or (ii) uses any designation or expressions other than 'Chartered Accountant' on professional documents, visiting cards, letter heads or sign boards unless it be a degree of a university established by law in India or recognized by the Central Government or a title indicating membership of the ICAI or of any other institution that has been recognized by the Central Government or may be recognized by the council.

Here there is no prohibition for printing names of all 3 firms on the personal letter heads in which a member holding certificate of practice is a partner. Thus, H is not guilty of any professional misconduct in the above case.

- (b) Under section 226(3)(d) of Companies Act, 1956 a person is disqualified from being an auditor if he is indebted to the company for more than ₹ 1,000/-. This provision applies only to an auditor appointed under the Companies Act, 1956.

In the instant Case, D is appointed to conduct a tax audit u/s 44AB of the Income Tax Act, 1961. There are no such similar provisions in the Income Tax Act. Thus, D will still be able to do the audit and would not be disqualified. He also does not violate any provision of the CA Act, 1949 and schedules thereto.

- (c) As per clause (4) of part I of II schedule, a CA is deemed to be guilty of professional misconduct if he expresses his opinion on financial statements in which his firm or a partner has substantial interest. As per Council General Guidelines, 2008, the above restriction is also made applicable for relatives of the members.

In the instant Case, since Q, a relative has a substantial interest in LMN Pvt. Ltd, P cannot conduct the audit and will be guilty of misconduct.

Question 3

Give your comments with reference to the Chartered Accountants Act, and schedules thereto:

- (a) *Mrs. Fair is a Director of XYZ Private Limited, having 15% share-holdings in the company. During 2003, the company appointed C.A. Mr. Lovely, Mrs. Fair's spouse, as its statutory auditor. On Mr. Lovely's advice, the company issued fresh equity shares in 2003-04, in the ratio of one share for every two shares held by the shareholders of the company. Mr. Lovely used to deliver audit report for subsequent years without any comments or disclosures, thereupon.*
- (b) *Mr. A, a Chartered Accountant was the auditor of 'A Limited'. During the financial year 2007-08, the investment appeared in the Balance Sheet of the company of ₹ 10 lakhs and was the same amount as in the last year. Later on, it was found that the company's investments were only ₹ 25,000, but the value of investments was inflated for the purpose of obtaining higher amount of Bank loan.*

- (c) *An advertisement was published in a Newspaper containing the photograph of Mr. X, a member of the institute wherein he was congratulated on the occasion of the opening ceremony of his office.*
- (d) *Mr. X, a Chartered Accountant and the proprietor of X & Co., wrote several letters to the Assistant Registrar of Co-operative Societies stating that though his firm was on the panel of auditors, no audit work was allotted to the firm and further requested him to look into the matter.*

Answer

- (a) As per the Companies Act, 1956, the definition of 'Relative' includes husband and wife. In this case Mr. Lovely and Mrs. Fair are spouse of each other. Mr. Lovely should not accept the appointment as statutory auditor of the company, where his wife Mrs. Fair has vulnerable interest. Where the company issued fresh equity shares on Mr. Lovely's advice, it is an apparent evidence of Mr. Lovely's control and direction over the company. Because of fresh issue of equity shares, Mr. Lovely's shareholding became 22.5% (15% + 50% thereof) and thus his wife now has substantial interest (i.e. more than 20%) in the said company. Mr. Lovely did not declare such interest of his wife, as substantial shareholder in the company in his audit report/s of the subsequent years, as he never offered any comment.

The independence of the auditor would be compromised without a declaration of his substantial interest. So Mr. Lovely is therefore liable for misconduct.

- (b) The primary duty of physical verification and valuation of investments is of the management. However, the auditor's duty is also to verify the physical existence and valuation of investments placed, at least on the last day of the accounting year. The auditor should verify the documentary evidence for the cost/value and physical existence of the investments at the end of the year. He should not blindly rely upon the Management's representation. In the instant case, such non-verification happened for two years. It also appears that auditors failed to confirm the value of investments from any proper source. In case auditor has simply relied on the management's representation the auditor has failed to perform his duty. Accordingly, Mr. A, will be held liable for professional misconduct under clauses (2), (7) and (8) of Part -1 of the Second Schedule to the Chartered Accountants Act, 1949 in terms of Sections 21 and 22.
- (c) Mr. X published an advertisement in a Newspaper containing his photograph on the occasion of the opening ceremony of his office. On this context, it may be noted that the advertisement which had been put in by the member is quite prominent. If soliciting of work is allowed, the independence and forthrightness of a Chartered Accountant in the discharge of duties can not be maintained.

The above therefore amounts to soliciting professional work by advertisement directly or indirectly. Mr. X would be therefore held guilty under Clause 6 of Part-I of the First Schedule to the Chartered Accountants Act, 1949.

- (d) Mr. X, a Chartered Accountant and proprietor of M/s X and Co, wrote several letters to the Assistant Registrar of Co-operative Societies, requesting for allotment of audit work. In similar cases, it was held that the Chartered Accountant would be guilty of professional misconduct under clause 6 of Part I of the First schedule to the Chartered Accountants Act, 1949. The writing of continuous letter to ascertain the reasons for not getting the work is quite alright but in case such either amount to request for allowing the work than Mr. X will be liable for professional misconduct. In fact Mr. X would be therefore held guilty under clause 6 of Part I of the Act.

Question 4

Give your comments with reference to the Chartered Accountants Act, and Schedules thereto:

- (a) Mr. A, a practicing Chartered Accountant, took over as the executive chairman of Software Company on 1.4.2010. On 10.4.2010 he applied to the Council for permission.
- (b) Mr. X, a practicing Chartered Accountant, issued a circulation certificate for a periodical on the basis of outward memos, which was later found to be false.
- (c) Mr. Z, a practicing Chartered Accountant, received a sum of ₹ 1 lac on 1.9.2009 from a Client who intends to leave abroad for a period of a year, with a request that his advance tax liabilities to be paid over the three instalments. On 15th September, 2009, 15th December, 2009 and 15th March, 2010. After remitting the 1st instalment of advance tax on 15.9.2009, Z did not keep the Balance Money in a separate Bank account and he is of the opinion he will remit the money within reasonable time as per payment schedule of Advance tax.
- (d) Mr. X, a Chartered Accountant, employed as a paid Assistant with a Chartered Accountant firm. On 31st December, 2008 he leaves the services of the firm. Despite many reminders from ICAI he fails to reply regarding the date of leaving the services of the firm.

Answer

- (a) As per Clause (11) of Part I of Schedule I of the Chartered Accountant Act, 1949 a Chartered Accountant in practice, will be deemed to be of professional misconduct if he engages in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council so to engage.

Thus, Mr. A took over as the executive chairman on 01/04/2010 and applied for permission on 10/4/2010, on the basis of these facts he was engaged in other occupation between the period 01/04/2010 and 10/04/2010, without the permission of the Council and is guilty of misconduct in terms of this clause.

- (b) As per Clause (8) of Part I of Schedule II of the Chartered Accountant Act, 1949 a Chartered Accountant in practice, will be deemed to be guilty of professional misconduct, if he fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.

This indicates a Chartered Accountant must determine the extent of information, which, should be obtained by him before he expresses an opinion on the financial statements.

Thus, Mr. X certifies the circulation based on outward memos, without going into the most elementary details of how the circulation of a periodical was maintained, i.e. not verifying the financial records, bank statements, collections for the periodicals, payment of the printer's bills etc. Hence he is guilty of professional misconduct.

- (c) As per Clause (10) of Part I of Schedule II of the Chartered Accountant Act, 1949, a Chartered Accountant in practice will be deemed to be of professional misconduct if he fails to keep moneys of his client other than the 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.

The term reasonable time would depend upon the circumstances of the case. Moneys which are intended to be spent within a reasonably short time need not be put in a separate bank account.

Thus, Mr. Z should have kept the balance money after remitting the first instalment of advance tax into a separate bank account. Hence he is guilty of professional misconduct.

- (d) As per Clause (2) of Part III of the First Schedule a member, whether in practice or not, will be deemed to be guilty of professional misconduct if he does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate authority.

Thus, Mr. X has failed to reply to the letters of the Institute asking him to confirm the date of leaving the service as a paid assistant he is held to be guilty of professional misconduct.

Question 5

Give your comments with reference to the Chartered Accountants Act, 1949 and schedules thereto:

- (a) *PQR and Associates, Chartered Accountants have their website and on the letterhead of the firm it is mentioned that "Visit our website: PQR com". In the website the nature of assignments handled, names of prominent clients and fees charged is also displayed.*
- (b) *Mr. B is a practising Chartered Accountant holding a valid certificate of practice. He accepted the appointment as Director of the Green World Co. Ltd. Mr. C, a partner of Mr. B is statutory auditor of the said company.*
- (c) *YKS & Co., a proprietary firm of Chartered Accountants was appointed as concurrent auditor of a bank. YKS used his influence for getting some cheques purchased and thereafter failed to repay the loan/overdraft.*

- (d) *Mr. Mohan is a practising Chartered Accountant. He issued a certificate of consumption which did not reflect the correct factual position of the consumption of raw material by the concerned entity. It is found that the certificate is given on the basis of data appearing in the minutes of meeting of the Board of Directors.*

Answer

- (a) The Council of the Institute of Chartered Accountants has issued guidelines for posting the particulars on Website by Chartered Accountants in practice and firms of Chartered Accountants in practice under Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949. According to the guidelines the details in the website should be so designed that it does not amount to soliciting client or professional work. It is permitted to mention the website address on letterhead but soliciting people to visit website is not permitted. PQR and Associates letterhead invites to people to visit their website. Similarly the website mentions the nature of assignments, names of the prominent clients and fees charged. The nature of assignments is permitted for display only on specific 'Pull' request. And the name of clients, the fees charged is not permitted at all.

PQR & Associates will be held guilty of Professional Misconduct under Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949.

- (b) Clause 11 of Part 1 of First Schedule to the Chartered Accountants Act, 1949 prohibits a member to engage in any business or occupation other than the profession of chartered accountants unless permitted by the Council so to engage. It does not prohibit a Chartered Accountant from being a director of a company, except managing director or a whole time director. But if any of the partners is interested in such company as an auditor then he cannot be director of the said company. In the present case Mr. B has accepted the directorship in a Company where his partner Mr. C is an auditor without obtaining specific permission of the council. Hence, Mr. B will be held for Professional Misconduct under Clause 11 of Part 1 of First Schedule to the Chartered Accountants Act, 1949.

Further, the Council of the Institute of Chartered Accountants of India has categorically stated that in cases where a member is a director of a company, the firm, in which the said member is a partner, should not express any opinion on its financial statements. Clause 4 of Part I of the Second Schedule to the Chartered Accountants Act, 1949 states that expressing an opinion on financial statement of any business establishment in which the auditor, his firm or a partner of his firm has a substantial interest would constitute misconduct unless he discloses the interest in his report. In cases, where a member of the Institute is a director of a company or a firm in which said member is a partner should not express any opinion on its financial statements. Hence Mr. C, a partner of Mr. B, should vacate the office.

