

CODE OF ETHICS



Celebrating the 60th Year of Excellence



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

CODE OF ETHICS

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FOREWORD TO THE REPRINT OF ELEVENTH EDITION

Every professional ethics in the world require a high toned morality and integrity. It considers the rightness and wrongness of man's conduct. It is a source of justifiable pride to a professional to consider the great role members of his profession have played to maintain the human values in order to strengthen the social structure and finally the public interest.

The Code of Ethics is a guiding force to the members of the profession and today the professionals act totally on the principles enunciated in the Code of Ethics. It is not for getting the examination passed and acquiring the qualification but it is required to be followed in line and spirit.

Recently the Council of the Institute has notified the advertisement guidelines and Council General Guidelines-2008 to strengthen the impact of profession on the globalized economy by finding a level playing field on the changing scenario.

In the present reprint-edition the provisions of the International Federation of Accountants (IFAC) Code of Ethics have been incorporated in order to compliance of membership obligations of the Institute of Chartered Accountants of India (ICAI) and to facilitate the participation of the members of Institute in global business.

I am sure that the members, will appreciate the spirit of the provisions of this edition of the Code of Ethics and will be benefited to a great extent.

NEW DELHI
25th May, 2009

CA. UTTAM PRAKASH AGARWAL
President

FOREWORD TO THE ELEVENTH EDITION

The Ethics is the science of morals in human conduct. Moral principles and Rules of Conduct impose obligations and withdraw certain areas of conduct from free option of the individual to do as he likes. The professional ethics is based on morality and it interprets the compliance for the specific working of a particular profession in order to achieve the mission of building the best social environment.

Human nature being what it is, a man often places his personal gain above service. Therefore, persons who as individuals and as a class, are willing to place public good above their personal gain have enjoyed respect and honour. But such a relationship can be maintained or enhanced only if the professional body to which they belong would interpret the concept of public interest as broadly as possible. The respect and confidence enjoyed by a profession, to a great extent, is dependent on the strictness and scrupulousness with which such a code is adhered to by self discipline. When in public practice, an accountant should both be, and appear to be, free of any interest which might be regarded, whatever its actual effect, as being incompatible with integrity and objectivity.

The over-riding motto has been 'pride of service in preference to personal gain'. A code of professional conduct may have the force of law, as is the case in this country in some matters, as well as the result of discipline and conventions voluntarily established by the members, any breach whereof would result in the person being disentitled to continue as a member of the professional body. In any event, it has a great deal of practical value in so far as it proclaims to the public that the members of the profession will discharge their duties and responsibilities, having regard to the public interest. This, in turn, will give an assurance to the public that in the event of a member straying away from the path of duty, he would be suitably dealt with by the professional body. The self imposed discipline is necessary to earn respect as sometimes, some act or omission may not fall strictly under any clause of the Schedules yet it may be contrary to the ethics. The professionals are expected to withstand such tests of professional integrity.

A need was felt to revise the existing Code of Ethics with a view to meet the ethical requirements in view of the amendment in The Chartered Accountants Act, 1949 and in the changing scenario of increasing participation in the accountancy profession worldwide. While revising the Code of Ethics, the Institute of Chartered Accountants of India (ICAI) has adopted the International Federation of Accountants (IFAC) Code of Ethics for professional accountants

subject to the variances, wherever required, have been made to make it compatible with Indian laws. The provisions of this Code of Ethics are more stringent than those of IFAC Code. The adoption of IFAC Code is a step towards compliance of ICAI's membership obligations of IFAC.

In bringing out this publication, the Ethical Standards Board and the Study Group constituted for the revision of the Code, has given their considerable time in discussions on each and every part of the Code. In this publication the Board has incorporated and presented very nicely all the decisions of the Council on ethical issues as well as the decisions of the Courts on disciplinary cases. Part – A of the Code has been issued as 'Guidelines of the Council'.

I must compliment the members of the Study Group and the Board particularly Shri J. N. Shah, Chairman and Shri V. C. James, Vice-Chairman & Convener of the Study Group, for achieving this difficult task in a short time.

I record my appreciation for contribution of Shri N.P.Singh, Secretary of the Board and the officials of the Institute in bringing out this publication in record time.

I am confident that this publication will be of great help to all the members of the Institute.

NEW DELHI
14th January, 2009

VED JAIN
President

FOREWORD TO THE TENTH EDITION

A distinguishing mark of the accountancy profession is acceptance of its responsibility to the public. The accountancy profession's public consists of clients, credit guarantors, governments, employers, employees, investors, the business and financial community and others who rely on the objectivity and integrity of a professional accountant to maintain the orderly functioning of economic order. This reliance imposes a public interest responsibility on the accountancy profession.

The Information Technology revolution and globalization of economy have changed the world for ever and every profession is facing challenges in this era of tough competition. Accountability of any profession is crucial for its survival and prosperity. In formulating the Code of Ethics for the profession, the Institute has always considered the motto "Pride of service in preference to personal gain" as a litmus test. User expectation and public perception are crucial criteria while formulating the Code of Ethics so that there should not be any expectation gap between the "standards expected" and "those prescribed". The Code of Ethics was last revised in January 2001. Since then, the Council considered various concerns of the profession and the interest of the society generally as well as the expectations of the stakeholders in particular.

Whether the notification imposing ceiling on non-audit fees, norms relaxing the criteria in responding to tenders of government agency or similar organizations or permitting the members to publish passport size photograph in their website, the Council, at its own wisdom, appreciated the changing scenario in the world order and the emerging opportunities of the profession. At the same time, the Council ensured that the ethical standards for the profession should be complied with at any cost. We feel proud that the Institute has always marched beyond the expectation of the society and the members have always considered as their solemn responsibility to comply with the ethical standards prescribed by the Council. In this era of globalized economy, our members are marching confidently ahead to provide the globally acceptable solutions to the world community.

In bringing out this publication, the Committee on Ethical Standards & Unjustified Removal of Auditors (CESURA) has done an excellent job. I learnt that the Committee while updating and revising the draft, had requested the Past Presidents to give their views/suggestions and the suggestions received have been appreciated. I gratefully acknowledge their valuable contribution.

To update the Code, the Committee has incorporated very nicely all the decisions of the Council on Ethical issues as well as the decisions on disciplinary cases.

I wish to place on record my deep appreciation & compliment for Shri Abhijit Bandyopadhyay, Chairman, Committee on Ethical Standards & Unjustified Removal of Auditors and its other members.

I appreciate the efforts & contribution of Dr. Alok Ray, Secretary to the Committee and the officials of Institute for this commendable job.

I have no doubt that this publication will make our members more confident and comfortable to carry out their professional jobs in this new worldorder.

NEW DELHI
21st January, 2005

SUNIL GOYAL
President

FOREWORD TO THE NINTH EDITION

The maintenance of ethical standards is the collective concern of the Institute as well as all members of the profession. The ideal situation, of course, would be that the maintenance of ethical standards at individual member level is so self-evident that its further mention need not be made. However, the human nature being what it is, a man may often place his personal gain above service. Therefore, it is necessary to keep on reinforcing the idea of keeping up and observing the highest ethical standards repeatedly. With this end in view and also keeping in mind the need to adhere to our creed “Excellence, Independence and Integrity”, it is a pleasure to release this publication with the new title “Code of Ethics” as decided by the Council. These values of profession need to be further institutionalised and globalised. Therefore, the Council of the Institute has recently permitted the members of the Institute to post their particulars on the Website. The detailed guidelines are contained in the new publication.

I am confident that the members of the profession, in general and the younger members in particular would definitely strive hard in the interest of upholding the professional image in the years to come and also to reduce the expectation gap.

In bringing out this publication, the Committee on Ethical Standards & Unjustified Removal of Auditors (CESURA) and Council held various long meetings. All the members of CESURA, particularly its Chairmen, Shri A.K. Chakraborty, Shri N.K. Gupta, Shri A.C. Shah, Shri S.C. Bhadra and some of its other members, namely Shri P.N. Shah, Shri A.H. Dalal, Shri S.P. Chhajed, Shri G. Sitharaman (also past-Presidents) and Shri Ashok Chandak (now Vice-President) have been very active in giving their valuable inputs and very useful and educative suggestions. Shri Chandak’s interpretation of complicated legal aspects of the subject facilitated the work of the Committee and the Council and was highly appreciated. Shri Bhadra’s continuous impetus in completing the task led the publication to its finality.

The Secretariat of CESURA headed by Shri G.D. Khurana who is Secretary of the Committee and possessing long experience in Disciplinary, Ethical and Legal matters of the Institute and his colleague Shri Neeraj Srivastava, Assistant Secretary need to be specifically mentioned as they have contributed a lot in facilitating the completion of updating the publication by, *inter alia*, summarising and placing at appropriate places the various decisions of the Council and Judgements of Courts etc.

I am confident that this publication which contains relevant extract, from decisions and pronouncements which have been made, from time to time, by the Council along with Council's perception of major issues, will go a long way for the assistance of the members. It will also assist both old and new members in addressing the issues/problems of the professional conduct which they face in their day to day professional life.

NEW DELHI
13th August, 2001

N.D. GUPTA
President

FOREWORD TO THE EIGHTH EDITION

The “Code of Conduct” is essentially a set of professional ethical standards, regulating the relationship of Chartered Accountants with their clients, employers, employees, fellow members of the group and the public generally. According to the International Federation of Accountants, the ethical requirements of any accountancy body should be based on integrity, objectivity, independence, confidentiality, high technical standards, professional competence and above all on ethical behaviour. The Chartered Accountants Act, 1949 and the Schedules to the Act set out the acceptable forms of behaviour of the members of the profession.

However, during the last 40 years since the Act came into force, certain conventions have been voluntarily established by the members of the profession which have enhanced the respect and confidence enjoyed by the profession. The Council of the Institute has been adhering to these principles strictly and scrupulously in order to maintain the reputation of the profession.

The first edition of the “Code of Conduct” was published in 1963 and ever since six more editions of the Code have been out incorporating the changes that had taken place from time to time. The present Council felt the need to have a self-contained document which is both up-to-date and currently relevant. The present edition is a result of this painstaking and elaborate exercise.

The revised Chartered Accountants Regulations, 1988, which have replaced the Chartered Accountants Regulations 1964, the recent decisions of the Council in administering the Code of Conduct, the various statements on auditing practices and accounting standards, which are now mandatory, etc. are reflected in the present Code.

The Council wishes to place on record its appreciation and gratitude to Sarvashri S. Nandagopal, A.K. Chakraborty, S.C. Bafna, Y. Soli and the members and Secretary of the Ethical Standards Committee for their painstaking work in revising, updating and editing this Code. The Council has also taken this opportunity to include the latest case laws and delete the obsolete ones.

I have great pleasure in bringing out this Eighth Edition of the Code of Conduct for the guidance of members and students. I hope this booklet will be of assistance to them in resolving their doubts in the ethical problems confronted by them in the course of their professional duties.

NEW DELHI
5th July, 1988

S.K. DASGUPTA
President

FOREWORD TO THE SEVENTH EDITION

Since the publication of the Sixth edition of the booklet Code of Conduct in 1980, the Council has enunciated many ethical principles and rules touching those areas with which members have immediate concern. Some of these areas pertain to responding to tenders, use of the designation Chartered Accountant in invitation cards, guidelines for members accepting directorships of Public Companies, the requirements of Sections 224 and 225 of the Companies Act, 1956 in regard to the appointment and change of auditors, handling of clients money by the members and so on. In these areas, the Council has given clarifications and relaxations wherever found necessary so that members may find it easier to overcome ethical doubts and dilemmas.

I have pleasure in bringing out the revised edition of the booklet for the benefit of the members and students.

17th December, 1985

P.A. NAIR
President

FOREWORD TO THE FIFTH EDITION

In this Fifth Edition of the booklet Code of Conduct several additions have been made by incorporating the various decisions of the Council taken since the publication of the last edition relating to the maintenance of Ethical Standards by the members.

I have pleasure in bringing out the revised edition of the booklet for the continued benefit of the members and students.

NEW DELHI
4th October, 1976

B.R. MAHESHWARI
President

FOREWORD TO THE FOURTH EDITION

This fourth edition of the booklet Code of Conduct has been revised and brought up-to-date. A noteworthy feature of this new edition is that several relaxations made by the Council regarding ethical requirements regarding publicity by members of the Institute have been incorporated. These relate to publication of Group Headings of Chartered Accountants in the Telephone Directory, appearance on radio, television and films, appointments to positions of local or national importance, giving talks or lectures or attending a Conference and writing articles or letters to the Press on subjects connected with the profession. A paragraph has been added on the question of lien upon documents belonging to clients. This edition also includes notifications on disabilities for acceptance of appointment as Cost Auditor, liability of a Chartered Accountant who accepts audit of a Company while he is an employee of the cost auditor of the Company and liability of a Chartered Accountant when he expresses his opinion on financial statements of any business or enterprise in which his relatives have a substantial interest.

In the maintenance of the ethical standards expected of the members, I trust that the booklet will continue to be of immense help.

NEW DELHI
31st August, 1971

M.C. BHANDARI
President

FOREWORD TO THE THIRD EDITION

The booklet was first published in November 1963. It was revised in September 1966, so as to bring it in line with the Chartered Accountants Regulations, 1964 which came in force on 18th July, 1964, as several changes had been introduced in the Regulations and the numbering of the Regulations and the headings as they appeared in the Chartered Accountants Regulations, 1949 had also been modified. Certain further guidelines issued by the Council were also incorporated in the second edition along with a new notification on the liability of Chartered Accountants in employment. This third edition includes in addition, a notification issued by the Council subsequently covering misconduct in connection with elections.

I trust that this booklet will help members to maintain the ethical standards expected of them.

NEW DELHI
1st January, 1969

R. VENKATESAN
President

FOREWORD TO THE FIRST EDITION

This booklet, published under the authority of the Council, is being sent to all members of the Institute and it is hoped that it will give guidance to them on the observance of a healthy code of professional ethics.

The booklet basically gives elaborate explanations, where necessary with illustrations, on the various items comprised in the Schedules to the Chartered Accountants Act, and is by no means meant to be exhaustive of all acts of omission and commission which may constitute professional misconduct. No booklet of this nature can achieve the object of outlining every possible act which may or may not constitute sound ethical conduct because the practice of professional ethics is largely a matter of conscience and the determination of members to distinguish between what is right and wrong.