- (c) This is a case which is covered under the expression in other misconduct of the Chartered Accountants Act, 1949. Chartered Accountant is expected to maintain the highest standards and integrity even in his personal affairs and any deviation from these

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

YKS & Co will be held guilty of other misconduct under section 22 of the Chartered Accountants Act, 1949.

- (d) According to Clause 2 of Part 1 of Second Schedule to the Chartered Accountants Act, 1949 a chartered accountant is held guilty of professional misconduct if he certifies or submits 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 employee in his firm or any other chartered accountant in practice.

Mr. Mohan has issued a certificate of consumption which does not reflect the correct factual position of the consumption of raw material by the concerned entity. He has failed in his duty of examining the record. He has relied on the minutes of Board of director's meeting which is not proper evidence to show the consumption of raw material. The relevant record of production and stock register should have been scrutinized thoroughly and properly.

Clause 7 of Part 1 of Second Schedule to the Chartered Accountants Act, 1949 also applies to this case which states that a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence or is grossly negligent in the conduct of his professional duties.

Mr. Mohan will be held guilty of Professional Misconduct under Clause 2 of Part 1 of Second Schedule to the Chartered Accountants Act, 1949.

Question 6

Give your comments with reference to the Chartered Accountants Act, 1949 and schedules thereto:

- (a) *CA Smart, a practicing Chartered Accountant was on Europe tour between 15-9-10 and 25-9-10. On 18-9-10 a message was received from one of his clients requesting for a stock certificate to be produced to the bank on or before 20-9-10. Due to urgency, CA Smart directed his assistant, who is also a Chartered Accountant, to sign and issue the stock certificate after due verification, on his behalf.*
- (b) *Mr. Kishore, a practicing Chartered Accountant was appointed by the Central Government to carry out a special audit u/s 233A of the Companies Act, 1956. He accepted the appointment and proceeded with the work without communicating to the statutory auditor of the company.*
- (c) *Mr. Sodhi, a Chartered Accountant in practice, who is proposed to be removed as the auditor of a company makes unsubstantiated and derogatory remarks against the management of the company in his representation u/s 225 of the Companies Act, 1956.*

- (d) *A letter is sent by a Chartered Accountant in practice to the Ministry of Finance inquiring whether a panel of auditors is being maintained by the Ministry and if so to include his name in the panel (CV enclosed)*

Answer

- (a) As per clause 12 of Part I of the First Schedule of the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct "if he allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any balance sheet, profit and loss account, report or financial statements".

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

Thus, CA Smart is guilty of professional misconduct under clause 12 of Part I of First Schedule of the Chartered Accountants Act, 1949.

- (b) Clause 8 of Part I of the First Schedule to the Chartered Accountants Act, 1949 deems a Chartered Accountant in practice to be guilty of professional misconduct if he accepts a position as auditor previously held by another Chartered Accountant without first communicating with him in writing.

However, the Council has specifically clarified that it is not necessary for the auditor who is appointed to conduct special audit to communicate with the previous auditor, who had conducted a regular audit for the period covered by special audit.

Therefore, Kishore is not guilty of professional misconduct.

- (c) In terms of Clause 6 of Part I of the First Schedule to the Chartered Accountants Act, 1949, the unsubstantiated and derogatory remarks against the Management of the Company by Mr. Sodhi, a Chartered Accountant in practice, in his representation under section 225 of the Companies Act, 1956 tantamount to securing professional work by undignified means.

The Council of the Institute has clarified that the right to make a representation under section 225 (3) of the Companies Act, 1956 does not mean that an auditor has any prescriptive right on a lien to an audit. The wording of this 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 terms of office and may, in addition, indicate if he so chooses, his willingness to continue as an auditor if reappointed by the shareholder.

Therefore, Mr. Sodhi is guilty of professional misconduct.

- (d) Clause 6 of Part I of the First Schedule to the Chartered Accountants Act, 1949 states that a Chartered Accountant in practice shall be deemed to be guilty of misconduct if he solicits clients or professional work either directly or indirectly by a circular, advertisement, personal communication or interview or by any other means. Such a restraint has been put so that the members maintain their independence of judgment and may be able to command respect from their prospective clients.

In case of making an application for the empanelment for the allotment of audit and other professional work, the Council has opined that, "where the existence of such a panel is within the knowledge of the 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 member to make roving inquiries by applying to any such organization for having his name included in any such panel."

Accordingly, the member is guilty of misconduct in terms of the above provision as he has solicited professional work from the Finance Ministry, by inquiring about the maintenance of the panel.

Question 7

Discuss whether the following actions by a Chartered Accountant would amount to misconduct or not:

- (i) *A Chartered Accountant practising in India enters into partnership with*
 - (a) *A Certified Public Accountant in New York.*
 - (b) *A Chartered Accountant from the Institute of Chartered Accountants in England and Wales in London, and in each case, the members concerned take the profits earned in their own country.*

Will it make any difference, if an Indian Chartered Accountant is practising outside India and becomes a partner with the aforesaid accountants?
- (ii) *A Chartered Accountant in service agrees to entrust the work of investment broker to Mr. X on the specific understanding that 20% of commission Mr. X earns would be paid to him.*
- (iii) *A practising Chartered Accountant uses a visiting card in which he designates himself, besides as Chartered Accountant, as*
 - (a) *Tax Consultant*
 - (b) *Cost Accountant.*
- (iv) *A Chartered Accountant in practice takes up the appointment as Managing Director of a Public Limited Company.*

Answer

- (i) (a) Partnership with a CPA in New York: Clause (4) of Part I to the First Schedule to the Chartered Accountants Act, 1949 specifies that a chartered accountant in

practice shall be deemed to be guilty of professional misconduct if he 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 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships;

Thus, chartered accountant would be guilty of professional misconduct since certified public accountants (CPA) are not eligible to become members of the Institute.

- (b) **Partnership with a chartered accountant from ICAEW:** As stated above, it is important that partnership with a member of the foreign professional body is permissible provided *inter alia* such bodies are eligible for the membership of the Institute. Earlier, the Council had passed a resolution permitting chartered accountants from ICAEW to become members of the Institute (Appendix 6) as also fulfilment of certain conditions in respect of persons not permanently residing in India. However, the Council of the Institute at its meeting held in December, 1995 decided to withdraw the resolution w.e.f. December 8, 1995. In view of this, persons qualified from any of the four Institutes in the United Kingdom including England and Wales are not entitled to have their names entered in the Register of Members maintained by the Institute effective from December 8, 1995. Based on this development, partnership between members of the Institute and members of above foreign professional bodies will not be permissible from the above date. Even a chartered accountant from ICAEW who was eligible to become member of the Institute, the profit sharing arrangement stated in the question goes against the provisions of Clause 4. Hence, it would constitute professional misconduct.

Chartered Accountants practising outside India: A member of the Institute of Chartered Accountants of India practising outside India is not governed by the provisions of the Chartered Accountants Act, 1949 since the provisions of the said Act are not applicable outside India. Accordingly, the question of professional misconduct would not arise if an Indian chartered accountant practising outside India becomes a partner with aforesaid accountants and enters into partnership in that country with a member of the Institute of that country. There would be no professional misconduct within the provisions of the Institute of Chartered Accountants Act, 1949 as the applicability of such provisions does not extend to outside India.

- (ii) Part II of the First Schedule to the Chartered Accountants Act, 1949 deals with instances of professional misconduct in relation to member of the Institute who is not in practice but is an employee of a firm, company or an individual. Clause (b) of Part II of the First Schedule to the Chartered Accountants Act, 1949 prohibits acceptance or agreeing 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. Thus, chartered accountant in service would be held guilty of professional misconduct since he entrusted the work to Mr X, an investment broker, on the specific understanding that 20% of commission Mr X earns would be payable to him. It is regardless of the fact that he was in whole-time or part-time employment or that he was carrying on practice of accountancy along with his employment.

- (iii) (a) **Tax Consultant:** Section 7 of the Chartered Accountants Act, 1949 read with Clause 7 of Part I of the First Schedule to the said Act prohibits advertising of professional attainments or services of a member. It also restrains a member from using any designation or expression other than that of a chartered accountant in documents through which the professional attainments of the member would come to the notice of the public. Under the clause, use of any designation or expression other than chartered accountant for a chartered accountant in practice, on professional documents, visiting cards, etc. amounts to a misconduct unless it be a degree of a university or a title indicating membership of any other professional body recognised by the Central Government or the Council. Thus, it is improper to use designation "Tax Consultant" since neither it is a degree of a University established by law in India or recognised by the Central Government nor it is a recognised professional membership by the Central Government or the Council.
- (b) **Cost Accountant:** As stated in the preceding paragraph, this would also constitute misconduct under section 7 of the Act read with Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949. A chartered accountant in practice cannot use any other designation than that of a chartered accountant. Nevertheless, a member in practice may use any other letters or descriptions indicating membership of accountancy bodies which have been approved by the Council. Thus, it is improper for a chartered accountant to state in his documents that he is a "Cost Accountant". However as per Appendix 8 to the Chartered Accountants Act, 1949 the Council has resolved that the members are permitted to use letters indicating membership of the Institute of Cost and Works Accountants but not the designation "Cost Accountant".
- (iv) **Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949** aims to restrain a member in practice from engaging himself in any business or occupation other than that of a chartered accountant except when permitted by the Council to be so engaged. However, there is nothing which 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.

Accordingly, in the absence of specific and prior approval chartered accountant would be held guilty of professional misconduct.

Question 8

As a practising chartered accountant do you approve the following? If not, why?

- (a) *In a representation to be submitted to a company under section 225(3) of the Companies Act, 1956, the partner of the firm of auditors wants to include the contributions made by the firm in strengthening the control procedures of the company during their association with the company.*
- (b) *A partner of a firm of chartered accountants during a T.V. interview handed over a bio-data of his firm to the chairperson. Such bio-data detailed the standing of the international firm with which the firm was associated. It also detailed the achievements of the concerned partner and his recognition as an expert in the field of taxation in the country. The chairperson read out the said bio-data during the interview.*
- (c) *The Chairman of an Audit Committee of a Bluechip Company, who is a chartered accountant asked the firm in which he was previously a partner to quote their fee on a success fee basis so as to ensure that a professional work is assigned to such firm.*
- (d) *A firm of chartered accountants were appointed by a company to evaluate the costs of the various products manufactured by it for their information system. One of the partners of the firm of chartered accountants was a non-executive director of the company.*

Answer

- (a) Section 225(3) of the Companies Act, 1956 permits a retiring auditor to make a representation in writing (not exceeding a reasonable length) to the company. The proposition of the partner to highlight contributions made by the firm in strengthening the control procedures in the representation is not acceptable because the representation letter should not be prepared in a manner so as to seek publicity. The Code of Ethics issued by the Institute makes it amply clear that the right to make representation does not mean that an auditor has any prescriptive right or a lien on 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 re-appointed by the shareholders. Thus, such action proposed by a partner could not be approved since, it would lead to his being held guilty of professional misconduct under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
- (b) Clause 6 of Part I of the First Schedule to the Chartered Accountants Act, 1949 prohibits solicitation of client or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means since it shall constitute professional misconduct. The bio-data was handed over to the chairperson during the T.V. interview by the Chartered Accountant which included details about the firm and the achievements of the partner as an expert in the field of taxation. The

chairperson simply read out the same in detail about association with the international firm as also the achievements of the partner and his recognition as an expert in the field of taxation. Such an act would definitely lead to the promotion of the firms' name and publicity thereof as well as of the partner and as such the handing over of bio-data cannot be approved. The partner would be held guilty of professional misconduct under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

- (c) Professional services cannot and should not be offered under an agreement which entails that fees shall be payable on a success fee basis. The fees payable, therefore, become contingent in nature. 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 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 is prohibited. Therefore, the action of the firm to quote fees in such a manner on the advice of the Chairman of the Audit Committee to ensure their appointment could not be accorded approval and the member would be held guilty of professional misconduct under Clause (10) of Part I of the Chartered Accountants Act, 1949.