Ethics is a state of the mind, and there may be some act which, though it may not strictly fall under one of the items of the Schedule, may be one which may not be proper by any moral or ethical standards. In the larger interests of the Institute, the Council exhorts all members to search their hearts and conscience whenever in doubt, and thereby assist towards the maintenance of high principles of professional conduct established by the Council.

As members are aware, the Council has, during the last 14 years, exercised its disciplinary jurisdiction judiciously but without fear or favour, and has built up a record of healthy traditions of which it can be justly proud. The highest standards of ethical behaviour can only evolve from the conduct of members and the Council feels sure that whenever members are confronted with two interpretations on a matter relating to professional conduct—one ethical and the other legalistic—they would adopt the stricter interpretation than the more liberal one, even though the latter may be perfectly legal.

The exercise of the highest ethical standards, which ensures the progress of our Institute, is in the hands of the members themselves.

I would be failing in my duty if I did not acknowledge, with grateful thanks of the Council, the tremendous efforts put into this work by Mr. N.R. Mody, the senior-most Member of the Council, who has brought to bear on this memorandum his wide experience of disciplinary matters extending over a period of fourteen years.

BOMBAY
25th October, 1963

R.C. COOPER
President

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PART-A

CHAPTER 1

GENERAL APPLICATION OF THE CODE

Section 100

Introduction and Fundamental Principles

- 100.1 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. Therefore, a **professional accountant's*** responsibility is not exclusively to satisfy the needs of an individual client or employer. In acting in the public interest a professional accountant should observe and comply with the ethical requirements of this Code.
- 100.2 This part of the Code is in three chapters. Chapter 1 establishes the fundamental principles of professional ethics for professional accountants and provides a conceptual framework for applying those principles. The conceptual framework provides guidance on fundamental ethical principles. Professional accountants are required to apply this conceptual framework to identify threats to compliance with the fundamental principles, to evaluate their significance and, if such threats are other than **clearly insignificant*** to apply safeguards to eliminate them or reduce them to an acceptable level such that compliance with the fundamental principles is not compromised.
- 100.3 Chapters 2 and 3 illustrate how the conceptual framework is to be applied in specific situations. It provides examples of safeguards that may be appropriate to address threats to compliance with the fundamental principles and also provides examples of situations where safeguards are not available to address the threats and consequently the activity or relationship creating the threats should be avoided. Chapter 2 applies to **professional accountants in public practice***. Chapter 3 applies to **professional**

* See Definitions.

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accountants in service*. Professional accountants in public practice may also find the guidance in Chapter 3 relevant to their particular circumstances.

Fundamental Principles

100.4 A professional accountant is required to comply with the following fundamental principles:

(a) *Integrity*

A professional accountant should be straightforward and honest in all professional and business relationships.

(b) *Objectivity*

A professional accountant should not allow bias, conflict of interest or undue influence of others to override professional judgments.

(c) *Professional Competence and Due Care*

A professional accountant has a continuing duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques. A professional accountant should act diligently and in accordance with applicable technical and professional standards while providing professional services.*

(d) *Confidentiality*

A professional accountant should respect the confidentiality of information acquired as a result of professional and employment relationships and should not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and employment relationships should not be used for the personal advantage of the professional accountant or third parties.

(e) *Professional Behaviour*

A professional accountant should comply with relevant

* See Definitions.

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laws and regulations and should avoid any action that discredits the profession.

Each of these fundamental principles is discussed in more detail in Sections 110 – 150.

Conceptual Framework Approach

- 100.5 The circumstances in which professional accountants operate may give rise to specific threats to compliance with the fundamental principles. It is impossible to define every situation that creates such threats and specify the appropriate mitigating action. In addition, the nature of engagements and work assignments may differ and consequently different threats may exist, requiring the application of different safeguards. A conceptual framework that requires a professional accountant to identify, evaluate and address threats to compliance with the fundamental principles, rather than merely comply with a set of specific rules which may be arbitrary, is, therefore, in the public interest. This Code provides a framework to assist a professional accountant to identify, evaluate and respond to threats to compliance with the fundamental principles. If identified threats are other than clearly insignificant, a professional accountant should, where appropriate, apply safeguards to eliminate the threats or reduce them to an acceptable level, such that compliance with the fundamental principles is not compromised.
- 100.6 A professional accountant has an obligation to evaluate any threats to compliance with the fundamental principles when the professional accountant knows, or could reasonably be expected to know, of circumstances or relationships that may compromise compliance with the fundamental principles.
- 100.7 A professional accountant should take qualitative as well as quantitative factors into account when considering the significance of a threat. If a professional accountant cannot implement appropriate safeguards, the professional accountant should decline or discontinue the specific professional service involved, or where necessary resign from the client (in the case of a professional accountant in public practice) or the employing organization (in the case of a professional accountant in service).

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- 100.8 Chapters 2 and 3 of this Code include examples that are intended to illustrate how the conceptual framework is to be applied. The examples are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by a professional accountant that may create threats to compliance with the fundamental principles. Consequently, it is not sufficient for a professional accountant merely to comply with the examples presented; rather, the framework should be applied to the particular circumstances encountered by the professional accountant.

Threats and Safeguards

- 100.9 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances. Many threats fall into the following categories:
- (a) Self-interest threats, which may occur as a result of the financial or other interests of a professional accountant or of a **relative**^{*};
 - (b) Self-review threats, which may occur when a previous judgment needs to be re- evaluated by the professional accountant responsible for that judgment;
 - (c) Advocacy threats, which may occur when a professional accountant promotes a position or opinion to the point that subsequent objectivity may be compromised;
 - (d) Familiarity threats, which may occur when, because of a relationship, a professional accountant becomes too sympathetic to the interests of others; and
 - (e) Intimidation threats, which may occur when a professional accountant may be deterred from acting objectively by threats, actual or perceived.

Chapters 2 and 3 of this Code, respectively, provide examples of circumstances that may create these categories of threats for professional accountants in public practice and professional accountants in service. Professional accountants in public practice may also find the guidance in Chapter 3 relevant to their particular circumstances.

^{*} See Definitions.

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- 100.10 Safeguards that may eliminate or reduce such threats to an acceptable level fall into two broad categories:
- (a) Safeguards created by the profession, legislation or regulation; and
 - (b) Safeguards in the work environment.
- 100.11 Safeguards created by the profession, legislation or regulation include, but are not restricted to:
- ☐ Educational, training and experience requirements for entry into the profession.
 - ☐ Continuing professional development requirements.
 - ☐ Corporate governance regulations.
 - ☐ Professional standards.
 - ☐ Professional or regulatory monitoring and disciplinary procedures.
 - ☐ External review by a legally empowered third party of the reports, returns, communications or information produced by a professional accountant.
- 100.12 Chapters 2 and 3 of this Code, respectively, discuss safeguards in the work environment for professional accountants in public practice and those in service.
- 100.13 Certain safeguards may increase the likelihood of identifying or deterring the unethical behaviour. Such safeguards, which may be created by the accounting profession, legislation, regulation or an employing organization, include, but are not restricted to:
- ☐ Effective, well publicized complaints systems operated by the employing organization, the profession or a regulator, which enable colleagues, employers and members of the public to draw attention to unprofessional or unethical behaviour.
 - ☐ An explicitly stated duty to report breaches of ethical requirements.
- 100.14 The nature of the safeguards to be applied will vary depending on the circumstances. In exercising professional judgment, a professional accountant should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat

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and the safeguards applied, would conclude to be unacceptable.

Ethical Conflict Resolution

100.15 In evaluating compliance with the fundamental principles, a professional accountant may be required to resolve a conflict in the application of fundamental principles.

100.16 When initiating either a formal or informal conflict resolution process, a professional accountant should consider the following, either individually or together with others, as part of the resolution process:

- (a) Relevant facts;
- (b) Ethical issues involved;
- (c) Fundamental principles related to the matter in question;
- (d) Established internal procedures; and
- (e) Alternative courses of action.

Having considered these issues, a professional accountant should determine the appropriate course of action that is consistent with the fundamental principles identified. The professional accountant should also weigh the consequences of each possible course of action. If the matter remains unresolved, the professional accountant should consult with other appropriate persons within the **firm*** or employing organization for help in obtaining resolution.

100.17 Where a matter involves a conflict with, or within, an organization, a professional accountant should also consider consulting with those charged with governance of the organization, such as the board of directors or the audit committee.

100.18 It may be in the best interests of the professional accountant to document the substance of the issue and details of any discussions held or decisions taken, concerning that issue.

100.19 If a significant conflict cannot be resolved, a professional accountant may wish to obtain professional advice from the relevant professional body or legal advisors, and thereby

* See Definitions.

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obtain guidance on ethical issues without breaching confidentiality. For example, a professional accountant may have encountered a fraud, the reporting of which could breach the professional accountant's responsibility to respect confidentiality. The professional accountant should consider obtaining legal advice to determine whether there is a requirement to report.

- 100.20 If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional accountant should, where possible, refuse to remain associated with the matter creating the conflict. The professional accountant may determine that, in the circumstances, it is appropriate to withdraw from the **engagement team**^{*} or specific assignment, or to resign altogether from the engagement, the firm or the employing organization.

Section 110

Integrity

- 110.1 The principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in professional and employment relationships. Integrity also implies fair dealing and maintaining an impartial attitude and truthfulness.
- 110.2 A professional accountant should not be associated with reports, returns, communications or other information where he believes that the information:
- (a) Contains a materially false or misleading statement;
 - (b) Contains statements or information furnished negligently; or
 - (c) Omits or obscures any information required to be included where such omission or obscurity would be misleading.
- 110.3 A professional accountant will not be considered to be in breach of paragraph 110.2 if the professional accountant provides a modified report in respect of a matter contained in paragraph 110.2.

^{*} See Definitions

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Section 120

Objectivity

- 120.1 The principle of objectivity imposes an obligation on all professional accountants not to compromise their professional duty or while in service judgment because of bias, conflict of interest or the undue influence of others.
- 120.2 A professional accountant may be exposed to situations that may impair objectivity. It is impracticable to define and prescribe all such situations. Relationships that bias or unduly influence the professional judgment of the professional accountant should be avoided.

Section 130

Professional Competence and Due Care

- 130.1 The principle of professional competence and due care imposes the following obligations on professional accountants:
- (a) To maintain professional knowledge and skill at the level required to ensure that the clients or employers receive competent professional service; and
 - (b) To act diligently in accordance with applicable technical and professional standards while providing professional services.
- 130.2 Competent professional service requires the exercise of sound judgment in applying professional knowledge and skill in the performance of such service. Professional competence may be divided into two separate phases:
- (a) Attainment of professional competence; and
 - (b) Maintenance of professional competence.
- 130.3 The maintenance of professional competence requires a continuing awareness and an understanding of relevant technical professional and business developments. Continuing professional development develops and maintains the capabilities that enable a professional accountant to perform competently within the professional environments.
- 130.4 Diligence encompasses the responsibility to act in

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accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.

- 130.5 A professional accountant should take steps to ensure that those working under the professional accountant's authority in a professional capacity have appropriate training and supervision.
- 130.6 Where appropriate, a professional accountant should make clients, employers or other users of the professional services aware of limitations inherent in the services to avoid the misinterpretation of an expression of opinion as an assertion of fact.

Section 140

Confidentiality

- 140.1 The principle of confidentiality imposes an obligation on professional accountants to refrain from:
- (a) Disclosing outside the firm or employing organization information acquired as a result of professional and employment relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and
 - (b) Using information acquired as a result of professional and employment relationships to their personal advantage or the advantage of third parties.
- 140.2 A professional accountant should maintain confidentiality even in a social environment. The professional accountant should be alert to the possibility of inadvertent disclosure, particularly in circumstances involving long association with a business associate or a **relative**^{*}.
- 140.3 A professional accountant should also maintain confidentiality of information disclosed by a prospective client or employer.
- 140.4 A professional accountant should also consider the need to maintain confidentiality of information within the firm or employing organization.
- 140.5 A professional accountant should take all reasonable steps to ensure that staff under the professional accountant's

^{*} See Definitions.

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control and persons from whom advice and assistance is obtained respect the professional accountant's duty of confidentiality.

- 140.6 The need to comply with the principle of confidentiality continues even after the end of relationships between a professional accountant and a client or employer. When a professional accountant acquires a new client or changes employment, the professional accountant is entitled to use prior experience. The professional accountant should not, however, use or disclose any confidential information either acquired or received as a result of a professional or employment relationship.
- 140.7 The following are circumstances where professional accountants are or may be required to disclose confidential information or when such disclosure may be appropriate:
- (a) Disclosure is permitted by law and is authorized by the client or the employer;
 - (b) Disclosure is required by law, for example:
 - (i) Production of documents or other provision of evidence in the course of legal proceedings; or
 - (ii) Disclosure to the appropriate public authorities of infringements of the law that come to light; and
 - (c) There is a professional duty or right to disclose, when not prohibited by law:
 - (i) To comply with the requirement of peer review or quality review of a member body or professional body.
 - (ii) To respond to an inquiry or investigation by a member body or regulatory body;
 - (iii) To protect the professional interests of a professional accountant in legal proceedings; or
 - (iv) To comply with technical standards and ethical requirements.
- 140.8 In deciding whether to disclose confidential information, professional accountants should consider the following points:
- (a) Whether the interests of all parties, including third parties whose interests may be affected, could be

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harmful if the client or employer consents to the disclosure of information by the professional accountant;

- (b) Whether all the relevant information is known and substantiated, to the extent it is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment should be used in determining the type of disclosure to be made, if any; and
- (c) The type of communication that is expected and to whom it is addressed; in particular, professional accountants should be satisfied that the parties to whom the communication is addressed are appropriate recipients.

Section 150

Professional Behaviour

- 150.1 The principle of professional behaviour imposes an obligation on professional accountants to comply with relevant laws and regulations and avoid any action that may bring discredit to the profession. The professional accountants should act in a manner consistent with the reputation of the profession and refrain from any conduct which might bring disrepute to the profession.
- 150.2 In promoting themselves and their work, professional accountants should not bring the profession into disrepute and should be honest and truthful and should not:
- (a) Make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; or
 - (b) Make disparaging references or unsubstantiated comparisons to the work of others.
 - (c) Advertise any professional/other facts which are in violation of advertisement guidelines issued by the **Council*** of the Institute from time to time.

* See Definitions.