(Note: In the instant case, the Chairman of Audit Committee who also happens to be a chartered accountant would also be guilty of misconduct under the Chartered Accountants Act, 1949.)

- (d) The Council of the Institute of Chartered Accountants of India has categorically stated that in case where a member is a director of a company, the firm in which the said member is a partner, should not express any opinion on its financial statements. Clause 4 of Part I of the Second Schedule desists a chartered accountant to express opinion on financial statements of an enterprise in which he, his firm or a partner in his firm has a substantial interest unless he discloses the interest in his report. Since the firm has been appointed to evaluate the costs of the various products manufactured by the company for their information system, it cannot be construed to be misconduct under Clause (4) Part I of the Second Schedule to Chartered Accountants Act, 1949.

Question 9

Is there any misconduct on the part of a Chartered Accountant in the following circumstances?

- (i) *Mr. G, a Chartered Accountant in practice as a sole proprietor has an office in Mumbai near Church Gate. Due to increase in professional work, he opens another office in a suburb of Mumbai which is approximately 80 kilometers away from his existing office. For running the new office he employs three retired Income-tax Officers.*
- (ii) *The offer document of a listed company in which Mr. D, a practising Chartered Accountant is a director mentions the name of Mr. D as a director along with his various professional attainments and spheres of specialisation.*

Answer

- (i) In terms of clause 1 of section 27 of the Chartered Accountants Act, 1949 if a chartered accountant in practice has more than one office in India, each one of these offices should be in the separate charge of a member of the Institute. There is however an exemption for the above if the second office is located in the same premises, in which the first office is located; or the second office is located in the same city, in which the first office is located; or the second office is located within a distance of 50 kms from the municipal limits of a city, in which the first office is located. Since the second office is situated beyond 50 kms of municipal limits of Mumbai city. Thus he would be liable for committing a professional mis-conduct.
- (ii) The Council of the ICAI has in a communication to members stated that if a public company, in which a chartered accountant in practice is a director, issues a prospectus or gives any announcement that gives descriptions about the Chartered Accountant's expertise, specialisation and knowledge in any particular field, it shall constitute a violation of Clauses 6 and 7 of Part I of the First Schedule to the Chartered Accountants Act, 1949. The Council has further stated that in such cases the member concerned has to take necessary steps to ensure that such prospectus or public announcements or public communications do not advertise his professional attainments and also that such prospectus or public announcements or public communications do not directly or indirectly amount to solicitation of clients for professional work by the members. Thus in the instant case, Mr. S would be held to be guilty of professional mis-conduct and liable for disciplinary action.

Question 10

Discuss the following with reference to the Chartered Accountants Act, 1949 and schedules thereto:

- (a) *A Chartered Accountant in practice has been suspended from practice for a period of 6 months and he had surrendered his Certificate of Practice for the said period. During the said period of suspension, though the member did not undertake any audit assignments, he undertook representation assignments for income tax whereby he would appear before the tax authorities in his capacity as a Chartered Accountant.*
- (b) *Mr. R, a Chartered Accountant in practice has been elected as the treasurer of a Regional Council of the Institute. The Regional Council had organized an international tour through a tour operator during the year for its members. During the audit of the Regional Council, it was found that Mr. R had received a personal benefit of ₹ 50,000 from the tour operator.*
- (c) *Mr. Q a Chartered Accountant in practice as a proprietor died in a road accident. His widow sold the practice of her husband to another Chartered Accountant in practice for ₹ 5 lakhs. The price also included right to use the firm name of Mr. Q.*

- (d) *M/s XYZ, a firm in practice, develops a website "xyz.com". The colour chosen for the website was a very bright green and the web-site was to run on a "push" technology where the names of the partners of the firm and the major clients were to be displayed on the web-site.*

Answer

- (a) **Undertaking Tax Representation Work:** In the instant case, a chartered accountant not holding certificate of practice cannot take up any other work because it would amount to violation of the relevant provisions of the Chartered Accountants Act, 1949. In case a member is suspended and is not holding Certificate of Practice, he cannot in any other capacity take up any practice separable from his capacity to practise as a member of the Institute. This is because once a member becomes a member of the Institute, he is bound by the provisions of the Chartered Accountants Act, 1949 and its Regulations. If he appears before the income tax authorities, he is only doing so in his capacity as a chartered accountant and a member of the Institute. Having bound himself by the said Act and its Regulations made thereunder, he cannot then set the Regulations at naught by contending that even though he continues to be a member and has been punished by suspension, he would be entitled to practice in some other capacity. Thus in the instant case, a chartered accountant would not be allowed to represent before the income tax authorities for the period he remains suspended.
- (b) **Embezzlement of Funds:** Section 21 of the Chartered Accountants Act, 1949 provides that a member is liable for disciplinary action if he is guilty of any professional or "Other Misconduct." Though the term "Other Misconduct" has not been defined in the said Act, this provision enables the Council to enquire into any misconduct of a member even if it does not arise out of his professional work. This is considered necessary because a chartered accountant is expected to maintain the highest standards of integrity even in his personal affairs and any deviation from these standards even in his non-professional work, would expose him to disciplinary action. The Council has also laid down that among other things "misappropriation by an office-bearer of a Regional Council of the Institute of a large amount and utilization thereof for his personal use" would amount to "other misconduct". Thus, in the instant case, Mr. R would be liable for disciplinary action.
- (c) **Sale of Goodwill:** The Council of the Instituted 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. The Council 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. It further laid down that in cases where the death of proprietor occurs after 30/8/1998, the goodwill of the deceased member's practice can be sold to another member and permission of the Institute has to be obtained within a year of the death of the proprietor concerned. It is even laid down that

in such cases the name of the proprietary firm concerned would not be removed upto a period of one year from the death of the proprietor. Thus, in the instant case, when the widow of Mr. Q sells the practice to another member, it is nothing but goodwill sold to another member. The sale of the practice and the right to use the name is also allowed in terms of the above decision of the Council. Thus the above act of the widow of Mr. Q is permissible.

(d) **Posting of Particulars on Website:** The Council of the Institute had approved posting of particulars on website by Chartered Accountants in practice under Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949 subject to the prescribed guidelines. The relevant guidelines in the context of the website hosted by M/s XYZ are:

- ◆ No restriction on the colours used in the website;
- ◆ The websites are run on a “pull” technology and not a “push” technology
- ◆ Names of clients and fees charged not to be given.

In view of the above, M/s XYZ would have no restriction on the colours used in the website but failed to satisfy the other two guidelines. Thus, the firm would be liable for professional misconduct since it would amount to soliciting work by advertisement.

Question 11

Write a short note on - Maintenance of branch offices by Chartered Accountants in practice.

Answer

Maintenance of Branch Offices by Chartered Accountants in Practice: Section 27 of the Chartered Accountants Act, 1949 requires that if a chartered accountant in practice or a firm of chartered accountants has more than one office in India, i.e., a branch, each 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 office and a separate member in case of the branches, if more than one, would constitute professional misconduct. However, exemption from the above has been given to members practising in the hilly areas subject to the certain conditions.

It is necessary to mention that the Chartered Accountant in charge of the branch of another firm should be associated with him or with the firm either as a partner or as a paid assistant. If he is a paid assistant, he must be in whole time employment with him. The above rule applies in case additional office is situated at a place beyond 50 Kms. from the municipal limits in which the office is situated.

The exemption may be 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.

Question 12

- (a) *Mr. X, a Chartered Accountant accepted his appointment as tax auditor of a firm under Section 44AB, of the Income-tax Act, and commenced the tax audit within two days of his appointment since the client was in a hurry to file Return of Income before the due date. After commencing the audit, Mr. X realised his mistake of accepting this tax audit without sending any communication to the previous tax auditor. In order to rectify his mistake, before signing the tax audit report, he sent a registered post to the previous auditor and obtained the postal acknowledgement. Will Mr. X be held guilty under the Chartered Accountants Act?*
- (b) *Mr. J started his practice as Chartered Accountant in 1996. During 1999, he got an offer for the post of Chief Accountant of a Software Development Company, as a fulltime employee, for a salary of ₹ 60, 000 per month. On accepting this offer, Mr. J converted his practice into a partnership firm by taking a fresh Chartered Accountant as his partner. Mr. J neither intimated the Institute nor obtained permission from the Institute about his employment. Will Mr. J be held guilty under the Chartered Accountants Act?*
- (c) *A Chartered Accountant in practice had confirmed in the application made by his articled clerk to the Council for permission to study that the normal working hours of his office were 11 a.m. to 6 p.m. and the hours during which the articled clerk was required to attend college classes were 7 a.m. to 9.30 a.m. On inquiry from Principal of College, it was ascertained that the articled clerk used to attend classes from 10 a.m. to 1.55 p.m. The Chartered Accountant pleaded ignorance about the articled clerk attending the college classes during office hours. Will the Chartered Accountant be held guilty of professional misconduct?*

Answer

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

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

The Code of Ethics further points out that it would also be a healthy practice if a tax auditor appointed for conducting special audit under the Income-tax Act, 1961 communicates even with the member who has conducted the statutory audit. Considering the above, though Mr. X tried to rectify his mistake, by communicating with the previous tax auditor after accepting the audit but before signing the audit report, the auditor will be held guilty of professional misconduct. Refer: Praful R. Gandhi of M/s Padamchand Jain & Associates councils decision dated 29th Aug 2005.