CHAPTER 2

PROFESSIONAL ACCOUNTANTS IN PUBLIC PRACTICE

Section 200

Introduction

- 200.1 This Chapter of the Code illustrates how the conceptual framework contained in Chapter 1 is to be applied by professional accountants in public practice. The examples in the following sections are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by a professional accountant in public practice that may create threats to compliance with the principles. Consequently, it is not sufficient for a professional accountant in public practice merely to comply with the examples presented; rather, the framework should be applied to the particular circumstances faced.
- 200.2 A professional accountant in public practice should not engage in any business, occupation or activity that impairs or might impair integrity, objectivity or the good reputation of the profession and as a result would be incompatible with the rendering of professional services.

Threats and Safeguards

- 200.3 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances. Many threats fall into the following categories:
- (a) Self-interest;
 - (b) Self-review;
 - (c) Advocacy;
 - (d) Familiarity; and
 - (e) Intimidation.

These threats are also discussed in Chapter 1.

The nature and significance of the threats may differ depending on whether they arise in relation to the provision

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of services to a **financial statement audit client***, a non-financial statement audit **assurance client*** or a non-assurance client.

200.4 Examples of circumstances that may create self-interest threats for a professional accountant in public practice include, but are not limited to:

- ☐ A **financial interest*** in a client or jointly holding a financial interest with a client.
- ☐ Undue dependence on total fees from a client subject to Council guidelines issued from time to time in this regard.
- ☐ Having a close business relationship with a client.
- ☐ Concern about the possibility of losing a client.
- ☐ Potential employment with a client
- ☐ A loan to or from an assurance client or any of its directors or officers, subject to Council guidelines issued from time to time in this regard.

200.5 **Self Review Threats:** Examples of circumstances that may create self-review threats include, but are not limited to:

- ☐ The discovery of a significant error during a re-evaluation of the work of the professional accountant in public practice.
- ☐ Reporting on the operation of financial systems after being involved in their design or implementation.
- ☐ Having prepared the original data used to generate records that are the subject matter of the engagement.
- ☐ A member of the **assurance team*** being, or having recently been, a **director or officer*** of that client.
- ☐ A member of the assurance team being, or having recently been, employed by the client in a position to exert direct and significant influence over the subject matter of the engagement.
- ☐ Performing a service for a client that directly affects the subject matter of the assurance engagement.

* See Definitions.

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- 200.6 **Advocacy Threats:** Examples of circumstances that may create advocacy threats include, but are not limited to:
- ☐ Promoting shares in a **listed entity*** when that entity is a financial statement audit client.
 - ☐ Acting as a representative on behalf of an assurance client in litigation or disputes with third parties.
- 200.7 **Familiarity Threats:** Examples of circumstances that may create familiarity threats include, but are not limited to:
- ☐ A member of the engagement team is a relative of a director or officer of the client.
 - ☐ A member of the engagement team is a relative of an employee of the client who is in a position to exert direct and significant influence over the subject matter of the engagement.
 - ☐ A former partner of the firm being a director or officer of the client or an employee in a position to exert direct and significant influence over the subject matter of the engagement.
 - ☐ Accepting gifts or preferential treatment from a client.
 - ☐ Long association of senior personnel with the assurance client.
- 200.8 **Intimidation Threats:** Examples of circumstances that may create intimidation threats include, but are not limited to:
- ☐ Being threatened with dismissal or replacement in relation to a client engagement.
 - ☐ Being threatened with litigation.
 - ☐ Being pressured to reduce inappropriately the extent of work performed in order to reduce fees.
- 200.9 A professional accountant in public practice may also find that specific circumstances give rise to unique threats to compliance with one or more of the fundamental principles. Such unique threats obviously cannot be categorized. In either professional or employment relationships, a professional accountant in public practice should always be on the alert for such circumstances and threats.
- 200.10 Safeguards that may eliminate or reduce threats to an

* See Definitions.

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acceptable level fall into two broad categories:

- (a) Safeguards created by the profession, legislation or regulation; and
- (b) Safeguards in the work environment.

Examples of safeguards created by the profession, legislation or regulation are described in paragraph 100.11.

200.11 In the work environment, the relevant safeguards will vary depending on the circumstances. Work environment safeguards comprise firm-wide safeguards and engagement specific safeguards.

200.12 Firm-wide safeguards in the work environment may include:

- ☐ Leadership of the firm that stresses the importance of compliance with the fundamental principles.
- ☐ Leadership of the firm that establishes the expectation that members of an assurance team will act in the public interest.
- ☐ Policies and procedures to implement and monitor quality control of engagements.
- ☐ Documented policies regarding the identification of threats to compliance with the fundamental principles, the evaluation of the significance of these threats and the identification and the application of safeguards to eliminate or reduce the threats, other than those that are clearly insignificant, to an acceptable level.
- ☐ For firms that perform assurance engagements, documented **independence**^{*} policies regarding the identification of threats to independence, the evaluation of the significance of these threats and the evaluation and application of safeguards to eliminate or reduce the threats, other than those that are clearly insignificant, to an acceptable level.
- ☐ Documented internal policies and procedures requiring compliance with the fundamental principles.
- ☐ Policies and procedures that will enable the identification of interests or relationships between the firm or members of engagement teams and clients.

^{*} See Definitions.

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- ☐ Policies and procedures to monitor and, if necessary, manage the reliance on revenue received from a single client.
 - ☐ Using different partners and engagement teams with separate reporting lines for the provision of non-assurance services to an assurance client.
 - ☐ Policies and procedures to prohibit individuals who are not members of an engagement team from inappropriately influencing the outcome of the engagement.
 - ☐ Timely communication of a firm's policies and procedures, including any changes to them, to all partners and professional staff, and appropriate training and education on such policies and procedures.
 - ☐ Designating a member of senior management to be responsible for overseeing the adequate functioning of the firm's quality control system.
 - ☐ Advising partners and professional staff of those assurance clients and related entities from which they must be independent.
 - ☐ A disciplinary mechanism to promote compliance with policies and procedures.
 - ☐ Published policies and procedures to encourage and empower staff to communicate to senior levels within the firm any issue relating to compliance with the fundamental principles that concerns them.
- 200.13 Engagement-specific safeguards in the work environment may include:
- ☐ Involving an additional professional accountant to review the work done or otherwise advise as necessary.
 - ☐ Consulting an independent third party, such as a committee of independent directors, a professional regulatory body or another professional accountant.
 - ☐ Discussing ethical issues with those charged with governance of the client.
 - ☐ Disclosing to those charged with governance of the

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client the nature of services provided and extent of fees charged.

- ☐ Rotating senior assurance team personnel.

200.14 Depending on the nature of the engagement, a professional accountant in public practice may also be able to rely on safeguards that the client has implemented. However it is not possible to rely solely on such safeguards to reduce threats to an acceptable level.

200.15 Safeguards within the client's systems and procedures may include:

- ☐ When a client appoints a firm in public practice to perform an engagement, persons other than management ratify or approve the appointment.
- ☐ The client has competent employees with experience and seniority to make managerial decisions.
- ☐ The client has implemented internal procedures that ensure objective choices in commissioning non-assurance engagements.
- ☐ The client has a corporate governance structure that provides appropriate oversight and communications regarding the firm's services.

Section 210

Professional Appointment

Client Acceptance

210.1 Before accepting a new client relationship, a professional accountant in public practice should consider whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behaviour may be created from, for example, questionable issues associated with the client (its owners, management and activities).

210.2 Client issues that, if known, could threaten compliance with the fundamental principles include, for example, client involvement in illegal activities (such as money laundering), dishonesty or questionable financial reporting practices.

210.3 The significance of any threats should be evaluated. If identified threats are other than clearly insignificant,

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safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level.

- 210.4 Appropriate safeguards may include obtaining knowledge and understanding of the client, its owners, managers and those responsible for its governance and business activities, or securing the client's commitment to improve corporate governance practices or internal controls.
- 210.5 Where it is not possible to reduce the threats to an acceptable level, a professional accountant in public practice should decline to enter into the client relationship.
- 210.6 Acceptance decisions should be periodically reviewed for recurring client engagements.

Engagement Acceptance

- 210.7 A professional accountant in public practice should agree to provide only those services that the professional accountant in public practice is competent to perform. Before accepting a specific client engagement, a professional accountant in public practice should consider whether acceptance would create any threats to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care is created if the engagement team does not possess, or cannot acquire, the competencies necessary to properly carry out the engagement.
- 210.8 A professional accountant in public practice should evaluate the significance of identified threats and, if they are other than clearly insignificant, safeguards should be applied as necessary to eliminate them or reduce them to an acceptable level. Such safeguards may include:
- ☐ Acquiring an appropriate understanding of the nature of the client's business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed.
 - ☐ Acquiring knowledge of relevant industries or subject matters.
 - ☐ Possessing or obtaining experience with relevant regulatory or reporting requirements.

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- ☐ Assigning sufficient staff with the necessary competencies.
- ☐ Using experts where necessary.
- ☐ Agreeing on a realistic time frame for the performance of the engagement.
- ☐ Complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.

210.9 When a professional accountant in public practice intends to rely on the advice or work of an expert, the professional accountant in public practice should evaluate whether such reliance is warranted. The professional accountant in public practice should consider factors such as reputation, expertise, resources available and applicable professional and ethical standards. Such information may be gained from prior association with the expert or from consulting others.

Changes in a Professional Appointment

210.10 A professional accountant in public practice who is asked to replace another professional accountant in public practice, or who is considering tendering for an engagement currently held by another professional accountant in public practice, should determine whether there are any reasons, professional or other, for not accepting the engagement, such as circumstances that threaten compliance with the fundamental principles. For example, there may be a threat to professional competence and due care if a professional accountant in public practice accepts the engagement before knowing all the pertinent facts.

210.11 The significance of the threats should be evaluated. It shall require direct communication with the **existing accountant**^{*} to establish the facts and circumstances behind the proposed change so that the professional accountant in public practice can decide whether it would be appropriate to accept the engagement. For example, the apparent reasons for the change in appointment may not fully reflect the facts and may indicate disagreements with the existing

^{*} See Definitions.

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accountant that may influence the decision as to whether to accept the appointment.

- 210.12 An existing accountant is bound by confidentiality. The extent to which the professional accountant in public practice can and should discuss the affairs of a client with a proposed accountant will depend on the nature of the engagement and on:
- (a) Whether the client's permission to do so has been obtained; or
 - (b) The legal or ethical requirements relating to such communications and disclosure, which may vary by jurisdiction.
- 210.13 In the absence of specific instructions by the client, an existing accountant should not ordinarily volunteer information about the client's affairs. Circumstances where it may be appropriate to disclose confidential information are set out in Section 140.
- 210.14 If identified threats are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level.
- 210.15 Such safeguards may include:
- ☐ Discussing the client's affairs fully and freely with the existing accountant;
 - ☐ Asking the existing accountant to provide known information on any facts or circumstances, that, in the existing accountant's opinion, the proposed accountant should be aware of before deciding whether to accept the engagement;
 - ☐ When replying to requests to submit tenders, stating in the tender that, before accepting the engagement, contact with the existing accountant will be requested so that inquiries may be made as to whether there are any professional or other reasons why the appointment should not be accepted.
- 210.16 A professional accountant in public practice will need not to obtain the client's permission, to initiate discussion with an existing accountant.. The existing accountant should comply with relevant legal and other regulations governing such requests. Where the existing accountant provides

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information, it should be provided honestly and unambiguously. If the proposed accountant is not able to get information from the existing accountant, the proposed accountant should try to obtain information about any possible threats by other means such as through inquiries of third parties or background investigations on senior management or those charged with governance of the client.

- 210.17 Where the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a professional accountant in public practice should, unless there is satisfaction as to necessary facts by other means, decline the engagement.
- 210.18 A professional accountant in public practice may be asked to undertake work that is complementary or additional to the work of the existing accountant. Such circumstances may give rise to potential threats to professional competence and due care resulting from, for example, a lack of or incomplete information. Safeguards against such threats include notifying the existing accountant of the proposed work, which would give the existing accountant the opportunity to provide any relevant information needed for the proper conduct of the work.

Section 220

Conflicts of Interest

- 220.1 A professional accountant in public practice should take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may give rise to threats to compliance with the fundamental principles. For example, a threat to objectivity may be created when a professional accountant in public practice competes directly with a client or has a joint venture or similar arrangement with major competitor of a client. A threat to objectivity or confidentiality may also be created when a professional accountant in public practice performs services for clients whose interests are in conflict or the clients are in dispute with each other in relation to the matter or transaction in question.
- 220.2 A professional accountant in public practice should evaluate the significance of any threats. Evaluation includes

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considering, before accepting or continuing a client relationship or specific engagement, whether the professional accountant in public practice has any business interests, or relationships with the client or a third party that could give rise to threats. If threats are other than clearly significant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level.

- 220.3 Depending upon the circumstances giving rise to the conflict, safeguards should ordinarily include the professional accountant in public practice:
- (a) Notifying the client of the firm's business interest or activities that may represent a conflict of interest, and obtaining their consent to act in such circumstances; or
 - (b) Notifying all known relevant parties that the professional accountant in public practice is acting for two or more parties in respect of a matter where their respective interests are in conflict, and obtaining their consent to so act; or
 - (c) Notifying the client that the professional accountant in public practice does not act exclusively for any one client in the provision of proposed services (for example, in a particular market sector or with respect to a specific service) and obtaining their consent to so act.
- 220.4 The following additional safeguards should also be considered:
- (a) The use of separate engagement teams; and
 - (b) Procedures to prevent access to information (e.g., strict physical separation of such teams, confidential and secure data filing); and
 - (c) Clear guidelines for members of the engagement team on issues of security and confidentiality; and
 - (d) The use of confidentiality agreements signed by employees and partners of the firm; and
 - (e) Regular review of the application of safeguards by a senior individual not involved with relevant client engagements.

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- 220.5 Where a conflict of interest poses a threat to one or more of the fundamental principles, including objectivity, confidentiality or professional behaviour, that cannot be eliminated or reduced to an acceptable level through the application of safeguards, the professional accountant in public practice should conclude that it is not appropriate to accept a specific engagement or that resignation from one or more conflicting engagements is required.
- 220.6 Where a professional accountant in public practice has requested consent from a client to act for another party (which may or may not be an existing client) in respect of a matter where the respective interests are in conflict and that consent has been refused by the client, then they must not continue to act for one of the parties in the matter giving rise to the conflict of interest.