- (b) **Failure to take Permission before Accepting Employment:** As per Clause 11 of Part I of First Schedule to the Chartered Accountants Act, 1949, Mr. J will be held guilty since he has accepted the full time salaried employment in addition to the practice of Chartered Accountancy without obtaining permission of the Institute. The Chartered Accountants Regulation, 1988 provide that a Chartered Accountant in practice shall not engage in any business or occupation other than the profession of accountancy except with the permission granted in accordance with the provisions contained in Regulation 190A. Part (B) of Appendix 10 to the Chartered Accountants Regulations, 1988 requires member of the Institute in practice to engage in full-time or part-time employment after obtaining the specific and prior approval of the Council. Further, Mr. J will be held guilty of professional misconduct under clause (i) of Part II of Second Schedule to the Chartered Accountants Act, 1949 if contravenes any of the provisions of the Act since he has failed to inform the Institute.
- (c) **Failure to Observe the Regulations:** As per Clause (i) of Part II of Second Schedule to the Chartered Accountants Act, 1949 a member shall be held guilty of professional misconduct if he contravenes any provision of the Act or the regulations made thereunder. The chartered accountant, as per Regulations also, is expected to impart proper practical training. In the instant case, the articled clerk must have not been attending office on a regular basis and the explanation of the Chartered Accountant cannot be accepted particularly in view of the fact that the chartered accountant did not obtain certificate from the Principal to confirm the timings. It is also quite likely that the articled clerk would be availing leave quite often and coming late to the office. Under the circumstances, the Chartered Accountant is guilty of professional misconduct in regard to the discharge of his professional duties.

Question 13

Can a Practicing Chartered Accountant be held guilty of Professional Misconduct under the following circumstances? Give your views with reasons in brief.

- (a) Z, a Chartered Accountant wrote several letters to Government Department, 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 organization of accountancy profession with a view to get the audit work.

- (b) *W, a Chartered Accountant has sent letters under certificate of posting to the previous auditor informing him his appointment as an auditor before the commencement of audit by him.*
- (c) *P, a Chartered Accountant had accepted appointment as an auditor of QRS Company Limited without ascertaining from the Company whether the requirement of Sections 224 and 225 of the Companies Act had been complied with. However, he realized this defect only after acceptance.*
- (d) *The Cashier of a company committed a fraud and absconded with the proceeds thereof. This happened during the course of the accounting year. The Chief Accountant of the company also did not know about fraud.*

In the course of the audit, at the end of the year, the auditor failed to discover the fraud. After the audit was completed, however, the fraud was discovered by the Chief Accountant. Investigation made at that time indicates that the auditor did not exercise proper skill and care and performed his work in a desultory and haphazard manner. With this background, the Directors of the company intend to file disciplinary proceedings against the auditor.

Discuss the position of the auditor with regard to the disciplinary proceedings.

Answer

- (a) **Solicitation of Professional Work Through Letters:** 'Z' a chartered accountant, wrote several letters to Government Department pointing out the seniority of his firm and sending his life sketch and stating that he had rendered glorious service to the country and to the accountancy profession with a view to getting the audit work. Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949 prohibits a member not to solicit professional work by means of advertisement, circular, personal communication or interview or by any other means. Since these letters were clearly in the nature of advertising professional attainments, "Z" was guilty of professional misconduct under clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949.
- (b) **Communication with the Previous Auditor:** Clause 8 of Part I of the First Schedule to the Chartered Accountants Act, 1949 requires communication by the incoming auditor with the previous auditor before accepting a position by him. The Council of the Institute has taken the view that a mere posting of a letter "under certificate of posting" is not sufficient to establish communication with the retiring auditor unless there is some evidence to show that the letter has in fact reached the person communicated with. A Chartered Accountant who relies solely upon a letter posted "under certificate of posting" therefore does so at his own risk. Since the letters were sent by "W" to the previous auditor informing him of his appointment as an auditor before the commencement of audit by him under Certificate of Posting is not sufficient to prove communication with the retiring auditor. In the opinion of the Council, communication by a letter sent "Registered Acknowledgement Due" or by hand against a written acknowledgement would in the

normal course provide positive evidence. Hence "W" was guilty of professional misconduct under Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

- (c) **Compliance with Sections 224 and 225 of the Companies Act, 1956:** Clause 9 of the Part I of the First Schedule to the Chartered Accountants Act, 1949 requires the auditor to ascertain from the company whether the relevant requirements have been complied with or not. However, in the instant case, "P" a chartered accountant, before acceptance of his appointment as an auditor has failed to ascertain whether the provisions of Sections 224 and 225 have been complied with by the company. The fact that "P" has realised this defect only after acceptance would not save him from charge of misconduct. It is necessary for the incoming auditor to verify the relevant records of the company to enable him to ascertain whether the provisions of sections 224 and 225 have been complied with. Therefore, P was guilty of professional misconduct under Clause (9) of Part I of First Schedule to the Chartered Accountants Act, 1949.
- (d) **Failure to Exercise Reasonable Care and Skill:** Apparently, as it appears from the facts of the case that the auditor did not exercise proper skill and care and that he performed his work in a desultory and haphazard manner. In this matter, the test for auditor's liability lies in whether he has applied reasonable care, skill and caution called for in the circumstances of the case and whether he reasonably used all the information that he came across in the course of audit. Cash is a very significant item in any situation and the fact that the cashier had left during the year without notice should have placed the auditor on alert as regards the cash book. In fact, the very fact that the cashier was absconding, i.e., left without any notice constituted sufficient circumstances to excite suspicion of the auditor to probe to the bottom. As per SA 240, "The auditor's responsibilities relating to fraud in an audit of financial statements", it can be concluded that the auditor did not plan and perform the audit with an attitude of professional skepticism. Thus, having regard to this and a fraud has actually taken place during the year, committed by the absconding cashier, it is reasonable to think that prima facie there is a case against the auditor for gross negligence. Clause (7) of Part I of Second Schedule to the Chartered Accountants Act, 1949 requires that it is the duty of an auditor to bring to bear in the work he has to perform that skill, care and caution as per the circumstances in an honest and reasonable manner. As it appears from the facts of the case, the auditor has been grossly negligent in performing his duties which constitutes professional misconduct. Thus, such instances require reference to Disciplinary Committee of the Council of the Institute. If a member is found guilty by the Council of any of the acts or omissions stated in the Schedule, its finding with recommendations are to be referred to the High Court for decision.

Question 14

Comment on the following with reference to Chartered Accountants Act, 1949 and schedules thereto:

- (a) *Mr. Parekh, a Chartered Accountant was invited by the Chamber of Commerce to present a paper in a symposium on the issues facing Indian Leather Industry. During the course*

of his presentation he shared some of the vital information of his client's business under the impression that it will help the Nation to compete with other countries at international level.

- (b) Mr. Shah, a Chartered Accountant certified the financial statements of a company in which his wife is a Director holding substantial interest.*
- (c) Mr. Joe, a Chartered Accountant during the course of audit of M/s XYZ Ltd. came to know that the company has taken a loan of ₹ 10 lakhs from Employees Provident Fund. The said loan was not reflected in the books of account. However, the auditor ignored this information in his report.*
- (d) Mr. Jain, a Chartered Accountant certified the circulation of "Good Luck" a weekly magazine without examination of financial records and other required documents.*
- (e) A charitable institution entrusted ₹ 10 lakhs with its auditors M/s Ram and Co., a Chartered Accountant firm, to invest in a profitable portfolio. The auditors pending investment of the money deposited it in their Savings bank account and no investment was made in the next three months.*

Answer

- (a) Disclosure of Client's Information:** Clause (1) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 deals with the professional misconduct relating to the disclosure of information by a chartered accountant in practice relating to the business of his clients to any person other than his client without the consent of his client or otherwise than as required by any law for the time being in force would amount to breach of confidence. The Code of Ethics further clarifies that such a duty continues even after completion of the assignment. The Chartered Accountant may however, disclose the information in case it is required as a part of performance of his professional duties. In the given case, Mr. Parekh has disclosed vital information of his client's business without the consent of the client under the impression that it will help the nation to compete with other countries at International level. Thus it is a professional misconduct covered by clause (1) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- (b) Disclosure of Substantial Interest:** Clause (4) of Part I of Second Schedule to the Chartered Accountants Act, 1949 states that if an auditor expresses his opinion on the financial statements of any business in which he, his firm or partner in his firm or his relative has substantial interest, he is committing professional misconduct unless he discloses the interest also in his report. Such disclosure is intended to assure the public as regard the faith and confidence that could be reposed in the independent opinion expressed by the auditor. In the given case Mr. Shah, Chartered Accountant, has certified the financial statements of a company in which his wife is a director with substantial interest. Hence this amounts to professional misconduct which attracts clause (4) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- (c) **Failure to Disclose Material Facts:** As per Clause (5) of Part I of Second Schedule to the Chartered Accountants Act, 1949, a chartered Accountant in practice will be held liable for misconduct if he fails to disclose a material fact known to him, which is not disclosed in the financial statements but disclosure of which is necessary to make the financial statements not misleading. In this case, Mr. Joe has come across information that a loan of ₹ 10 lakhs has been taken by the company from Employees Provident Fund. This is contravention of Rules and the said loan has not been reflected in the books of accounts. Further, this material fact has also to be disclosed in the financial statements. The very fact that Mr. Joe has failed to disclose this fact in his report, he is attracted by the provisions of professional misconduct under clause (5) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- (d) **Failure to obtain information:** Clause 8 of Part I of Second Schedule to Chartered Accountants Act, 1949 states that if a Chartered Accountant in practice fails to obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficient material to negate the expression of an opinion, the chartered accountant shall be deemed to be guilty of a professional misconduct. Mr. Jain, a Chartered Accountant, certified the circulation figures of Good Luck, a weekly magazine without examination of financial records and other required documents. The chartered accountant should not express his opinion before obtaining the required data and information. As an auditor, Mr Jain ought to have verified the basic records such as print order, printer's bill, number of copies sold and paid for, number of copies returned unsold to ensure the correctness of circulation figures. Thus in the present case Mr. Jain will be held guilty of professional misconduct.
- (e) **Failure to keep Money in separate Bank Account:** If a Chartered Accountant in practice fails to keep moneys of his clients in a separate bank account or fails to use such moneys for purposes for which they are intended then his action would amount to professional misconduct under clause 10 of Part I of Second Schedule to the Chartered Accountants Act, 1949. In the course of his engagement as a professional accountant, a member may be entrusted with moneys belonging to his client. If he should receive such funds, it would be his duty to deposit them in a separate banking account, and to utilise such funds only in accordance with the instructions of the client or for the purposes intended by the client. In the given case by depositing the client's money by M/s Ram and Co., a firm of Chartered Accountants, in their own savings bank account, the auditors have committed a professional misconduct. Hence in the given case, M/s Ram & Co. will be held guilty of professional misconduct.

Question 15

Do you approve of the following? If not, why?

- (a) *A firm of Chartered Accountants was appointed by a company to evaluate the costs of the various products manufactured by it for its information system. One of the partners of the firm was a Non-Executive Director of the company.*

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

Answer

- (a) **Evaluation of Cost of Products:** Clause 4 of Part I of the Second Schedule to Chartered Accountants Act, 1949 states that expressing an opinion on financial statements of any business or any enterprise in which the auditor, his firm or a partner in his firm has a substantial interest would constitute misconduct, unless he discloses the interest also in his report. Also, the Council of the Institute of Chartered Accountants of India has stated that in cases where a member of the Institute is a director of a company, or the firm in which the said member is a partner, should not express any opinion on its financial statements. As per facts of the case, the firm has been retained to evaluate the cost of products manufactured by it for its information system. It is a part of management consultancy service of the firm and moreover its partner was on the Board. Hence, the firm can perform this assignment and it will not constitute misconduct. However, the firm while accepting the position as auditor in future would have to consider whether it would be possible to act in independent manner and express opinion on financial statements.
- (b) **Sale of Goodwill:** With reference to Clause (2) of Part I to the First Schedule to Chartered Accountants' Act, 1949 the Council of the Institute of Chartered Accountants of India had an occasion to consider whether the goodwill of a proprietary concern of chartered accountant can be sold to another member who is otherwise eligible, after the death of the proprietor. It lay down that the sale is permitted subject to certain conditions. It further resolved that the legal heir of the deceased member has to obtain the permission of the Council within a year of the death of the proprietor concerned. Thus, in a given case and on the facts, the widow of Mr. Qureshi who has sold the practice for ₹ 5 lakhs is nothing but sale of goodwill. Thus the act of Mrs. Qureshi is permissible.

Question 16

Write a short note on – Other Misconduct.

Answer

- (i) A member is liable to disciplinary action under Section 21 of the Chartered Accountant Act if he is found guilty of any professional or 'other misconduct'
- (ii) Other misconduct has been defined in Part IV of First Schedule and Part III of Second Schedule in the CA (Amendment Act) 2006
- (iii) As per Part IV of First Schedule of the CA Act, a member of the Institute whether in practice or not, shall be deemed to be guilty of other misconduct if he

1. Is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months
 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
- (iv) As per Part III of Second Schedule to the CA Act, 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

This provision empowers the Council to enquire any misconduct of a member even if it does not arise of professional misconduct.

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

- (1) Where a chartered accountant retains the books of account and documents of the client and fails to return these to the client on request without a reasonable cause.
- (2) Where a chartered accountant makes a material misrepresentation.
- (3) Where a chartered accountant uses the services of his articled or audit clerk for purposes other than professional practice.
- (4) Conviction by a competent court of law for any offence under Section 8 (v) of the Chartered Accountants Act 1949.
- (5) Misappropriation by office-bearer of a Regional Council of the Institute, of a large amount and utilisation thereof for his personal use.
- (6) Non-replying within a reasonable time and without a good cause to the letter of the public authorities.
- (7) Where certain assessment records of income tax department belonging to the client of Chartered Accountant were found in the almirah of the bed-room of the chartered accountant.
- (8) Where a chartered accountant had adopted coercive methods on a bank for having a loan sanctioned to him.

Question 17

Comment on the following with reference to the Chartered Accountants Act, 1949 and Schedules thereto:

- (a) L, a chartered accountant did not maintain books of account for his professional earnings on the ground that his income is less than the limits prescribed u/s 44AA of the Income Tax Act, 1961.

- (b) *M/s. ABC, a firm of Chartered Accountants has taken a loan for acquiring computers; from a company whose Managing Directors' son is an Articled Trainee with A, a partner of M/s ABC.*
- (c) *M/s XYZ, a firm of Chartered Accountants created a website "www.xyzindia.com". The website besides containing details of the firm and bio-data of the partners also contains the photographs of all the partners of the firm.*
- (d) *Z, a Chartered Accountant, certifies a financial forecast of his client which was forwarded to the client's bank based on which the bank sanctioned a loan to the client.*

Answer

- (a) **Maintenance of Books of Account:** As per the Council General Guidelines 2008, under chapter 5 on maintenance of books of accounts. it is specified that if a chartered accountant in practice or the firm of Chartered Accountants of which he is a partner fails to maintain and keep in respect of his/its professional practice, proper books of account including the Cash Book and Ledger, he is deemed to be guilty of professional misconduct. Accordingly, it does not matter whether section 44AA of the Income Tax Act, 1961 applies or not. Hence, Mr. L is guilty of professional misconduct.
- (b) **Loan from a Company:** As per Clause (i) of Part II of Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant is deemed to be guilty of professional misconduct if he contravenes any of the provisions of Chartered Accountants Act, 1949 or Regulations made thereunder. Regulation 47 of the Chartered Accountant's Regulations, 1988 prohibits a member from accepting any premiums or loans or any deposit in any form from an articled clerk directly or indirectly. However, M/s ABC has taken loan from a company whose Managing Director happens to be father of articled clerk with Mr. A, a partner of M/s ABC. In this case, the articled trainee has no direct interest in that company. There has been a case wherein a chartered accountant was held guilty of professional misconduct because he took a loan from a firm in which the articled clerk and his father were both interested. But, in this case as per the facts, the articled trainee has no direct interest in the company. However, if relationship, direct or indirect, can be established in view of relationship of articled trainee with MD of the company, Mr. A of M/s ABC would be held liable for professional misconduct. Thus, M/s ABC would be guilty of professional misconduct under this clause if it is proved that the loan was related to the engagement of the articled clerk.
- (c) **Hosting Details on Website:** As per detailed guidelines of the ICAI laid down in Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a chartered accountant of the firm can create its own website using any format subject to guidelines. However, the website should be so designed that it does not solicit clients or professional work and should not amount to direct or indirect advertisement. The guidelines of the ICAI to allow a firm to put up the details of the firm, bio-data of partners and display of a passport size photograph. In the case of M/s XYZ, all the guidelines seem to have been

complied and there appears to be no violation of the Chartered Accountants Act, 1949 and its Regulations.

- (d) **Certification of Financial Forecast:** Under Clause (3) of Part I of Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice is deemed to be guilty of professional misconduct if he 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. Accuracy does not refer to arithmetical accuracy. All forecasts are estimates based on certain assumptions duly evaluated on a consideration of various relevant factors and cannot be ascertained with accuracy. The Guidance Note on Accountants Report on Profit Forecasts and/or Financial forecast considered the implications of this clause and made it clear that the chartered accountant can participate in the preparation of profit or financial forecasts and review them. But, first of all, he should clearly indicate in his report the sources of information, the basis of forecasts and also the major assumptions made in arriving at the forecasts and, secondly, he should not vouch for the accuracy of the forecasts. In the instant case, Mr. Shankar is deemed to be guilty as it appears that he has certified the financial forecast without taking adequate safeguards

Question 18

- (a) *A chartered accountant holding certificate of practice and having four articled clerks registered under him accepts appointment as a full-time lecturer in a college. Also he becomes a partner with his brother in a business. Examine his conduct in the light of Chartered Accountants Act, 1949 and the regulations thereunder.*
- (b) *XYZ Co. Ltd. has applied to a bank for loan facilities. The bank on studying the financial statements of the company notices that you are the auditor and requests you to call at the bank for a discussion. In the course of discussions, the bank asks for your opinion regarding the company and also asks for detailed information regarding a few items in the financial statements. The information is available in your working paper file. What should be your response and why?*
- (c) *A chartered accountant in practice, in spite of repeated requests from the Secretary of the Institute fails to submit form 18. Is he liable for misconduct?*

Answer

- (a) Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 debars a chartered accountant in practice from engaging in any business or occupation other than the profession of chartered accountancy unless permitted by the Council of the Institute so to engage. This clause, in effect, has empowered the Council of the Institute to permit chartered accountants in practice to engage in any other business or occupation considered fit and proper. Accordingly, the Council had formulated Regulations 190A and 191 to the Chartered Accountants Regulations, 1988 to provide a basis for considering applications of chartered accountants seeking permission to

engage in other business or occupation. A member can accept full-time lecturer-ship in a college only after obtaining the specific and prior approval of the Council. As also becoming a partner in a business with his brother would require specific permission the chartered accountant is liable for professional misconduct since he failed to obtain specific and prior approval of the Council in each case.

- (b) Clause (1) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 states that a chartered accountant in practice shall be deemed to be guilty of professional misconduct if he discloses information acquired in the course of his professional engagement to any person other than his client, without the consent of the client or otherwise than as required by law for the time being in force. SA 200 on "Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Standards on Auditing" also reiterates that, "the auditor should respect the confidentiality of information acquired in the course of his work and should not disclose any such information to a third party without specific authority or unless there is a legal or professional duty to disclose". In the instant case, the bank has asked the auditor for detailed information regarding few items in the financial statements available in his working papers. Having regard to the position stated earlier, the auditor cannot disclose the information in his possession without specific permission of the client. As far as working papers are concerned, working papers are the property of the auditor. The auditor may at his discretion, make portions of or extracts from his working papers available to his client". Thus, there is no requirement compelling the auditor to divulge information obtained in the course of audit and included in the working papers to any outside agency except as and when required by any law.
- (c) Clause (2) of Part III of the First Schedule requires a member to supply the information called for by the Council or any of its Committees and Clause (1) of Part II of the Second Schedule requires every member of the Institute to act within the framework of the Chartered Accountants Act and the Regulation made thereunder. Under the former clause, it is misconduct for chartered accountants generally, if they do not supply the information called for by the Council. The Secretary acts for the Council; hence, request from the Secretary amounts to a request from the Council. Besides, it is also a contravention of Regulation of the Chartered Accountants Regulations, 1988. Thus, failure to submit Form 18 (deals with Deed of Assignment of Articles where the Articled Clerk is a minor) constitutes professional misconduct.

Question 19

Comment on the following with reference to the Chartered Accountants Act, 1949 and Schedules thereto:

- (a) *Mr. S, a Chartered Accountant published a book and gave his personal details as the author. These details also mentioned his professional experience and his present association as partner with M/s RST, a firm.*

- (b) *Mr C accepted the statutory audit of M/s PSU Ltd., whose net worth is negative for the year 2008-09. The audit was to be conducted for the year 2009-10. The audited accounts for the year 2009-10 showed liability for payment of tax audit fees of ₹ 15,000 in favour of Mr E, the previous auditor.*
- (c) *Mr. P, a Chartered Accountant in practice entered into a partnership with Mr. L, an advocate for sharing of fees for work sent by one to the other. However, due to some disputes, the partnership was dissolved after 1 month without any fees having been received.*

Answer

- (a) **Soliciting Professional Work:** Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 refers to professional misconduct of a member in practice if he solicits client or professional work either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means. Therefore, members should not adopt any indirect methods to advertise their professional practice with a view to gain publicity and thereby 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. While elaborating forms of soliciting work, the Council has specified that a member is not permitted to indicate in a book or an article, published by him, the association with any firm of chartered accountants. In this case, Mr. S a chartered accountant, published the book and mentioned his professional experience and his association as a partner with M/s RST, a firm of chartered accountants.

Mr. S being a chartered accountant in practice has committed the professional misconduct by mentioning that at present he is a partner in M/s. RST, a chartered accountants firm.

- (b) **Accepting Appointment as an Auditor:** As per chapter 7 of councils general guidelines 2008 a member of the Institute of Chartered Accountants of India in practice shall be deemed to be guilty of professional misconduct if he accepts appointment as auditor of an entity in case the undisputed audit fee of another chartered accountant for carrying out the statutory audit under Companies Act, 1956 or various other statutes has not been paid.