Section 230

Second Opinions

- 230.1 Situations where a professional accountant in public practice is asked to provide a second opinion on the application of accounting, auditing, reporting or other standards or principles to specific circumstances or transactions by or on behalf of a company or an entity that is not an existing client may give rise to threats to compliance with the fundamental principles. For example, there may be a threat to professional competence and due care in circumstances where the second opinion is not based on the same set of facts that were made available to the existing accountant, or is based on inadequate evidence. The significance of the threat will depend on the circumstances of the request and all the other available facts and assumptions relevant to the expression of a professional judgment.
- 230.2 When asked to provide such an opinion, a professional accountant in public practice should evaluate the significance of the threats and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Such safeguards may include seeking client permission to contact the existing accountant, describing the limitations surrounding any opinion in

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communications with the client and providing the existing accountant with a copy of the opinion.

- 230.3 If the company or entity seeking the opinion will not permit communication with the existing accountant, a professional accountant in public practice should consider whether, taking all the circumstances into account, it is appropriate to provide the opinion sought.

Section 240

Fees and Other Types of Remuneration

- 240.1 When entering into negotiations regarding professional services, a professional accountant in public practice may quote whatever fee deemed to be appropriate. The fact that one professional accountant in public practice may quote a fee lower than another is not in itself unethical. Nevertheless, there may be threats to compliance with the fundamental principles arising from the level of fees quoted. For example, a self-interest threat to professional competence and due care is created if the fee quoted is so low that it may be difficult to perform the engagement in accordance with applicable technical and professional standards for that price. Professional accountants in public practice, while quoting their fees, must ensure the compliance of the Council guidelines issued from time to time in this regard. Please refer Chapter 6 of the book.
- 240.2 The significance of such threats will depend on factors such as the level of fee quoted and the services to which it applies. In view of these potential threats, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Safeguards which may be adopted include:
- ☐ Making the client aware of the terms of the engagement and, in particular, the basis on which fees are charged and which services are covered by the quoted fee.
 - ☐ Assigning appropriate time and qualified staff to the task.
- 240.3 The significance of such threats should be evaluated and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate or

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reduce them to an acceptable level. Such safeguards may include:

- ☐ An advance written agreement with the client as to the basis of remuneration.
- ☐ Disclosure to intended users of the work performed by the professional accountant in public practice and the basis of remuneration
- ☐ Quality control policies and procedures.

240.4 In certain circumstances, a professional accountant in public practice may receive a referral fee or commission relating to a client. For example, where the professional accountant in public practice does not provide the specific service required, a fee may be received for referring a continuing client to another professional accountant in public practice or other professionals recognized within the terms of the Act.

240.5 A professional accountant in public practice may pay a referral fee to obtain a client, for example, where the client continues as a client of another professional accountant in public practice or other professionals recognized within the terms of the Act but requires specialist services not offered by the existing accountant or other professionals recognized within the terms of the Act. The payment of such a referral fee may also create a self-interest threat to objectivity and professional competence and due care.

240.6 A professional accountant in public practice should not pay or receive a referral fee or commission, unless the professional accountant in public practice has established safeguards to eliminate the threats or reduce them to an acceptable level. Such safeguards may include:

- ☐ Disclosing to the client any arrangements to pay a referral fee to another professional accountant or other professionals for the work referred.
- ☐ Disclosing to the client any arrangements to receive a referral fee for referring the client to another professional accountant in public practice or other professionals.

Section 250

Marketing Professional Services

- 250.1 When a professional accountant in public practice solicits new work through **advertising**^{*} or other forms of marketing, there may be potential threats to compliance with the fundamental principles. For example, a self-interest threat to compliance with the principle of professional behaviour is created if services, achievements or products are marketed in a way that is inconsistent with that principle.
- 250.2 A professional accountant in public practice should not bring the profession into disrepute when marketing professional services. The professional accountant in public practice should be honest and truthful and should not:
- ☐ Make exaggerated claims for services offers, qualifications possessed or experience gained; or
 - ☐ Make disparaging references to unsubstantiated comparisons to the work of another.
- 250.3 Professional accountants in public practice should, while advertising their services, follow the Council guidelines for advertisement issued from time to time.

Section 260

Gifts and Hospitality

- 260.1 A professional accountant in public practice, or a relative, may be offered gifts and hospitality from a client. Such an offer ordinarily gives rise to threats to compliance with the fundamental principles. For example, self-interest threats to objectivity may be created if a gift from a client is accepted; intimidation threats to objectivity may result from the possibility of such offers being made public.
- 260.2 The significance of such threats will depend on the nature, value and intent behind the offer. Where gifts or hospitality, which a reasonable and informed third party, having knowledge of all relevant information, would consider clearly insignificant, are made, a professional accountant in public practice may conclude that the offer is made in the normal

^{*} See Definitions.

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course of business without the specific intent to influence decision making or to obtain information. In such cases, the professional accountant in public practice may generally conclude that there is no significant threat to compliance with the fundamental principles.

- 260.3 If evaluated threats are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a professional accountant in public practice should not accept such an offer.

Section 270

Custody of Client Assets

- 270.1 A professional accountant in public practice should not assume custody of client monies or other assets unless permitted to do so by law and, if so, in compliance with any additional legal duties imposed on a professional accountant in public practice holding such assets.
- 270.2 The holding of client assets creates threats to compliance with the fundamental principles; for example, there is a self-interest threat to professional behaviour and may be a self interest threat to objectivity arising from holding client assets. To safeguard against such threats, a professional accountant in public practice entrusted with money (or other assets) belonging to others should:
- (a) Keep such assets separately from personal or firm assets;
 - (b) Use such assets only for the purpose for which they are intended;
 - (c) At all times, be ready to account for those assets, and any income, dividends or gains generated, to any persons entitled to such accounting; and
 - (d) Comply with all relevant laws and regulations relevant to the holding of and accounting for such assets.
- 270.3 In addition, professional accountants in public practice should be aware of threats to compliance with the fundamental principles through association with such

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assets, for example, if the assets were found to derive from illegal activities, such as money laundering. As part of client and engagement acceptance procedures for such services, professional accountants in public practice should make appropriate inquiries about the source of such assets and should consider their legal and regulatory obligations. They may also consider seeking legal advice.

Section 280

Objectivity–All Services

- 280.1 A professional accountant in public practice should consider when providing any professional service whether there are threats to compliance with the fundamental principle of objectivity resulting from having interests in, or relationships with, a client or directors, officers or employees. For example, a familiarity threat to objectivity may be created from a personal or business relationship.
- 280.2 A professional accountant in public practice who provides an assurance service is required to be independent of the assurance client. Independence of mind and in appearance is necessary to enable the professional accountant in public practice to express a conclusion, and be seen to express a conclusion, without bias, conflict of interest or undue influence of others. Section 290 provides specific guidance on independence requirements for professional accountants in public practice when performing an assurance engagement.
- 280.3 The existence of threats to objectivity when providing any professional service will depend upon the particular circumstances of the engagement and the nature of the work that the professional accountant in public practice is performing.
- 280.4 A professional accountant in public practice should evaluate the significance of identified threats and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Such safeguards may include:
- ☐ Withdrawing from the engagement team.
 - ☐ Supervisory procedures.

- ☐ Terminating the financial or business relationship giving rise to the threat.
- ☐ Discussing the issue with higher levels of management within the firm.
- ☐ Discussing the issue with those charged with governance of the client.

Section 290

Independence–Assurance Engagements

- 290.1 In the case of an assurance engagement it is in the public interest and, therefore, required by this Code of Ethics, that members of **assurance teams**,* firms and, when applicable, **network firms*** be independent of assurance clients.
- 290.2 Assurance engagements are designed to enhance intended users' degree of confidence about the outcome of the evaluation or measurement of a subject matter against criteria. The Framework for Assurance Engagements (the Assurance Framework) issued by the Council of the Institute describes the elements and objectives of an assurance engagement, and identifies engagements to which Standards on Auditing (SAs), Standards on Review Engagements (SREs) and Standards on Assurance Engagements (SAEs) apply. For a description of the elements and objectives of an assurance engagement reference should be made to the Assurance Framework.
- 290.3 As further explained in the Assurance Framework, in an assurance engagement the professional accountant in public practice expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria.
- 290.4 The outcome of the evaluation or measurement of a subject matter is the information that results from applying the criteria to the subject matter. The term "subject matter information" is used to mean the outcome of the evaluation or measurement of subject matter. For example:
- ☐ The recognition, measurement, presentation and

* See Definitions.

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disclosure represented in the **financial statements*** (subject matter information) result from applying a financial reporting framework for recognition, measurement, presentation and disclosure, such as Financial Reporting Standards, (criteria) to an entity's financial position, financial performance and cash flows (subject matter).

- An assertion about the effectiveness of internal control (subject matter information) results from applying a framework for evaluating the effectiveness of internal control.

290.5 Assurance engagements may be assertion-based or direct reporting. In either case they involve three separate parties: a public accountant in public practice, a responsible party and intended users.

290.6 In an assertion-based assurance engagement, which includes a **financial statement audit engagement***, the evaluation or measurement of the subject matter is performed by the responsible party, and the subject matter information is in the form of an assertion by the responsible party that is made available to the intended users.

290.7 In a direct reporting assurance engagement the professional accountant in public practice either directly performs the evaluation or measurement of the subject matter, or obtains a representation from the responsible party that has performed the evaluation or measurement that is not available to the intended users. The subject matter information is provided to the intended users in the assurance report.

290.8 **Independence*** requires:

Independence of Mind

The state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional skepticism.

* See Definitions.

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Independence in Appearance

The avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information, including safeguards applied, would reasonably conclude a firm's, or a member of the assurance team's, integrity, objectivity or professional skepticism had been compromised.

- 290.9 The use of the word "independence" on its own may create misunderstandings. Standing alone, the word may lead observers to suppose that a person exercising professional judgment ought to be free from all economic, financial and other relationships. This is impossible, as every member of society has relationships with others. Therefore, the significance of economic, financial and other relationships should also be evaluated in the light of what a reasonable and informed third party having knowledge of all relevant information would reasonably conclude to be unacceptable.
- 290.10 Many different circumstances, or combination of circumstances, may be relevant and accordingly it is impossible to define every situation that creates threats to independence and specify the appropriate mitigating action that should be taken. In addition, the nature of assurance engagements may differ and consequently different threats may exist, requiring the application of different safeguards. A conceptual framework that requires firms and members of assurance teams to identify, evaluate and address threats to independence, rather than merely comply with a set of specific rules which may be arbitrary, is, therefore, in the public interest.

A Conceptual Approach to Independence

- 290.11 Members of assurance teams, firms and network firms are required to apply the conceptual framework contained in Section 100 to the particular circumstances under consideration. In addition to identifying relationships between the firm, network firms, members of the assurance team and the assurance client, consideration should be given to whether relationships between individuals outside of the assurance team and the assurance client create threats to independence.
- 290.12 The examples presented in this section are intended to

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illustrate the application of the conceptual framework and are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances that may create threats to independence. Consequently, it is not sufficient for a member of an assurance team, a firm or a network firm merely to comply with the examples presented, rather they should apply the framework to the particular circumstances they face.

- 290.13 The nature of the threats to independence and the applicable safeguards necessary to eliminate the threats or reduce them to an acceptable level differ depending on the characteristics of the individual assurance engagement: whether it is a financial statement audit engagement or another type of assurance engagement; and in the latter case, the purpose, subject matter information and intended users of the report. A firm should, therefore, evaluate the relevant circumstances, the nature of the assurance engagement and the threats to independence in deciding whether it is appropriate to accept or continue an engagement, as well as the nature of the safeguards required and whether a particular individual should be a member of the assurance team.

Assertion-based Assurance Engagements

Financial Statement Audit Engagements

- 290.14 Financial statement audit engagements are relevant to a wide range of potential users; consequently, in addition to independence of mind, independence in appearance is of particular significance. Accordingly, for financial statement audit clients, the members of the assurance team, the firm and network firms are required to be independent of the financial statement audit client. Such independence requirements include prohibitions regarding certain relationships between members of the assurance team and directors, officers and employees of the client in a position to exert direct and significant influence over the subject matter information (the financial statements). Also, consideration should be given to whether threats to independence are created by relationships with employees of the client in a position to exert direct and significant influence over the subject matter (the financial position, financial performance and cash flows).

Other Assertion-based Assurance Engagements

- 290.15 In an assertion-based assurance engagement where the client is not a financial statement audit client, the members of the assurance team and the firm are required to be independent of the assurance client (the responsible party, which is responsible for the subject matter information and may be responsible for the subject matter). Such independence requirements include prohibitions regarding certain relationships between members of the assurance team and directors, officers and employees of the client in a position to exert direct and significant influence over the subject matter information. Also, consideration should be given to whether threats to independence are created by relationships with employees of the client in a position to exert direct and significant influence over the subject matter of the engagement. Consideration should also be given to any threats that the firm has reason to believe may be created by network firm interests and relationships.
- 290.16 In the majority of assertion-based assurance engagements, that are not financial statement audit engagements, the responsible party is responsible for the subject matter information and the subject matter. However, in some engagements the responsible party may not be responsible for the subject matter. For example, when a professional accountant in public practice is engaged to perform an assurance engagement regarding a report that an environmental consultant has prepared about a company's sustainability practices, for distribution to intended users, the environmental consultant is the responsible party for the subject matter information but the company is responsible for the subject matter (the sustainability practices).
- 290.17 In those assertion-based assurance engagements that are not financial statement audit engagements, where the responsible party is responsible for the subject matter information but not the subject matter the members of the assurance team and the firm are required to be independent of the party responsible for the subject matter information (the assurance client). In addition, consideration should be given to any threats the firm has reason to believe may be created by interests and relationships between a member of the assurance team, the firm, a network firm and the party responsible for the subject matter.

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Direct Reporting Assurance Engagements

- 290.18 In a direct reporting assurance engagement the members of the assurance team and the firm are required to be independent of the assurance client (the party responsible for the subject matter).

Restricted Use Reports

- 290.19 In the case of an assurance report in respect of a non-financial statement audit client expressly restricted for use by identified users, the users of the report are considered to be knowledgeable as to the purpose, subject matter information and limitations of the report through their participation in establishing the nature and scope of the firm's instructions to deliver the services, including the criteria against which the subject matter are to be evaluated or measured. This knowledge and the enhanced ability of the firm to communicate about safeguards with all users of the report increase the effectiveness of safeguards to independence in appearance. These circumstances may be taken into account by the firm in evaluating the threats to independence and considering the applicable safeguards necessary to eliminate the threats or reduce them to an acceptable level. At a minimum, it will be necessary to apply the provisions of this section in evaluating the independence of members of the assurance team and their relatives. Further, if the firm had a material financial interest, whether direct or indirect, in the assurance client, the self-interest threat created would be so significant that no safeguard could reduce the threat to an acceptable level. Limited consideration of any threats created by network firm interests and relationships may be sufficient.