As per the proviso, such prohibition shall not apply in case of a sick unit where a sick unit is defined to mean "where the net worth is negative".

In the instant case, though the undisputed fees are unpaid, Mr C would still not be guilty of professional misconduct since the M/s PSU Ltd. is a sick unit having negative net worth for the year 2008-09.

- (c) **Partnership with non-chartered accountants:** As per clause 4 of Part I of the First Schedule to the Chartered Accountants Act, 1949, a chartered accountant will be guilty of professional misconduct if he enters into partnership with any person other than a

chartered accountant in practice or a person resident without India who but for his residence abroad would be entitled to be registered as a member under Claus (v) of Sub-section (1) of Section 4 or whose qualification are recognized by the Central Government or the Council for the purpose of permitting such partnership.

This clause puts a restriction on entering into partnership with a non-chartered accountant for the practice of the profession of chartered accountancy. In the instant case since Mr. P, a chartered accountant, has entered into partnership with Mr. L, an advocate, he would be guilty of professional misconduct irrespective of the fact that no work or fee was shared and the partnership was dissolved after one month since the clause does not permit entering into partnership.

Question 20

Write a short note on - Record of Audit Assignments (as required by ICAI regulations).

Answer

Record of Audit assignments: In exercise of the powers conferred by chapter 6 of Councils general guidelines 2008 the Council of the Institute of Chartered Accountants of India specified that a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he holds at any time appointment of more than the "specified number of audit assignments of the companies under Section 224 and /or Section 228 of the Companies Act, 1956. As a part of this clause, to meet its requirements, a Chartered Accountants in practice as well as a firm in practice shall maintain a record of the audit assignments accepted as laid out in guidelines issued by the Council of the ICAI under Part II of Second Schedule to the Chartered Accountants Act, 1949 in respect of ceiling on audits containing following particulars:

- (i) Name of Company Audit/ Assignment.
- (ii) Regn. No.
- (iii) Date of appointment with Registrar of Companies.
- (iv) Date of acceptance.
- (v) Date on which form 23B filed.

Question 21

Comment on the following with reference to the Chartered Accountants Act, 1949, Code of Ethics and Schedules to the Act:

- (a) *P, a Chartered Accountant in practice provides management consultancy and other services to his clients. During 2010, looking to the growing needs of his clients to invest in the stock markets, he also advised them on Portfolio Management Services whereby he managed portfolios of some of his clients.*

- (b) *B, a Chartered Accountant in practice is a partner in 3 firms. While printing his personal letter heads, B gave the names of all the firms in which he is a partner.*
- (c) *XYZ & Associates, a firm with 5 partners developed a website www.xyzassociates.com. The website also contained a link to "All India Chartered Accountants Association", a voluntary association where X, a partner of the firm is currently the Vice-president.*
- (d) *M/s LMN, a firm of Chartered Accountants responded to a tender from a State Government for computerization of land revenue records. For this purpose, the firm also paid ₹50,000 as earnest deposit as part of the terms of the tender.*

Answer

- (a) **Advising on Portfolio Management Services:** The Council of the Institute of Chartered Accountants of India (ICAI) pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949 has passed a resolution permitting "Management Consultancy and other Services" by a Chartered Accountant in practice. A clause of the aforesaid resolution allows Chartered Accountants in practice to act as advisor or consultant to an issue of securities including such matters as drafting of prospectus, filing of documents with SEBI, preparation of publicity budgets, advice regarding selection of brokers, etc. It is, however, specifically stated that Chartered Accountants in practice are not permitted to undertake the activities of broking, underwriting and portfolio management Services. Thus, a chartered accountant in practice is not permitted to manage portfolios of his clients.

In view of this, P would be guilty of misconduct under the Chartered Accountants Act, 1949.

- (b) **Advertisement of Professional Attainments:** Clause 7 of Part I of the First Schedule to the Chartered Accountants Act, 1949 prohibits advertising of professional attainments or services of a member. It also restrains a member from using any designation or expression other than that of a Chartered Accountant in documents through which the professional attainments of the member would come to the notice of the public. Even a member is not permitted to specify the date of setting up of practice or establishment of firm. However, there is no prohibition for printing names of all the three firms on the personal letterheads in which a member holding Certificate of Practice is a partner. Thus B is not guilty of any misconduct under the Chartered Accountants Act, 1949.
- (c) **Developing Website:** As per the guidelines laid down under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 in respect of websites by chartered accountants in practice, it is permitted that website may provide a link to the website of ICAI, its Regional Councils, Branches and Government Departments and other professional Bodies like AICPA, ICAEW, CICA. In this case, M/s XYZ Associates provided a link to "All India Chartered Accountants Association" which is not permitted. Hence the firm would be liable for misconduct under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

- (d) **Responding to Tenders:** Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 lays down guidelines for responding to tenders, etc. As per the guidelines if a matter relates to any services other than audit, members can respond to any tender. Further, in respect of a non-exclusive area, members are permitted to pay reasonable amount towards earnest money/security deposits.

In the instance case, since computerization of land revenue records does not fall within exclusive areas for chartered accountants, M/s LMN can respond to tender as well as deposit ₹ 50,000 as earnest deposit and shall not have committed any professional misconduct.

Question 22

Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto:

- (a) *The superannuation-cum-pension fund for the employees of a company was under a separate 'trust'. Both the company and the trust were under the same management. The auditor, who was auditing the accounts of the company as well as the trust noted some irregularities in the operation of the trust and commented upon these irregularities in the confidential report given to the trustees, but did not mention about these irregularities in his report on the Annual accounts of the Trust.*
- (b) *M/s XYZ a firm of Chartered Accountants received ₹ 2 lakhs in January, 2006 on behalf of one of their clients, who has gone abroad and deposited the amount in their Bank account, so that they can return the money to the client in July, 2006, when he is due to return to India.*
- (c) *Mr. J.J. a practicing Chartered Accountant engages himself as part time finance manager of Quick Return Securities Ltd. He is of the view that as both functions are independent, he need not take permission from the Institute.*

Answer

- (a) **Disclosure of material facts:** A Chartered Accountant in practice is deemed to be guilty of professional misconduct under clause 5 of Part I of the Second Schedule if he "fails to disclose a material fact known to him which is not disclosed in a financial statement but disclosure of which is necessary to make the financial statement not misleading". In this case, the Chartered Accountant was aware of the contraventions and irregularities committed by the trust as these were referred to in the confidential report given by the Chartered Accountant to the trustees of the company. However, he had issued the annual accounts without any qualification. On similar facts it was held by the Supreme Court in *Kishorilal Dutta vs. P. K. Mukherjee* that it was the duty of the Chartered Accountant to have disclosed the irregularities and contravention to the beneficiaries of the fund in the statement of accounts signed by him. Accordingly, in the present case also it has to be held that the Chartered Accountant is guilty of professional misconduct if the amount of irregularities is proved material.

- (b) Money of clients to be deposited in separate bank account: Clause 10 of Part I of Second Schedule states that a Chartered Accountant shall be deemed to be guilty of professional misconduct if "he fails to keep money of his clients in separate banking account or to use such money for the purpose for which they are intended."

XYZ received the money in January, 2006 which is to be paid only in July 2006; hence it should be deposited in a separate bank account. Since in this case XYZ have failed to keep the sum of ₹ 2 lakhs received on behalf of their client in a separate Bank Account it amounts to professional misconduct under clause 10 of part I of Second Schedule.

Connected case Law: *Mr. R. S. Murugai Vs. (1) S K Gadh & (2) V. K. Bajaj*

- (c) Engaging in any business other than the profession of Chartered Accountants: Clause II of Part I of First Schedule of Chartered Accountants Act, 1949 states that a Chartered Accountant is deemed to be guilty of professional misconduct if he engages in any business other than the profession of Chartered Accountant unless permitted by the Council for the same.

In the given case Mr. J. J. a practicing Chartered Accountant is engaging himself as part time Finance Manager without the permission of the Institute which is misconduct attracted by clause II of Part I of First Schedule.

This is similar to a reported in *Re Anil Kumar Case*.

Question 23

Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto:

- (a) *A chartered accountant in practice created his own website in attractive format and colours and circulated the information contained in the website through E-mail.*
- (b) *A chartered accountant in practice takes up the appointment as managing director of a public limited company.*
- (c) *S, a practicing chartered accountant gives power of attorney to an employee chartered accountant to sign reports and financial statements, on his behalf.*
- (d) *A is the auditor of Z Ltd., which has a turnover of ₹ 200 crores. The audit fee for the year is fixed at ₹ 50 lakhs. During the year, the company offers A an assignment of management consultancy within the meaning of Section 2(2)(iv) of the Chartered Accountants Act, 1949 for a remuneration of ₹ 1 crore. A seeks your advice on accepting the assignment.*

Answer

- (a) Creation of own website by a chartered accountant/firm of chartered accountants
The guidelines approved by the Council of the Institute of Chartered Accountants of India permits creation of own website by a chartered accountant in his or his firm name and no standard format or restriction on colours is there. The chartered accountant or firm, as

per the guidelines, 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 except on a specific "Pull" request.

Since in the given case, the chartered accountant circulated the information contained in the website through E-mail, he is guilty of misconduct under clause 6 of Part I of the First Schedule to the Chartered Accountants Act, i.e., a chartered accountant in practice is deemed to be guilty of professional misconduct if he solicits client or professional work either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means.

- (b) **Appointment of a Chartered Accountant in practice as MD of a Public Limited Company:** Under clause 11 of Part I of First Schedule to the Chartered Accountants Act, a chartered accountant in practice is deemed to be guilty of professional misconduct, if he engages in any business or occupation other than the profession of chartered accountants, unless permitted by the council so to engage.

However, nothing contained in clause 11 shall disentitle a chartered accountant from being a director of a company, unless he or any of his partners is interested in such company as an auditor.

Regulation 190A, states a member in practice cannot engage himself in any business or occupation other than that of a chartered accountant except when permitted by the council. As per Appendix 10 of Chartered Accountants Regulations, 1988, a Chartered Accountant in practice may hold the office of a Managing Director a Whole-time Director of a body corporate, provided that the member and/or his relatives do not hold substantial interest in such concern, after obtaining the specific and prior approval of the Council.

He should seek prior approval of the council otherwise he would be held guilty of misconduct.

- (c) **Power of signing reports and financial statements:** Under clause 12 of Part I of First Schedule to the Chartered Accountants Act a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any balance sheet, profit and loss account, report or financial statements.

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

The term 'Financial Statement' for this purpose would cover an examination of the accounts or financial statements given under a statutory enactment or otherwise. Accordingly S is guilty of professional misconduct under clause 13 of part I of First

Schedule and also under clause (1) of Part II of Second Schedule for contravening Section 26.