Multiple Responsible Parties

- 290.20 In some assurance engagements, whether assertion-based or direct reporting, that are not financial statement audit engagements, there might be several responsible parties. In such engagements, in determining whether it is necessary to apply the provisions in this section to each responsible party, the firm may take into account whether an interest or relationship between the firm, or a member of the assurance team, and a particular responsible party would create a threat to independence that is other than clearly insignificant

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in the context of the subject matter information. This will take into account factors such as:

- The materiality of the subject matter information (or the subject matter) for which the particular responsible party is responsible; and
- The degree of public interest associated with the engagement.

If the firm determines that the threat to independence created by any such interest or relationship with a particular responsible party would be clearly insignificant it may not be necessary to apply all of the provisions of this section to that responsible party.

Other Considerations

- 290.21 The threats and safeguards identified in this section are generally discussed in the context of interests or relationships between the firm, network firms, members of the assurance team and the assurance client. In the case of a financial statement audit client that is a listed entity, the firm and any network firms are required to consider the interests and relationships that involve that client's related entities. Ideally those entities and the interests and relationships should be identified in advance. For all other assurance clients, when the assurance team has reason to believe that a **related entity*** of such an assurance client is relevant to the evaluation of the firm's independence of the client, the assurance team should consider that related entity when evaluating independence and applying appropriate safeguards.
- 290.22 The evaluation of threats to independence and subsequent action should be supported by evidence obtained before accepting the engagement and while it is being performed. The obligation to make such an evaluation and take action arises when a firm, a network firm or a member of the assurance team knows, or could reasonably be expected to know, of circumstances or relationships that might compromise independence. There may be occasions when the firm, a network firm or an individual inadvertently violates this section. If such an inadvertent violation occurs, it would

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generally not compromise independence with respect to an assurance client provided the firm has appropriate quality control policies and procedures in place to promote independence and, once discovered, the violation is corrected promptly and any necessary safeguards are applied.

- 290.23 Throughout this section, reference is made to significant and clearly insignificant threats in the evaluation of independence. In considering the significance of any particular matter, qualitative as well as quantitative factors should be taken into account. A matter should be considered clearly insignificant only if it is deemed to be both trivial and inconsequential.

Objective and Structure of this Section

- 290.24 The objective of this section is to assist firms and members of assurance teams in:

- (a) Identifying threats to independence;
- (b) Evaluating whether these threats are clearly insignificant; and
- (c) In cases when the threats are not clearly insignificant, identifying and applying appropriate safeguards to eliminate or reduce the threats to an acceptable level.

Consideration should always be given to what a reasonable and informed third party having knowledge of all relevant information, including safeguards applied, would reasonably conclude to be unacceptable. In situations when no safeguards are available to reduce the threat to an acceptable level, the only possible actions are to eliminate the activities or interest creating the threat, or to refuse to accept or continue the assurance engagement.

- 290.25 This section concludes with some examples of how this conceptual approach to independence is to be applied to specific circumstances and relationships. The examples discuss threats to independence that may be created by specific circumstances and relationships (paragraphs 290.100 onwards). Professional judgment is used to determine the appropriate safeguards to eliminate threats to independence or to reduce them to an acceptable level. In certain examples, the threats to independence are so

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significant the only possible actions are to eliminate the activities or interest creating the threat, or to refuse to accept or continue the assurance engagement. In other examples, the threat can be eliminated or reduced to an acceptable level by the application of safeguards. The examples are not intended to be all-inclusive.

- 290.26 Certain examples in this section indicate how the framework is to be applied to a financial statements audit engagement for a listed entity. Since it is not differentiated between listed entities and other entities, the examples that relate to financial statement audit engagements for listed entities should be considered to apply to all financial statement audit engagements.
- 290.27 When threats to independence that are not clearly insignificant are identified, and the firm decides to accept or continue the assurance engagement, the decision should be documented. The documentation should include a description of the threats identified and the safeguards applied to eliminate or reduce the threats to an acceptable level.
- 290.28 The evaluation of the significance of any threats to independence and the safeguards necessary to reduce any threats to an acceptable level, takes into account the public interest. Certain entities may be of significant public interest because, as a result of their business, their size or their corporate status they have a wide range of stakeholders. Examples of such entities may include listed companies, credit institutions, insurance companies, and pension funds. Because of the strong public interest in the financial statements of listed entities, certain paragraphs in this section deal with additional matters that are relevant to the financial statement audit of listed entities. Consideration should be given to the application of the framework in relation to the financial statement audit of listed entities to other financial statement audit clients that may be of significant public interest.
- 290.29 Audit committees can have an important corporate governance role when they are independent of client management and can assist the Board of Directors in satisfying themselves that a firm is independent in carrying

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out its audit role. There should be regular communications between the firm and the audit committee (or other governance body if there is no audit committee) of listed entities regarding relationships and other matters that might, in the firm's opinion, reasonably be thought to bear on independence.

- 290.30 Firms should establish policies and procedures relating to independence communications with audit committees, or others charged with governance of the client. In the case of the financial statement audit of listed entities, the firm should communicate orally and in writing at least annually, all relationships and other matters between the firm, network firms and the financial statement audit client that in the firm's professional judgment may reasonably be thought to bear on independence. Matters to be communicated will vary in each circumstance and should be decided by the firm, but should generally address the relevant matters set out in this section.

Engagement Period

- 290.31 The members of the assurance team and the firm should be independent of the assurance client during the period of the assurance engagement. The period of the engagement starts when the assurance team begins to perform assurance services and ends when the assurance report is issued, except when the assurance engagement is of a recurring nature. If the assurance engagement is expected to recur, the period of the assurance engagement ends with the notification by either party that the professional relationship has terminated or the issuance of the final assurance report, whichever is later.
- 290.32 In the case of a financial statement audit engagement, the engagement period includes the period covered by the financial statements reported on by the firm. When an entity becomes a financial statement audit client during or after the period covered by the financial statements that the firm will report on, the firm should consider whether any threats to independence may be created by:
- ☐ Financial or business relationships with the audit client during or after the period covered by the financial

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statements, but prior to the acceptance of the financial statement audit engagement; or

- ☐ Previous services provided to the audit client.

Similarly, in the case of an assurance engagement that is not a financial statement audit engagement, the firm should consider whether any financial or business relationships or previous services may create threats to independence.

290.33 If a non-assurance service was provided to the financial statement audit client during or after the period covered by the financial statements but before the commencement of professional services in connection with the financial statement audit and the service would be prohibited during the period of the audit engagement, consideration should be given to the threats to independence, if any, arising from the service. If the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards may include:

- ☐ Discussing independence issues related to the provision of the non-assurance service with those charged with governance of the client, such as the audit committee;
- ☐ Obtaining the client's acknowledgement of responsibility for the results of the non-assurance service;
- ☐ Precluding personnel who provided the non-assurance service from participating in the financial statement audit engagement; and
- ☐ Engaging another firm to review the results of the non-assurance service or having another firm re-perform the non-assurance service to the extent necessary to enable it to take responsibility for the service.

290.34 A non-assurance service provided to a non-listed financial statement audit client will not impair the firm's independence when the client becomes a listed entity provided:

- (a) The previous non-assurance service was permissible under this section for non-listed financial statement audit clients;

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- (b) The service will be terminated within a reasonable period of time of the client becoming a listed entity, if they are not permissible under this section for financial statement audit clients that are listed entities; and
 - (c) The firm has implemented appropriate safeguards to eliminate any threats to independence arising from the previous service or reduce them to an acceptable level.
- 290.35 The professional accountant in public practice should ensure the compliance of “Guidance Note on Independence of Auditors” issued by the Council of the Institute from time to time.

APPLICATION OF FRAMEWORK TO SPECIFIC SITUATIONS

Introduction

- 290.100 The following examples describe specific circumstances and relationships that may create threats to independence. The examples describe the potential threats created and the safeguards that may be appropriate to eliminate the threats or reduce them to an acceptable level in each circumstance. The examples are not all inclusive. In practice, the firm, network firms and the members of the assurance team will be required to assess the implications of similar, but different, circumstances and relationships and to determine whether safeguards, including the safeguards in paragraphs 200.12 to 200.15 can be applied satisfactorily to address the threats to independence.
- 290.101 Some of the examples deal with financial statement audit clients while others deal with assurance engagements for clients that are not financial statement audit clients. The examples illustrate how safeguards should be applied to fulfill the requirement for the members of the assurance team, the firm and network firms to be independent of a financial statement audit client, and for the members of the assurance team and the firm to be independent of an assurance client that is not a financial statement audit client. The examples do not include assurance reports to a non-financial statement audit client expressly restricted for use

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by identified users. As stated in paragraph 290.19 for such engagements, members of the assurance team and their relatives are required to be independent of the assurance client. Further, the firm should not have a material financial interest, direct or indirect, in the assurance client.

- 290.102 The examples illustrate how the framework applies to financial statement audit clients and other assurance clients. The examples should be read in conjunction with paragraphs 290.20 which explain that, in the majority of assurance engagements, there is one responsible party and that responsible party comprises the assurance client. However, in some assurance engagements there are two responsible parties. In such circumstances, consideration should be given to any threats the firm has reason to believe may be created by interests and relationships between a member of the assurance team, the firm, a network firm and the party responsible for the subject matter.

Financial Interests

- 290.103 A financial interest in an assurance client may create a self-interest threat. In evaluating the significance of the threat, and the appropriate safeguards to be applied to eliminate the threat or reduce it to an acceptable level, it is necessary to examine the nature of the financial interest. This includes an evaluation of the role of the person holding the financial interest, the materiality of the financial interest and the type of financial interest (direct or indirect).
- 290.104 When evaluating the type of financial interest, consideration should be given to the fact that financial interests range from those where the individual has no control over the investment vehicle or the financial interest held (e.g., a mutual fund, unit trust or similar intermediary vehicle) to those where the individual has control over the financial interest (e.g., as a trustee) or is able to influence investment decisions. In evaluating the significance of any threat to independence, it is important to consider the degree of control or influence that can be exercised over the intermediary, the financial interest held, or its investment strategy. When control exists, the financial interest should be considered direct. Conversely, when the holder of the financial interest has no ability to exercise such control the financial interest should be considered indirect.

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Provisions Applicable to All Assurance Clients

290.105 If a member of the assurance team, or his relative has a **direct financial interest***, or a material **indirect financial interest***, in the assurance client, the self-interest threat created would be so significant the only safeguards available to eliminate the threat or reduce it to an acceptable level would be to:

- (a) Dispose of the direct financial interest prior to the individual becoming a member of the assurance team;
- (b) Dispose of the indirect financial interest in total or dispose of a sufficient amount of it so that the remaining interest is no longer material prior to the individual becoming a member of the assurance team; or
- (c) Remove the member of the assurance team from the assurance engagement.

290.106 If a member of the assurance team, or his relative receives, by way of, for example, an inheritance, gift or, as a result of a merger, a direct financial interest or a material indirect financial interest in the assurance client, a self-interest threat would be created. The following safeguards should be applied to eliminate the threat or reduce it to an acceptable level:

- (a) Disposing of the financial interest at the earliest practical date; or
- (b) Removing the member of the assurance team from the assurance engagement.

During the period prior to disposal of the financial interest or the removal of the individual from the assurance team, consideration should be given to whether additional safeguards are necessary to reduce the threat to an acceptable level. Such safeguards might include:

- ☐ Discussing the matter with those charged with governance, such as the audit committee; or
- ☐ Involving an additional professional accountant to review the work done, or otherwise advise as necessary.

* See Definitions.

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- 290.107 When a member of the assurance team knows that his or her relative has a direct financial interest or a material indirect financial interest in the assurance client, a self-interest threat may be created. In evaluating the significance of any threat, consideration should be given to the nature of the relationship between the member of the assurance team and the relative and the materiality of the financial interest. Once the significance of the threat has been evaluated, safeguards should be considered and applied as necessary. Such safeguards might include:
- ☐ The relative disposing of all or a sufficient portion of the financial interest at the earliest practical date;
 - ☐ Discussing the matter with those charged with governance, such as the audit committee;
 - ☐ Involving an additional professional accountant who did not take part in the assurance engagement to review the work done by the member of the assurance team with the relative or otherwise advise as necessary; or
 - ☐ Removing the individual from the assurance engagement.
- 290.108 When a firm or a member of the assurance team holds a direct financial interest or a material indirect financial interest in the assurance client as a trustee, a self-interest threat may be created by the possible influence of the trust over the assurance client. Accordingly, such an interest should only be held when:
- (a) The member of the assurance team, a relative of the member of the assurance team, and the firm are not beneficiaries of the trust;
 - (b) The interest held by the trust in the assurance client is not material to the trust;
 - (c) The trust is not able to exercise significant influence over the assurance client; and
 - (d) The member of the assurance team or the firm does not have significant influence over any investment decision involving a financial interest in the assurance client.

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290.109 Consideration should be given to whether a self-interest threat may be created by the financial interests of individuals outside of the assurance team and their relatives. Such individuals would include:

- ☐ Partners, and their relatives, who are not members of the assurance team;
- ☐ Partners and managerial employees who provide non-assurance services to the assurance client; and
- ☐ Individuals who have a personal relationship with a member of the assurance team.

Whether the interests held by such individuals may create a self-interest threat will depend upon factors such as:

- ☐ The firm's organizational, operating and reporting structure; and
- ☐ The nature of the relationship between the individual and the member of the assurance team.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- ☐ Where appropriate, policies to restrict people from holding such interests;
- ☐ Discussing the matter with those charged with governance, such as the audit committee; or
- ☐ Involving an additional professional accountant who did not take part in the assurance engagement to review the work done or otherwise advise as necessary.

290.110 An inadvertent violation of this section as it relates to a financial interest in an assurance client would not impair the independence of the firm, the network firm or a member of the assurance team when:

- (a) The firm, and the network firm, have established policies and procedures that require all professionals to report promptly to the firm any breaches resulting from the purchase, inheritance or other acquisition of a financial interest in the assurance client;

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- (b) The firm, and the network firm, promptly notify the professional that the financial interest should be disposed of; and
 - (c) The disposal occurs at the earliest practical date after identification of the issue, or the professional is removed from the assurance team.
- 290.111 When an inadvertent violation of this section relating to a financial interest in an assurance client has occurred, the firm should consider whether any safeguards should be applied. Such safeguards might include:
- ☐ Involving an additional professional accountant who did not take part in the assurance engagement to review the work done by the member of the assurance team; or
 - ☐ Excluding the individual from any substantive decision-making concerning the assurance engagement.

Provisions Applicable to Financial Statement Audit Clients

- 290.112 If a firm, or a network firm, has a direct financial interest in a financial statement audit client of the firm the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level. Consequently, disposal of the financial interest would be the only action appropriate to permit the firm to perform the engagement.
- 290.113 If a firm, or a network firm, has a material indirect financial interest in a financial statement audit client of the firm a self-interest threat is also created. The only actions appropriate to permit the firm to perform the engagement would be for the firm, or the network firm, either to dispose of the indirect interest in total or to dispose of a sufficient amount of it so that the remaining interest is no longer material.
- 290.114 If a firm, or a network firm, has a material financial interest in an entity that has a controlling interest in a financial statement audit client, the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level. The only actions appropriate to permit the firm to perform the engagement would be for the firm, or the network firm, either to dispose of the financial interest in

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total or to dispose of a sufficient amount of it so that the remaining interest is no longer material.

- 290.115 If the retirement benefit plan of a firm, or network firm, has a financial interest in a financial statement audit client a self-interest threat may be created. Accordingly, the significance of any such threat created should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level.
- 290.116 If other partners, including partners who do not perform assurance engagements, or their relative(s), in the **office*** in which the **engagement partner*** practices in connection with the financial statement audit hold a direct financial interest or a material indirect financial interest in that audit client, the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level. Accordingly, such partners or their relative(s) should not hold any such financial interests in such an audit client.
- 290.117 The office in which the engagement partner practices in connection with the financial statement audit is not necessarily the office to which that partner is assigned. Accordingly, when the engagement partner is located in a different office from that of the other members of the assurance team, judgment should be used to determine in which office the partner practices in connection with that audit.
- 290.118 If other partners and managerial employees who provide non-assurance services to the financial statement audit client, except those whose involvement is clearly insignificant, or their relative(s), hold a direct financial interest or a material indirect financial interest in the audit client, the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level. Accordingly, such personnel or their relative(s) should not hold any such financial interests in such an audit client.
- 290.119 A financial interest in a financial statement audit client that is held by a relative of (a) a partner located in the office in which the engagement partner practices in connection with

* See Definitions.

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the audit, or (b) a partner or managerial employee who provides non-assurance services to the audit client is not considered to create an unacceptable threat provided it is received as a result of their employment rights (e.g., pension rights or share options) and, where necessary, appropriate safeguards are applied to reduce any threat to independence to an acceptable level.

- 290.120 A self-interest threat may be created if the firm, or the network firm, or a member of the assurance team has an interest in an entity and a financial statement audit client, or a director, officer or controlling owner thereof also has an investment in that entity. Independence is not compromised with respect to the audit client if the respective interests of the firm, the network firm, or member of the assurance team, and the audit client, or director, officer or controlling owner thereof are both immaterial and the audit client cannot exercise significant influence over the entity. If an interest is material, to either the firm, the network firm or the audit client, and the audit client can exercise significant influence over the entity, no safeguards are available to reduce the threat to an acceptable level and the firm, or the network firm, should either dispose of the interest or decline the audit engagement. Any member of the assurance team with such a material interest should either:
- (a) Dispose of the interest;
 - (b) Dispose of a sufficient amount of the interest so that the remaining interest is no longer material; or
 - (c) Withdraw from the audit.

Provisions Applicable to Non-Financial Statement Audit Assurance Clients

- 290.121 If a firm has a direct financial interest in an assurance client that is not a financial statement audit client the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level. Consequently, disposal of the financial interest would be the only action appropriate to permit the firm to perform the engagement.
- 290.122 If a firm has a material indirect financial interest in an assurance client that is not a financial statement audit client a self-interest threat is also created. The only action

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appropriate to permit the firm to perform the engagement would be for the firm to either dispose of the indirect interest in total or to dispose of a sufficient amount of it so that the remaining interest is no longer material.

- 290.123 If a firm has a material financial interest in an entity that has a controlling interest in an assurance client that is not a financial statement audit client, the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level. The only action appropriate to permit the firm to perform the engagement would be for the firm either to dispose of the financial interest in total or to dispose of a sufficient amount of it so that the remaining interest is no longer material.
- 290.124 When a restricted use report for an assurance engagement that is not a financial statement audit engagement is issued, exceptions to the provisions in paragraphs 290.105 to 290.109 and 290.121 to 290.123 are set out in 290.19.

Loans and Guarantees

- 290.125 A loan, or a guarantee of a loan, to the professional accountant/any partner of the firm/firm from an assurance client that is a bank or a similar institution, would not create a threat to independence provided the loan, or guarantee, is made within the terms of statutory provisions and guidelines/guidance notes issued by the Council of the Institute from time to time in this regard.. If the loan amount is exceeding the limit specified by the statute to the assurance client or the firm, it may be possible, through the application of safeguards by way of repayment of loan, to reduce the self-interest threat created to an acceptable level. Such safeguards might include replacing the other professional accountant from outside the firm, or network firm, to undertake the work.
- 290.126 Subject to the provisions of Section 290.125 above and the RBI Guidelines issued from time to time in regard to the Banking Companies, a loan, or a guarantee of a loan, from an assurance client that is a bank or a similar institution, to a member of the assurance team or their relative(s) would not create a threat to independence provided the loan, or guarantee, is made under normal lending procedures, terms and requirements. Examples of such loans include home

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mortgages, bank overdrafts, car loans and credit card balances.

- 290.127 Similarly, deposits made by, or brokerage accounts of, a firm or a member of the assurance team with an assurance client that is a bank, broker or similar institution would not create a threat to independence provided the deposit or account is held under normal commercial terms.
- 290.128 If the firm, or a member of the assurance team, makes a loan to an assurance client, that is not a bank or similar institution, or guarantees such an assurance client's borrowing, the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level, unless the loan or guarantee is immaterial to both the firm or the member of the assurance team and the assurance client.
- 290.129 Similarly, if the firm or a member of the assurance team accepts a loan from, or has borrowing guaranteed by, an assurance client that is not a bank or similar institution, the self-interest threat created would be so significant no safeguard could reduce the threat to an acceptable level, unless the loan or guarantee is within the limits specified by the statute and guidelines/guidance notes issued by the Council from time to time to both the firm or the member of the assurance team and the assurance client.
- 290.130 The examples in paragraphs 290.125 to 290.129 relate to loans and guarantees between the firm and an assurance client. In the case of a financial statement audit engagement, the provisions should be applied to the firm, all network firms and the audit client.

Close Business Relationships With Assurance Clients

- 290.131 A close business relationship between a firm or a member of the assurance team and the assurance client or its management, or between the firm, a network firm and a financial statement audit client, will involve a commercial or common financial interest and may create self-interest and intimidation threats. The following are examples of such relationships:
- ☐ Having a material financial interest in a joint venture

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with the assurance client or a controlling owner, director, officer or other individual who performs senior managerial functions for that client.

- Arrangements to combine one or more services or products of the firm with one or more services or products of the assurance client and to market the package with reference to both parties.

In the case of a financial statement audit client, unless the financial interest is immaterial and the relationship is clearly insignificant to the firm, the network firm and the audit client, no safeguards could reduce the threat to an acceptable level. In the case of an assurance client that is not a financial statement audit client, unless the financial interest is immaterial and the relationship is clearly insignificant to the firm and the assurance client, no safeguards could reduce the threat to an acceptable level. Consequently, in both these circumstances the only possible courses of action are to:

- (a) Terminate the business relationship;
- (b) Reduce the magnitude of the relationship so that the financial interest is immaterial and the relationship is clearly insignificant; or
- (c) Refuse to perform the assurance engagement.

Unless any such financial interest is immaterial and the relationship is clearly insignificant to the member of the assurance team, the only appropriate safeguard would be to remove the individual from the assurance team.

290.132 In the case of a financial statement audit client, business relationships involving an interest held by the firm, a network firm or a member of the assurance team or their relative(s) in a closely held entity when the audit client or a director or officer of the audit client, or any group thereof, also has an interest in that entity, do not create threats to independence provided:

- (a) The relationship is clearly insignificant to the firm, the network firm and the audit client;
- (b) The interest held is immaterial to the investor, or group of investors; and

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- (c) The interest does not give the investor, or group of investors, the ability to control the closely held entity.

- 290.133 The purchase of goods and services from an assurance client by the firm (or from a financial statement audit client by a network firm) or a member of the assurance team would not generally create a threat to independence providing the transaction is in the normal course of business and on an arm's length basis. However, such transactions should not be of a nature or magnitude so as to create a self-interest threat. If the threat created is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:
- ☐ Eliminating or reducing the magnitude of the transaction;
 - ☐ Removing the individual from the assurance team; or
 - ☐ Discussing the issue with those charged with governance, such as the audit committee.

Personal Relationships

- 290.134 Relationships between a member of the assurance team and a director, an officer or certain employees, depending on their role, of the assurance client, may create self-interest, familiarity or intimidation threats. It is impracticable to attempt to describe in detail the significance of the threats that such relationships may create. The significance will depend upon a number of factors including the individual's responsibilities on the assurance engagement, the relationship and role of the relative or other individual within the assurance client. Consequently, there is a wide spectrum of circumstances that will need to be evaluated and safeguards to be applied to reduce the threat to an acceptable level.
- 290.135 When a relative of a member of the assurance team is a director, an officer or an employee of the assurance client in a position to exert direct and significant influence over the subject matter information of the assurance engagement, or was in such a position during any period covered by the engagement, the threats to independence can only be reduced to an acceptable level by removing the individual from the assurance team. The relationship is such that no

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other safeguard could reduce the threat to independence to an acceptable level. If application of this safeguard is not used, the only course of action is to withdraw from the assurance engagement. For example, in the case of an audit of financial statements, if the spouse of a member of the assurance team is an employee in a position to exert direct and significant influence over the preparation of the audit client's accounting records or financial statements, the threat to independence could only be reduced to an acceptable level by removing the individual from the assurance team.

- 290.136 When a relative of a member of the assurance team is an employee in a position to exert direct and significant influence over the subject matter of the engagement, threats to independence may be created. The significance of the threats will depend on factors such as:

- ☐ The position the relative holds with the client; and
- ☐ The role of the professional on the assurance team.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- ☐ Removing the individual from the assurance team;
- ☐ Where possible, structuring the responsibilities of the assurance team so that the professional does not deal with matters that are within the responsibility of the relative; or
- ☐ Policies and procedures to empower staff to communicate to senior levels within the firm any issue of independence and objectivity that concerns them.

- 290.137 When a relative of a member of the assurance team is a director, an officer, or an employee of the assurance client in a position to exert direct and significant influence over the subject matter information of the assurance engagement, threats to independence may be created. The significance of the threats will depend on factors such as:

- ☐ The position the relative holds with the client; and
- ☐ The role of the professional on the assurance team.

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The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- ☐ Removing the individual from the assurance team;
- ☐ Where possible, structuring the responsibilities of the assurance team so that the professional does not deal with matters that are within the responsibility of the relative; or
- ☐ Policies and procedures to empower staff to communicate to senior levels within the firm any issue of independence and objectivity that concerns them.

290.138 In addition, self-interest, familiarity or intimidation threats may be created when a person who is other than a relative of a member of the assurance team has a relationship with the member of the assurance team and is a director, an officer or an employee of the assurance client in a position to exert direct and significant influence over the subject matter information of the assurance engagement. Therefore, members of the assurance team are responsible for identifying any such persons and for consulting in accordance with firm procedures. The evaluation of the significance of any threat created and the safeguards appropriate to eliminate the threat or reduce it to an acceptable level will include considering matters such as the relationship and the role of the individual within the assurance client.

290.139 Consideration should be given to whether self-interest, familiarity or intimidation threats may be created by a relationship between a partner or employee of the firm who is not a member of the assurance team and a director, an officer or an employee of the assurance client in a position to exert direct and significant influence over the subject matter information of the assurance engagement. Therefore partners and employees of the firm are responsible for identifying any such relationships and for consulting in accordance with firm procedures. The evaluation of the significance of any threat created and the safeguards appropriate to eliminate the threat or reduce it to an acceptable level will include considering matters such as the

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relationship, the interaction of the firm professional with the assurance team, the position held within the firm, and the role of the individual within the assurance client.

290.140 An inadvertent violation of this section as it relates to relationships would not impair the independence of a firm or a member of the assurance team when:

- (a) The firm has established policies and procedures that require all professionals to report promptly to the firm any breaches resulting from changes in the employment status of their relatives or other personal relationships that create threats to independence;
- (b) Either the responsibilities of the assurance team are re-structured so that the professional does not deal with matters that are within the responsibility of the person with whom he or she is related or has a personal relationship, or, if this is not possible, the firm promptly removes the professional from the assurance engagement; and
- (c) Additional care is given to reviewing the work of the professional.

290.141 When an inadvertent violation of this section relating to relationships has occurred, the firm should consider whether any safeguards should be applied. Such safeguards might include:

- ☐ Involving an additional professional accountant who did not take part in the assurance engagement to review the work done by the member of the assurance team; or
- ☐ Excluding the individual from any substantive decision-making concerning the assurance engagement.

Employment with Assurance Clients

290.142 A firm or a member of the assurance team's independence may be threatened if a director, an officer or an employee of the assurance client in a position to exert direct and significant influence over the subject matter information of the assurance engagement has been a member of the assurance team or partner of the firm. Such circumstances

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may create self-interest, familiarity and intimidation threats particularly when significant connections remain between the individual and his or her former firm. Similarly, a member of the assurance team's independence may be threatened when an individual participates in the assurance engagement knowing, or having reason to believe, that he or she is to, or may, join the assurance client some time in the future.

290.143 If a member of the assurance team, partner or former partner of the firm has joined the assurance client, the significance of the self-interest, familiarity or intimidation threats created will depend upon the following factors:

- (a) The position the individual has taken at the assurance client.
- (b) The amount of any involvement the individual will have with the assurance team.
- (c) The length of time that has passed since the individual was a member of the assurance team or firm.
- (d) The former position of the individual within the assurance team or firm.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- ☐ Considering the appropriateness or necessity of modifying the assurance plan for the assurance engagement;
- ☐ Assigning an assurance team to the subsequent assurance engagement that is of sufficient experience in relation to the individual who has joined the assurance client;
- ☐ Involving an additional professional accountant who was not a member of the assurance team to review the work done or otherwise advise as necessary; or
- ☐ Quality control review of the assurance engagement.