- (d) Appointment as a statutory auditor of a PSUs'/Govt company/companies / listed company/companies and other public company/companies : In exercise of the powers conferred by clause (ii) of part II of the Second Schedule to the Chartered Accountants Act, 1949, the Council of ICAI specifies that a member of the Institute in practice shall be deemed to be guilty of professional misconduct if he accepts the appointment as a statutory auditor of a PSUs'/Govt company/companies/ listed company/companies and other public company/companies having a turnover of ₹ 50 crores or more in a year and accepts any other work(s) or assignment(s) or service(s) in regard to same undertaking(s) on a remuneration which in total exceeds the fee payable for carrying out the statutory audit of the same undertaking. In view of the above position it would be a misconduct on A's part if he accepts the management consultancy assignment for a fee of ₹ 1 crore.

Question 24

Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto:

- (a) *Mr. A, a practicing Chartered Accountant agreed to select and recruit personnel, conduct training programmes for and on behalf of a client.*
- (b) *XY & Co., a firm of Chartered Accountant having 2 partners X & Y, one in charge of Head Office and another in charge of Branch at a distance of 80 Kms, puts up a name-board of the firm in both premises and also in their respective residences.*
- (c) *A practicing Chartered Accountant was appointed to represent a company before the tax authorities. He submitted on behalf of his clients certain information and explanations to the authorities, which were found to be false and misleading.*
- (d) *AB & Co., a firm of Chartered Accountants, included the name of P as a partner while filing an application for empanelment as auditor for Public Sector bank branches. It was subsequently noticed that on the date of application, P was not a partner with AB & Co.*

Answer

- (a) Under Section 2(2)(iv) of the Chartered Accountants Act, 1949, "A member of the Institute shall be deemed "to be in practice" when individually or in partnership with Chartered Accountants in practice, he, in consideration of remuneration received or to be received renders such other services as, in the opinion of the Council, are or may be rendered by a Chartered Accountant in practice. Pursuant to Section 2(2) (iv) above, the Council has passed a resolution permitting a Chartered Accountant in practice to render entire range of "Management Consultancy and other Services".

The definition of the expression "Management Consultancy and other Services" includes Personnel recruitment and selection. Personnel Recruitment and selection includes, development of human resources including designing and conduct of training

programmes, work study, job description, job evaluation and evaluations of work loads. So A is not guilty of professional misconduct.

- (b) The Council of the Institute has decided that with regard to the use of the name-board, there will be no bar to the putting up of a name-board in the place of residence of a member with the designation of chartered accountant, provided, it is a name-plate or board of an individual member and not of the firm. In the given case partners of X Y & Co., put up a name board of the firm in both offices and also in their respective residences.

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

- (c) As per clause 5 of Part I of Second Schedule if a member in practice fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary to make the financial statement not misleading, where he is concerned with that financial statement in a professional capacity, he will be held guilty under clause (5). As per clause 6 of Part I of Second Schedule if he fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity, he will be held guilty under clause 6.

In given case, the Chartered Accountant had submitted the statements before the taxation authorities. These statements are based on the data provided by the management of the company. Although the statements prepared were based on incorrect facts and misleading, the Chartered Accountant had only submitted them acting on the instructions of his client as his authorized representative.

Hence the Chartered Accountant would not be held liable for professional misconduct.

- (d) Under clause 3 of Part II of second schedule of the Chartered Accountant Act, 1949, a Chartered Accountant whether in practice or not is guilty of professional misconduct if he includes in any information, statement, return or form to be submitted to the Institute, Council or any of its committees, Directors (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false.

In the instant case A B & Co. included another Chartered Accountant name as partner in his firm, in his application for empanelment as Auditor of branches of Public Sector Banks submitted to the Institute. In fact such a member was not a partner of the said firm on the date of application. He will be held guilty of professional misconduct.

Question 25

Comment on the following with reference to the Chartered Accountants Act, 1949 and Schedules thereto:

- (a) *M/s ABC, a partnership firm carrying on business has complained to the Institute of Chartered Accountants of India (ICAI) that Mr. M, a Chartered Accountant has charged the firm excessive fees for a professional assignment.*

- (b) *Mr. A, a Chartered Accountant in practice has been appointed editor of a monthly journal which analyses performance of the Stock Market and Mutual Fund Schemes.*

Answer

- (a) The contention of the client of Mr. M that he has charged an excessive fee for a professional assignment does not constitute professional misconduct in the context of the provisions of the Chartered Accountants Act, 1949 and regulation made there under since the matter of fixation of actual fee charged in individual cases depends upon the mutual agreement and understanding between them.

Moreover, scales of fee recommended by the Council of the Institute are recommendatory only.

Therefore Mr. M is not liable for any professional misconduct under the Chartered Accountants Act, 1949

- (b) As part clause (11) of part (I) to the first schedule of the Chartered Accountants Act, a chartered accountant in practice is deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of chartered accountant unless permitted by the Council.

Under the above clause, the Council permits (among other things) editorship of professional journals. In the instant case, Mr. A, a Chartered Accountant in practice has been appointed editor of a journal related to Stock Market and Mutual Funds –a publication which cannot be called a professional journal.

Hence Mr. A would be guilty of Professional Misconduct.

Question 26

Comment on the following:

- (a) *A Chartered Accountant in practice has been suspended from practice for a period of 6 months. During the said period, though he did not undertake the audit assignment since he had surrendered certificate of practice, he had appeared before Income Tax authorities in his capacity as a Chartered Accountant.*
- (b) *Mr. J, a Chartered Accountant has identified that ABC Ltd. has taken a loan of ₹ 15 lakhs from Provident Fund Account, during the course of audit. The said loan was not reflected in the books of accounts and statements were prepared ignoring the same.*
- (c) *Mr. K, a Chartered Accountant certified the circulation of a weekly magazine without examining the records and relevant documents.*
- (d) *Mr. R, a Chartered Accountant in practice approached Manager of a Nationalised Bank for a loan of ₹ 25 lakhs. He has also informed the Manager that if the loan is sanctioned, the Income Tax return of the Manager and staff will be filed without charging any fees, as quid Pro quo for the loan sanctioned.*

Answer

- (a) **Undertaking Tax Representation Work:** A chartered accountant not holding certificate of practice cannot take up any other work because it would amount to violation of the relevant provisions of the Chartered Accountants Act, 1949.

In case a member is suspended and is not holding Certificate of Practice, he cannot in any other capacity take up any practice separable from his capacity to practice as a member of the Institute. This is because once a member becomes a member of the Institute, he is bound by the provisions of the Chartered Accountants Act, 1949 and its Regulations.

If he appears before the income tax authorities, he is only doing so in his capacity as a chartered accountant and a member of the Institute. Having bound himself by the said Act and its Regulations made there under, he cannot then set the Regulations at naught by contending that even though he continues to be a member and has been punished by suspension, he would be entitled to practice in some other capacity.

Thus, in the instant case, a chartered accountant would not be allowed to represent before the income tax authorities for the period he remains suspended. Accordingly, in the present case he is guilty of professional misconduct.

- (b) **Failure to Disclose Material Facts:** As per Clause (5) of Part I of Second Schedule to the Chartered Accountants Act, 1949, a chartered Accountant in practice will be held liable for misconduct if he fails to disclose a material fact known to him, which is not disclosed in the financial statements but disclosure of which is necessary to make the financial statements not misleading.

In the present case, Mr. J has come across information that a loan of ₹ 15 lakhs has been taken by the company from Provident Fund. This is contravention of rules and the said loan has not been reflected in the books of accounts. Further, this material fact has also to be disclosed in the financial statements.

Mr. J has failed to disclose this fact in his report. Therefore, he is attracted by the provisions of professional misconduct under clause (5) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- (c) **Failure to obtain information:** Clause 8 of Part I of Second Schedule to the Chartered Accountants Act, 1949 states that if a Chartered Accountant in practice fails to obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficient material to negate the expression of an opinion, the chartered accountant shall be deemed to be guilty of a professional misconduct.

Mr. K, a Chartered Accountant, certified the circulation of a weekly magazine without examination of records and other relevant documents. The chartered accountant should not express his opinion before obtaining the required data and information. As an auditor, Mr. K ought to have verified the basic records such as print order, printer's bill, number of copies sold and paid for, number of copies returned unsold to ensure the correctness of circulation figures.

Thus, in the present case, Mr. K will be held guilty of professional misconduct.

- (d) **Disrepute to the Profession:** Clause 2 of Part IV of First Schedule to the Chartered Accountants Act, 1949 states that member of the Institute, whether in practice or not, shall be deemed guilty of other misconduct, if he in the opinion of the Council, brings disrepute to the profession or to the Institute as a result of his action whether or not related to his professional work".

Accordingly, a Chartered Accountant is also expected to maintain the highest standards and integrity even in his personal affairs and any deviation from these standards calls for disciplinary action.

In the present case, the action of Mr. R, a Chartered Accountant in practice offering free service in return to sanction of loan brings disrepute to the profession of a Chartered Accountant.

Hence, Mr. R will be held guilty of other misconduct under Clause 2 of Part IV of the First Schedule of the Chartered Accountants Act, 1949.

Question 27

Give your comments with reference to the Chartered Accountants Act, 1949 and Schedules thereto.

- (a) *Z, a practicing 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.*
- (b) *X, a practicing Chartered Accountant in an application for permission to study submitted by his Articled 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 Articled Assistant was required to attend classes were 7.00 A.M. to 9.30 A.M. According to the information from College, the Articled Assistant attended the College from 10 A.M. to 1.55 P.M. on all week days. About the Articled Assistant attending the classes even during office hours, X pleaded ignorance.*
- (c) *K, a practicing Chartered Accountant gave 50% of the audit fees received by him to L, who was not a Chartered Accountant, under the nomenclature of office allowance and such an arrangement continued for a number of years.*
- (d) *M, a practicing Chartered Accountant sent a letter to another firm of Chartered Accountants, claiming himself to be a 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.*

Answer

- (a) **Failure to obtain information:** Clause 8 of Part I of Second Schedule to the Chartered Accountants Act, 1949 states that if a Chartered Accountant in practice fails to obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficient material to negate the expression of an opinion, the chartered accountant shall be deemed to be guilty of a professional misconduct.

In the instant case Mr. Z, a practicing 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.

The chartered accountant should not express his opinion before obtaining the required data and information. As an auditor, Mr. Z ought to have verified the basic records to ensure the correctness of circulation figures.

Thus, in the present case Mr. Z will be held guilty of professional misconduct as per clause 8 of part I of Second Schedule of Chartered Accountants Act, 1949.

Alternative Solution:

According to clause 7 of Part-I of Second Schedule of Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he “does not exercise due diligence or is grossly negligent in the conduct of his professional duties”.

In the instant case CA Z did not exercise due diligence and is grossly negligent in the conduct of his professional duties since he issued a certificate of circulation of a periodical without going into the most elementary details. Further, certification of circulation figures based on statistical information without cross verification with financial records amounts to gross negligence and failure to exercise due diligence.

Hence, CA Z is guilty of professional misconduct as per clause 7 of part I of Second Schedule of Chartered Accountants Act, 1949.