In all cases, all of the following safeguards are necessary to reduce the threat to an acceptable level:

- (a) The individual concerned is not entitled to any benefits

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or payments from the firm unless these are made in accordance with fixed pre-determined arrangements. In addition, any amount owed to the individual should not be of such significance to threaten the firm's independence.

- (b) The individual does not continue to participate or appear to participate in the firm's business or professional activities.

290.144 A self-interest threat is created when a member of the assurance team participates in the assurance engagement while knowing, or having reason to believe, that he or she is to, or may, join the assurance client some time in the future. This threat can be reduced to an acceptable level by the application of all of the following safeguards:

- (a) Policies and procedures to require the individual to notify the firm when entering serious employment negotiations with the assurance client.
- (b) Removal of the individual from the assurance engagement.

In addition, consideration should be given to performing an independent review of any significant judgments made by that individual while on the engagement.

Recent Service with Assurance Clients

290.145 To have a former officer, director or employee of the assurance client serve as a member of the assurance team may create self-interest, self-review and familiarity threats. This would be particularly true when a member of the assurance team has to report on, for example, subject matter information he or she had prepared or elements of the financial statements he or she had valued while with the assurance client.

290.146 If, during the period covered by the assurance report, a member of the assurance team had served as an officer or director of the assurance client, or had been an employee in a position to exert direct and significant influence over the subject matter information of the assurance engagement, the threat created would be so significant no safeguard could reduce the threat to an acceptable level.

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Consequently, such individuals should not be assigned to the assurance team.

290.147 If, prior to the period covered by the assurance report, a member of the assurance team had served as an officer or director of the assurance client, or had been an employee in a position to exert direct and significant influence over the subject matter information of the assurance engagement, this may create self-interest, self-review and familiarity threats. For example, such threats would be created if a decision made or work performed by the individual in the prior period, while employed by the assurance client, is to be evaluated in the current period as part of the current assurance engagement. The significance of the threats will depend upon factors such as:

- ☐ The position the individual held with the assurance client;
- ☐ The length of time that has passed since the individual left the assurance client; and
- ☐ The role the individual plays on the assurance team.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- ☐ Involving an additional professional accountant to review the work done by the individual as part of the assurance team or otherwise advise as necessary; or
- ☐ Discussing the issue with those charged with governance, such as the audit committee.

Serving as an Officer or Director on the Board of Assurance Clients

290.148 No person who is an officer or employee of an entity shall be qualified for appointment as auditor of that entity

LONG ASSOCIATION OF SENIOR PERSONNEL WITH ASSURANCE CLIENTS

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290.149 Using the same senior personnel on an assurance engagement over a long period of time may create a

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familiarity threat. The significance of the threat will depend upon factors such as:

- ☐ The length of time that the individual has been a member of the assurance team;
- ☐ The role of the individual on the assurance team;
- ☐ The structure of the firm; and
- ☐ The nature of the assurance engagement.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied to reduce the threat to an acceptable level. Such safeguards might include:

- ☐ Rotating the senior personnel off the assurance team;
- ☐ Involving an additional professional accountant who was not a member of the assurance team to review the work done by the senior personnel or otherwise advise as necessary; or
- ☐ Independent internal quality reviews.

Financial Statement Audit Clients that are Listed Entities

290.150 Using the same engagement partner or the same individual responsible for the **engagement quality control review*** on a financial statement audit over a prolonged period may create a familiarity threat. This threat is particularly relevant in the context of the financial statement audit of a listed entity and safeguards should be applied in such situations to reduce such threat to an acceptable level. Accordingly in respect of the financial statement audit of listed entities:

- (a) The engagement partner and the individual responsible for the engagement quality control review should be rotated after serving in either capacity, or a combination thereof, for a pre-defined period, normally no more than seven years; and
- (b) Such an individual rotating after a pre-defined period should not participate in the audit engagement until a further period of time, normally two years, has elapsed.

* See Definitions.

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- 290.151 When a financial statement audit client becomes a listed entity the length of time the engagement partner or the individual responsible for the engagement quality control review has served the audit client in that capacity should be considered in determining when the individual should be rotated. However, the person may continue to serve as the engagement partner or as the individual responsible for the engagement quality control review for two additional years before rotating off the engagement.
- 290.152 While the engagement partner and the individual responsible for the engagement quality control review should be rotated after such a pre-defined period, some degree of flexibility over timing of rotation may be necessary in certain circumstances. Examples of such circumstances include:
- ☐ Situations when the person's continuity is especially important to the financial statement audit client, for example, when there will be major changes to the audit client's structure that would otherwise coincide with the rotation of the person; and
 - ☐ Situations when, due to the size of the firm, rotation is not possible or does not constitute an appropriate safeguard.
- In all such circumstances when the person is not rotated after such a pre-defined period equivalent safeguards should be applied to reduce any threats to an acceptable level.
- 290.153 When a firm has only a few people with the necessary knowledge and experience to serve as engagement partner or individual responsible for the engagement quality control review on a financial statement audit client that is a listed entity, rotation may not be an appropriate safeguard. In these circumstances the firm should apply other safeguards to reduce the threat to an acceptable level. Such safeguards would include involving an additional professional accountant who was not otherwise associated with the assurance team to review the work done or otherwise advise as necessary. This individual could be someone from outside the firm or someone within the firm who was not otherwise associated with the assurance team.

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Provision of Non-assurance Services to Assurance Clients

- 290.154 Firms have traditionally provided to their assurance clients a range of non-assurance services that are consistent with their skills and expertise. Assurance clients value the benefits that derive from having these firms, which have a good understanding of the business, bring their knowledge and skill to bear in other areas. Furthermore, the provision of such non-assurance services will often result in the assurance team obtaining information regarding the assurance client's business and operations that is helpful in relation to the assurance engagement. The greater the knowledge of the assurance client's business, the better the assurance team will understand the assurance client's procedures and controls, and the business and financial risks that it faces. The provision of non-assurance services may, however, create threats to the independence of the firm, a network firm or the members of the assurance team, particularly with respect to perceived threats to independence. Consequently, it is necessary to evaluate the significance of any threat created by the provision of such services. In some cases it may be possible to eliminate or reduce the threat created by application of safeguards. In other cases no safeguards are available to reduce the threat to an acceptable level.
- 290.155 The following activities would generally create self-interest or self-review threats that are so significant that only avoidance of the activity or refusal to perform the assurance engagement would reduce the threats to an acceptable level.
- ☐ Authorizing, executing or consummating a transaction, or otherwise exercising authority on behalf of the assurance client, or having the authority to do so.
 - ☐ Determining which recommendation of the firm should be implemented.
 - ☐ Reporting, in a management role, to those charged with governance.
- 290.156 The potential threats to independence will most frequently arise when a non-assurance service is provided to a financial statement audit client. The financial statements of

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an entity provide financial information about a broad range of transactions and events that have affected the entity. The subject matter information of other assurance services, however, may be limited in nature. Threats to independence, however, may also arise when a firm provides a non-assurance service related to the subject matter information, of a non-financial statement audit assurance engagement. In such cases, consideration should be given to the significance of the firm's involvement with the subject matter information, of the engagement, whether any self-review threats are created and whether any threats to independence could be reduced to an acceptable level by application of safeguards, or whether the engagement should be declined. When the non-assurance service is not related to the subject matter information, of the non-financial statement audit assurance engagement, the threats to independence will generally be clearly insignificant

290.157 The following activities may also create self-review or self-interest threats:

- ☐ Having custody of an assurance client's assets.
- ☐ Supervising assurance client employees in the performance of their normal recurring activities.
- ☐ Preparing source documents or originating data, in electronic or other form, evidencing the occurrence of a transaction (for example, purchase orders, payroll time records, and customer orders).

The significance of any threat created should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level. Such safeguards might include:

- ☐ Making arrangements so that personnel providing such services do not participate in the assurance engagement;
- ☐ Involving an additional professional accountant to advise on the potential impact of the activities on the independence of the firm and the assurance team; or

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- ☐ Other relevant safeguards set out in national regulations.
- 290.158 New developments in business, the evolution of financial markets, rapid changes in information technology, and the consequences for management and control, make it impossible to draw up an all-inclusive list of all situations when providing non- assurance services to an assurance client might create threats to independence and of the different safeguards that might eliminate these threats or reduce them to an acceptable level. In general, however, a firm may provide services beyond the assurance engagement provided any threats to independence have been reduced to an acceptable level.
- 290.159 The following safeguards may be particularly relevant in reducing to an acceptable level threats created by the provision of non-assurance services to assurance clients:
- ☐ Policies and procedures to prohibit professional staff from making management decisions for the assurance client, or assuming responsibility for such decisions.
 - ☐ Discussing independence issues related to the provision of non-assurance services with those charged with governance, such as the audit committee.
 - ☐ Policies within the assurance client regarding the oversight responsibility for provision of non-assurance services by the firm.
 - ☐ Involving an additional professional accountant to advise on the potential impact of the non-assurance engagement on the independence of the member of the assurance team and the firm.
 - ☐ Involving an additional professional accountant outside of the firm to provide assurance on a discrete aspect of the assurance engagement.
 - ☐ Obtaining the assurance client's acknowledgement of responsibility for the results of the work performed by the firm.
 - ☐ Disclosing to those charged with governance, such as the audit committee, the nature and extent of fees charged.
 - ☐ Making arrangements so that personnel providing non-

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assurance services do not participate in the assurance engagement.

- 290.160 Before the firm accepts an engagement to provide a non-assurance service to an assurance client, consideration should be given to whether the provision of such a service would create a threat to independence. In situations when a threat created is other than clearly insignificant, the non-assurance engagement should be declined unless appropriate safeguards can be applied to eliminate the threat or reduce it to an acceptable level.
- 290.161 The provision of certain non-assurance services to financial statement audit clients may create threats to independence so significant that no safeguard could eliminate the threat or reduce it to an acceptable level. However, the provision of such services to a related entity, division or discrete financial statement item of such clients may be permissible when any threats to the firm's independence have been reduced to an acceptable level by arrangements for that related entity, division or discrete financial statement item to be audited by another firm or when another firm re-performs the non-assurance service to the extent necessary to enable it to take responsibility for that service.

Preparing Accounting Records and Financial Statements

- 290.162 Assisting a financial statement audit client in matters such as preparing accounting records or financial statements may create a self-review threat when the financial statements are subsequently audited by the firm.*
- 290.163 It is the responsibility of financial statement audit client management to ensure that accounting records are kept and financial statements are prepared, although they may request the firm to provide assistance. If firm, or network firm, personnel providing such assistance make management decisions, the self-review threat created could not be reduced to an acceptable level by any safeguards.

* It may however be noted that the members are not permitted to write the books of account of their auditee clients. Attention is invited to "Guidance Note on Independence of Auditors" in this regard.

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Consequently, personnel should not make such decisions. Examples of such managerial decisions include:

- ☐ Determining or changing journal entries, or the classifications for accounts or transaction or other accounting records without obtaining the approval of the financial statement audit client;
- ☐ Authorizing or approving transactions; and
- ☐ Preparing source documents or originating data (including decisions on valuation assumptions), or making changes to such documents or data.

290.164 The audit process involves extensive dialogue between the firm and management of the financial statement audit client. During this process, management requests and receives significant input regarding such matters as accounting principles and financial statement disclosure, the appropriateness of controls and the methods used in determining the stated amounts of assets and liabilities. Technical assistance of this nature and advice on accounting principles for financial statement audit clients are an appropriate means to promote the fair presentation of the financial statements. The provision of such advice does not generally threaten the firm's independence. Similarly, the financial statement audit process may involve technically assisting an audit client in resolving account reconciliation problems, analyzing and accumulating information for regulatory reporting, assisting in the preparation of consolidated financial statements (including the translation of local statutory accounts to comply with group accounting policies and the transition to a different reporting framework such as Financial Reporting Standards), drafting disclosure items, proposing adjusting journal entries and providing technical assistance and advice in the preparation of local statutory accounts of subsidiary entities. These services are considered to be a normal part of the audit process and do not, under normal circumstances, threaten independence.

General Provisions

290.165 Self-review threats may be created if the firm is involved in the preparation of accounting records or financial statements and those financial statements are subsequently the subject matter information of an audit engagement of the

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firm. This notion may be equally applicable in situations when the subject matter information of the assurance engagement is not financial statements.

Valuation Services

- 290.166 A valuation comprises the making of assumptions with regard to future developments, the application of certain methodologies and techniques, and the combination of both in order to compute a certain value, or range of values, for an asset, a liability or for a business as a whole.
- 290.167 A self-review threat may be created when a firm or network firm performs a valuation for a financial statement audit client that is to be incorporated into the client's financial statements.
- 290.168 If the valuation service involves the valuation of matters material to the financial statements and the valuation involves a significant degree of subjectivity, the self-review threat created could not be reduced to an acceptable level by the application of any safeguard. Accordingly, such valuation services should not be provided or, alternatively, the only course of action would be to withdraw from the financial statement audit engagement.
- 290.169 Performing valuation services for a financial statement audit client that are neither separately, nor in the aggregate, material to the financial statements, or that do not involve a significant degree of subjectivity, may create a self-review threat that could be reduced to an acceptable level by the application of safeguards. Such safeguards might include:
- ☐ Involving an additional professional accountant who was not a member of the assurance team to review the work done or otherwise advise as necessary;
 - ☐ Confirming with the audit client their understanding of the underlying assumptions of the valuation and the methodology to be used and obtaining approval for their use;
 - ☐ Obtaining the audit client's acknowledgement of responsibility for the results of the work performed by the firm; and
 - ☐ Making arrangements so that personnel providing such services do not participate in the audit engagement.

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In determining whether the above safeguards would be effective, consideration should be given to the following matters:

- (a) The extent of the audit client's knowledge, experience and ability to evaluate the issues concerned, and the extent of their involvement in determining and approving significant matters of judgment.
- (b) The degree to which established methodologies and professional guidelines are applied when performing a particular valuation service.
- (c) For valuations involving standard or established methodologies, the degree of subjectivity inherent in the item concerned.
- (d) The reliability and extent of the underlying data.
- (e) The degree of dependence on future events of a nature which could create significant volatility inherent in the amounts involved.
- (f) The extent and clarity of the disclosures in the financial statements.