- (b) **Failure to Observe the Regulations:** As per Clause 1 of Part II of Second Schedule to the Chartered Accountants Act, 1949 a member shall be held guilty of professional misconduct if he contravenes any of the provisions of the Act or the regulations made thereunder or any guidelines issued by the Council.

The chartered accountant, as per Regulations also, is expected to impart proper practical training. There is a specific circular issued which guides on timing for training for articleship.

In the instant case, the articled clerk must have not been attending office on a regular basis and the explanation of the Chartered Accountant cannot be accepted. It is also

quite likely that the articled clerk would be availing leave quite often and coming late to the office.

Under the circumstances, the Chartered Accountant is guilty of misconduct for making a misstatement to the institute in regard to the discharge of his professional duties.

Alternative Solution :

Providing information known to be false: As per Schedule II, Part II, Clause (3), a member is deemed to be guilty of professional misconduct if he 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. In the instant case, X knew about the college timing of his articled assistant and he had given false information to the institute knowing them to be false and hence he will be deemed to be guilty of professional misconduct.

- (c) **Sharing of Audit Fees with non-member:** As per Clause 2 of Part I of First Schedule to the Chartered Accountants Act, 1949 a member shall be held guilty if a Chartered Accountant in practice pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualification as may be prescribed, for the purpose of rendering such professional services to time in or outside India.

In the instant case, Mr. K, a practising Chartered Accountant gave 50% of the audit fees received by him to Mr. L, who was not a Chartered Accountant, under the nomenclature of office allowance and such an arrangement continued for a number of years. In this case, it is not the nomenclature to a transaction that is material but it is the substance of the transaction, which has to be looked into.

The Chartered Accountant had shared his profits and, therefore, Mr. K was guilty of professional misconduct under the clause 2 of Part I of First Schedule.

- (d) **Soliciting work directly or indirectly:** As per Clause 6 of Part I of First Schedule to the Chartered Accountants Act, 1949 a member shall be held guilty if a Chartered Accountant in practice solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means;

Further, as per Central Council Guidelines for Advertisement for the members in practice, write up of the members should not claim superiority over any other Member(s)/Firm(s) and should also not include the names of the clients.

In the present case, Mr. M, a practicing Chartered Accountant sent the letter to another firm of Chartered Accountants, claiming himself to be a 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 also given a list of his

existing clients and details of his staff etc. which seems to be indirect methods to adventure their professional practice with a view to gain publicity and thereby solicit clients or professional work.

Hence, Mr. M was guilty of professional misconduct as per clause 6 of part I of First Schedule of the Chartered Accountants Act, 1949.

Question 28

Give your comments with reference to the Companies Act, 1956 and the Chartered Accountants Act, 1949 and Schedules thereto:

- (a) *A Chartered Accountant who was in practices since last 20 years died in a road accident. His widow sold the practice to another Chartered Accountant in practice for ₹30 lakhs. The price also included the right to use the firm name.*
- (b) *K, Chartered Accountant in practice as a sole proprietor at Chennai has an office in the suburbs of Chennai. Due to increase in the income tax assessment work, he opens another office near the income tax office. For running the new office, he has employed a retired income Tax Commissioner.*
- (c) *Mr. A has been appointed statutory auditor of a private limited company where his spouses' sisters' husband is having 75% ownership.*
- (d) *Mr. E, proprietor of M/s. E & Co. is the statutory auditor of a Company which owns a store dealing in computer equipments. During the year 2011-12, E purchased a computer from the store costing ₹25,000 for his son. He did not make any payment for the same, but asked the company to adjust the same against the audit fees payable of ₹50,000.*

Answer

- (a) *Sale of Goodwill: With reference to Clause (2) of Part I to the First Schedule to Chartered Accountants Act, 1949 the Council of the Institute of Chartered Accountants of India had an occasion to consider whether the goodwill of a proprietary concern of chartered accountant can be sold to another member who is otherwise eligible, after the death of the proprietor.*

The Council 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. It further laid down that in cases where the death of proprietor occurs after 30/8/1998, the goodwill of the deceased member's practice can be sold to another member and permission of the Institute has to be obtained within a year of the death of the proprietor concerned. It is even laid down that in such cases the name of the proprietary firm concerned would not be removed up to a period of one year from the death of the proprietor.

Thus, in the instant case, when the widow of the chartered accountant sold the practice to another member, it is nothing but goodwill sold to another member. The

sale of the practice and the right to use the name is also allowed in terms of the above decision of the Council. Therefore, the above act of the widow of the Chartered Accountant is permissible.

- (b) *Maintenance of Branch Office in the same city: As per section 27 of the Chartered Accountants Act, 1949 if a chartered accountant in practice has more than one office in India, each one of these offices should be in the separate charge of a member of the Institute. However, a member can be in charge of two offices if the second office is located in the same premises or in the same city, in which the first office is located; or the second office is located within a distance of 50 Kms from the municipal limits of a city, in which the first office is located.*

In the given case, Mr. K, Chartered Accountant in practice as a sole proprietor at Chennai has an office in suburbs of Chennai, and due to increase in the work he opened another branch near the income tax office. He also employed the income tax commissioner to run the new office.

Assuming that the second office is situated within a distance of 50 Kms from municipal limits, there will be no misconduct if Mr. K will be in charge of both the offices, however, he will be liable to declare which of the two offices is the main office.

Note : Alternative view is possible on the assumption that distance of both the office is more than 50 Km, Hence, Mr. K will be liable for misconduct under section 27 of the Chartered Accountant Act, 1949.

- (c) *Appointment of Auditor in case of substantial interest: Clause (4) of Part I of Second Schedule to the Chartered Accountants Act, 1949 states that if an auditor expresses his opinion on the financial statements of any business or enterprises in which he, his firm or a partner in his firm or his relative has substantial interest, he is committing professional misconduct unless he discloses the interest in his report. Such disclosure is intended to assure the public as regard the faith and confidence that could be reposed in the independent opinion expressed by the auditor.*

Further as per Council General Guidelines, 2008 the term relative shall have the same meaning as defined in AS 18 and spouses' sister' husband does not fall within this definition.

In the given case Mr. A, has been appointed as statutory auditor of a private limited company where his spouses' sisters' husband is having 75 % ownership i. e. substantial interest. As per AS 18, spouses' sisters' husband is not covered in the definition of the term relative.

Therefore, appointment of Mr. A as statutory auditor in such company would not amount to professional misconduct as per clause (4) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- (d) *Independence of Auditor: The guidance note on "Independence of Auditors" issued by the ICAI in this context recommends that "a question of indebtedness may also be raised where an auditor of a company purchases goods or services from the company audited by him. In such a case, if the amount outstanding exceeds ₹ 1000, irrespective of the nature of the purchase or period of credit allowed to other customers, the provisions concerning disqualification of auditor as contained in sec 226 (3) of the Companies Act, 1956 will be attracted."*

This is applicable in the case of purchase of Computer for his son or for personal work by the auditor of a company on normal terms and conditions of the business of the company as the amount outstanding at the end of the year exceeded ₹1000.

In the instant case, Mr. E, Proprietor of M/s E & Co. is the statutory auditor of a company which owns a store dealing in computer equipments, purchased a computer from the store and adjusted the payment for the same against his audit fee.

Therefore, the contention of Mr. E that he does not incur disqualification is not correct as he has purchased a computer of the value of ₹ 25,000 and asked the company to adjust the same against the audit fees payable of ₹ 50,000. Thus, Mr. E was disqualified under Section 226(3) of the Companies Act, 1956 to be appointed as auditor of the Company.

Hence, he would be deemed to have vacated his office as auditor but inspite of that he acted as the auditor of the company. Thus, Mr. E will be held liable for guilty of professional misconduct.

Question 29

Give your comments with reference to Chartered Accountants Act, 1949 and Schedules thereto.

- (a) *Mr. A, a practicing Chartered Accountant, failed to return the books of account and other documents of a client despite many reminders from the client. The client had settled his entire fees dues also.*
- (b) *Mr. B, a practicing Chartered Accountant as well as a qualified lawyer, was permitted by the bar council to practice as a lawyer also. He printed his visiting card where he mentioned his designation as Chartered Accountant and Advocate.*
- (c) *Mr. C, a practicing Chartered Accountant, in the course of the audit of a listed company discovered serious violations of the provisions of the Companies Act 1956, informed the Registrar of Companies out of public interest.*
- (d) *Mr. D, a practicing Chartered Accountant, did not complete his work relating to the audit of the accounts of a company and had not submitted his audit report in due time to enable the company to comply with the statutory requirements.*

Answer

(a) *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". As per part IV of the First Schedule to the Chartered Accountants Act, a member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he-*

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

A member may be found guilty of "Other Misconduct", as per clause 2, under the aforesaid provisions rendering, himself unfit to be member if he retains the books of account and documents of the client and fails to return these to the client on request without a reasonable cause.

In the given case, Mr. A failed to return the books of accounts and other documents of his client without any reasonable cause, therefore, he would be guilty of professional misconduct under the aforesaid provisions.

(b) *Under clause (7) of part -1 of First Schedule, a CA in practice is deemed to be guilty of professional misconduct if he (i) advertises his professional attainments or services or (ii) uses any designation or expressions other than 'Chartered Accountant' on professional documents, visiting cards, letter heads or sign boards unless it be a degree of a university established by law in India or recognized by the Central Government or a title indicating membership of the ICAI or of any other institution that has been recognized by the Central Government or may be recognized by the council.*

This clause prohibits advertising of professional attainments or services of a member. It also restrains a member from using any designation or expression other than that of a Chartered Accountant in documents through which the professional attainments of the member would come to the notice of the public.

Members of the Institute in practice who are otherwise eligible may practice 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. Since Mr. B has printed his visiting card where he mentioned his designation as Chartered Accountant and Advocate which is prohibited under the above clause and hence Mr. B is guilty of professional misconduct.

- (c) *Clause (1) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 deals with the professional misconduct relating to the disclosure of information by a chartered accountant in practice relating to the business of his clients to any person other than his client without the consent of his client or otherwise than as required by any law for the time being in force would amount to breach of confidence. The Code of Ethics further clarifies that such a duty continues even after completion of the assignment. The Chartered Accountant may however, disclose the information in case it is required as a part of performance of his professional duties.*

In the given case, Mr. C has disclosed serious violations of the provisions of the Companies Act, 1956 to Registrar of Companies without the consent of the client under the impression that it would be in public interest. Instead of disclosing the violations to the Registrar of Companies directly, he should impress on the client that while disclosure may entail only monetary penalties, nondisclosure and subsequent discovery thereof may entail imprisonment and fine, in addition to penalties. He should mention the violations in his report instead of informing the Registrar of Companies. Thus it is a professional misconduct covered by clause (1) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

- (d) *According to clause 7 of Part-I of Second Schedule of Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he “does not exercise due diligence or is grossly negligent in the conduct of his professional duties”.*

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

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

Since Mr. D has not completed his audit work in time and consequently could not submit audit report in due time and consequently, company could not comply with the statutory requirements, therefore, the auditor is guilty of professional misconduct.