290.170 When a firm, or a network firm, performs a valuation service for a financial statement audit client for the purposes of making a filing or return to a tax authority, computing an amount of tax due by the client, or for the purpose of tax planning, this would not create a significant threat to independence because such valuations are generally subject to external review, for example by a tax authority.

290.171 When the firm performs a valuation that forms part of the subject matter information of an assurance engagement that is not a financial statement audit engagement, the firm should consider any self-review threats. If the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level.

Provision of Taxation Services to Financial Statement Audit Clients

290.172 Many a times, the firms may be asked to provide taxation services to a financial statement audit client. Taxation services comprise a broad range of services, including

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compliance, planning, provision of formal taxation opinions and assistance in the resolution of tax disputes. Such assignments are generally not seen to create threats to independence.

Provision of Internal Audit Services to Financial Statement Audit Clients

290.173 A statutory auditor of an entity can not be its internal auditor as it will not be possible for him to give an independent and objective opinion.*

Provision of IT Systems Services to Financial Statement Audit Clients

290.174 The provision of services by a firm or network firm to a financial statement audit client that involve the design and implementation of financial information technology systems that are used to generate information forming part of a client's financial statements may create a self-review threat.

290.175 The self-review threat is likely to be too significant to allow the provision of such services to a financial statement audit client unless appropriate safeguards are put in place ensuring that:

- (a) The audit client acknowledges its responsibility for establishing and monitoring a system of internal controls;
- (b) The audit client designates a competent employee, preferably within senior management, with the responsibility to make all management decisions with respect to the design and implementation of the hardware or software system;
- (c) The audit client makes all management decisions with respect to the design and implementation process;
- (d) The audit client evaluates the adequacy and results of the design and implementation of the system; and
- (e) The audit client is responsible for the operation of the system (hardware or software) and the data used or generated by the system.

* Attention is also invited to "Guidance Note on Independence of Auditors".

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- 290.176 Consideration should also be given to whether such non-assurance services should be provided only by personnel not involved in the financial statement audit engagement and with different reporting lines within the firm.
- 290.177 The provision of services by a firm, or network firm, to a financial statement audit client which involve either the design or the implementation of financial information technology systems that are used to generate information forming part of a client's financial statements may also create a self-review threat. The significance of the threat, if any, should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level.
- 290.178 The provision of services in connection with the assessment, design and implementation of internal accounting controls and risk management controls are not considered to create a threat to independence provided that firm or network firm personnel do not perform management functions.

Temporary Staff Assignments to Financial Statement Audit Clients*

- 290.179 The lending of staff by a firm, or network firm, to a financial statement audit client may create a self-review threat when the individual is in a position to influence the preparation of a client's accounts or financial statements. In practice, such assistance may be given (particularly in emergency situations) but only on the understanding that the firm's or network firm's personnel will not be involved in:
- (a) Making management decisions;
 - (b) Approving or signing agreements or other similar documents; or
 - (c) Exercising discretionary authority to commit the client.

Each situation should be carefully analyzed to identify whether any threats are created and whether appropriate

* As per the provisions of the Guidance Note on Independence, it is not permitted to do the Book keeping work of the client.

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safeguards should be implemented. Safeguards that should be applied in all circumstances to reduce any threats to an acceptable level include:

- ☐ The staff providing the assistance should not be given audit responsibility for any function or activity that they performed or supervised during their temporary staff assignment; and
- ☐ The audit client should acknowledge its responsibility for directing and supervising the activities of firm, or network firm, personnel.

Provision of Litigation Support Services to Financial Statement Audit Clients

290.180 Litigation support services may include activities such as acting as an expert witness, calculating estimated damages or other amounts that might become receivable or payable as the result of litigation or other legal dispute, and assistance with document management and retrieval in relation to a dispute or litigation.

290.181 A self-review threat may be created when the litigation support services provided to a financial statement audit client include the estimation of the possible outcome and thereby affects the amounts or disclosures to be reflected in the financial statements. The significance of any threat created will depend upon factors such as:

- ☐ The materiality of the amounts involved;
- ☐ The degree of subjectivity inherent in the matter concerned; and
- ☐ The nature of the engagement.

The firm, or network firm, should evaluate the significance of any threat created and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level. Such safeguards might include:

- ☐ Policies and procedures to prohibit individuals assisting the audit client from making managerial decisions on behalf of the client;

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- ☐ Using professionals who are not members of the assurance team to perform the service; or
- ☐ The involvement of others, such as independent experts.

290.182 If the role undertaken by the firm or network firm involved making managerial decisions on behalf of the financial statement audit client, the threats created could not be reduced to an acceptable level by the application of any safeguard. Therefore, the firm or network firm should not perform this type of service for an audit client.

Provision of Legal Services to Financial Statement Audit Clients

290.183 Legal services are defined as any services for which the person providing the services must either be admitted to practice before the Courts of the jurisdiction in which such services are to be provided, or have the required legal training to practice law. Legal services encompass a wide and diversified range of areas including both corporate and commercial services to clients, such as contract support, litigation, mergers and acquisition advice and support and the provision of assistance to clients' internal legal departments. The provision of legal services by a firm, or network firm, to an entity that is a financial statement audit client may create both self-review and advocacy threats.

290.184 Threats to independence need to be considered depending on the nature of the service to be provided, whether the service provider is separate from the assurance team and the materiality of any matter in relation to the entities' financial statements. The safeguards set out in paragraph 290.157 may be appropriate in reducing any threats to independence to an acceptable level. In circumstances when the threat to independence cannot be reduced to an acceptable level the only available action is to decline to provide such services or withdraw from the financial statement audit engagement.

290.185 The provision of legal services to a financial statement audit client which involve matters that would not be expected to have a material effect on the financial statements are not considered to create an unacceptable threat to independence.

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- 290.186 There is a distinction between advocacy and advice. Legal services to support a financial statement audit client in the execution of a transaction (e.g., contract support, legal advice, legal due diligence and restructuring) may create self-review threats; however, safeguards may be available to reduce these threats to an acceptable level. Such a service would not generally impair independence, provided that:
- (a) Members of the assurance team are not involved in providing the service; and
 - (b) In relation to the advice provided, the audit client makes the ultimate decision or, in relation to the transactions, the service involves the execution of what has been decided by the audit client.
- 290.187 Acting for a financial statement audit client in the resolution of a dispute or litigation in such circumstances when the amounts involved are material in relation to the financial statements of the audit client would create advocacy and self-review threats so significant that no safeguard could reduce the threat to an acceptable level. Therefore, the firm should not perform this type of service for a financial statement audit client.
- 290.188 When a firm is asked to act in an advocacy role for a financial statement audit client in the resolution of a dispute or litigation in circumstances when the amounts involved are not material to the financial statements of the audit client, the firm should evaluate the significance of any advocacy and self-review threats created and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate the threat or reduce it to an acceptable level. Such safeguards might include:
- ☐ Policies and procedures to prohibit individuals assisting the audit client from making managerial decisions on behalf of the client; or
 - ☐ Using professionals who are not members of the assurance team to perform the service.
- 290.189 The appointment of a partner or an employee of the firm or network firm as General Counsel for legal affairs to a financial statement audit client would create self-review and advocacy threats that are so significant that no safeguards

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could reduce the threats to an acceptable level. The position of General Counsel is generally a senior management position with broad responsibility for the legal affairs of a company and consequently, no member of the firm or network firm should accept such an appointment for a financial statement audit client

Recruiting Senior Management

290.190 The recruitment of senior management for an assurance client, such as those in a position to affect the subject matter information of the assurance engagement, may create current or future self-interest, familiarity and intimidation threats. The significance of the threat will depend upon factors such as:

- ☐ The role of the person to be recruited; and
- ☐ The nature of the assistance sought.

The firm could generally provide such services as reviewing the professional qualifications of a number of applicants and provide advice on their suitability for the post. In addition, the firm could generally produce a short-list of candidates for interview, provided it has been drawn up using criteria specified by the assurance client.

The significance of the threat created should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. In all cases, the firm should not make management decisions and the decision as to whom to hire should be left to the client.

Corporate Finance and Similar Activities

290.191 The provision of corporate finance services, advice or assistance to an assurance client may create advocacy and self-review threats. In the case of certain corporate finance services, the independence threats created would be so significant no safeguards could be applied to reduce the threats to an acceptable level. For example, promoting, dealing in, or underwriting of an assurance client's shares is not compatible with providing assurance services. Moreover, committing the assurance client to the terms of a transaction or consummating a transaction on behalf of the client would create a threat to independence so significant no safeguard

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could reduce the threat to an acceptable level. In the case of a financial statement audit client the provision of those corporate finance services referred to above by a firm or a network firm would create a threat to independence so significant that no safeguard could reduce the threat to an acceptable level.

290.192 Other corporate finance services may create advocacy or self-review threats; however, safeguards may be available to reduce these threats to an acceptable level. Examples of such services include assisting a client in developing corporate strategies, assisting in identifying or introducing a client to possible sources of capital that meet the client specifications or criteria, and providing structuring advice and assisting a client in analyzing the accounting effects of proposed transactions. Safeguards that should be considered include:

- ☐ Policies and procedures to prohibit individuals assisting the assurance client from making managerial decisions on behalf of the client;
- ☐ Using professionals who are not members of the assurance team to provide the services; and
- ☐ Ensuring the firm does not commit the assurance client to the terms of any transaction or consummate a transaction on behalf of the client.

FEES AND PRICING

Fees—Relative Size*

290.193 When the total fees generated by an assurance client represent a large proportion of a firm's total fees, the dependence on that client or client group and concern about the possibility of losing the client may create a self-interest threat. The significance of the threat will depend upon factors such as:

- ☐ The structure of the firm; and
- ☐ Whether the firm is well established or newly created.

The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be

* The professional accountant may refer the Guidelines issued by the Council of the Institute from time to time.

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considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- ☐ Discussing the extent and nature of fees charged with the audit committee, or others charged with governance;
- ☐ Taking steps to reduce dependency on the client;
- ☐ External quality control reviews; and
- ☐ Consulting a third party, such as a professional regulatory body or another professional accountant.

290.194 A self-interest threat may also be created when the fees generated by the assurance client represent a large proportion of the revenue of an individual partner. The significance of the threat should be evaluated and, if the threat is other than clearly insignificant, safeguards should be considered and applied as necessary to reduce the threat to an acceptable level. Such safeguards might include:

- ☐ Policies and procedures to monitor and implement quality control of assurance engagements; and
- ☐ Involving an additional professional accountant who was not a member of the assurance team to review the work done or otherwise advise as necessary.

Fees Overdue

290.195 A self-interest threat may be created if fees due from an assurance client for professional services remain unpaid for a long time, especially if a significant part is not paid before the issue of the assurance report for the following year. Generally the payment of such fees should be required before the report is issued. The following safeguards may be applicable:

- ☐ Discussing the level of outstanding fees with the audit committee, or others charged with governance.
- ☐ Involving an additional professional accountant who did not take part in the assurance engagement to provide advice or review the work performed.

The firm should also consider whether the overdue fees might be regarded as being equivalent to a loan to the client and whether, because of the significance of the overdue fees, it is appropriate for the firm to be re-appointed.

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Pricing

- 290.196 When a firm obtains an assurance engagement at a significantly lower fee level than that charged by the predecessor firm, or quoted by other firms, the self-interest threat created will not be reduced to an acceptable level unless:
- (a) The firm is able to demonstrate that appropriate time and qualified staff are assigned to the task; and
 - (b) All applicable assurance standards, guidelines and quality control procedures are being complied with.

Restriction on Fees

- 290.197 The fees which are based on a percentage of profits or which are contingent upon the findings, or results of such work, is not allowed except in cases which are permitted under Regulation 192 of The Chartered Accountants Regulations, 1988.

Gifts and Hospitality

- 290.198 Accepting gifts or hospitality from an assurance client may create self-interest and familiarity threats. When a firm or a member of the assurance team accepts gifts or hospitality, unless the value is clearly insignificant, the threats to independence cannot be reduced to an acceptable level by the application of any safeguard. Consequently, a firm or a member of the assurance team should not accept such gifts or hospitality.

Actual or Threatened Litigation

- 290.199 When litigation takes place, or appears likely, between the firm or a member of the assurance team and the assurance client, a self-interest or intimidation threat may be created. The relationship between client management and the members of the assurance team must be characterized by complete candor and full disclosure regarding all aspects of a client's business operations. The firm and the client's management may be placed in adversarial positions by litigation, affecting management's willingness to make complete disclosures and the firm may face a self-interest threat. The significance of the threat created will depend

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upon such factors as:

- ☐ The materiality of the litigation;
- ☐ The nature of the assurance engagement; and
- ☐ Whether the litigation relates to a prior assurance engagement.

Once the significance of the threat has been evaluated the following safeguards should be applied, if necessary, to reduce the threats to an acceptable level:

- (a) Disclosing to the audit committee, or others charged with governance, the extent and nature of the litigation;
- (b) If the litigation involves a member of the assurance team, removing that individual from the assurance team; or
- (c) Involving an additional professional accountant in the firm who was not a member of the assurance team to review the work done or otherwise advise as necessary.

If such safeguards do not reduce the threat to an appropriate level, the only appropriate action is to withdraw from, or refuse to accept, the assurance engagement.

CHAPTER 3

PROFESSIONAL ACCOUNTANTS IN SERVICE

Section 300

Introduction

- 300.1 This Chapter of the Code illustrates how the conceptual framework contained in Chapter 1 is to be applied by professional accountants in service.
- 300.2 Investors, creditors, employers and other sectors of the business community, as well as governments and the public at large, all may rely on the work of professional accountants in service. Professional accountants in service may be solely or jointly responsible for the preparation and reporting of financial and other information, which both their employing organizations and third parties may rely on. They may also be responsible for providing effective financial management and competent advice on a variety of business-related matters.
- 300.3 A professional accountant in service may be a salaried employee, a partner, director (whether executive or non-executive), an owner manager, a volunteer or another working for one or more employing organization. The legal form of the relationship with the employing organization, if any, has no bearing on the ethical responsibilities incumbent on the professional accountant in service.
- 300.4 A professional accountant in service has a responsibility to further the legitimate aims of their employing organization. This Code does not seek to hinder a professional accountant in service from properly fulfilling that responsibility, but considers circumstances in which conflicts may be created with the absolute duty to comply with the fundamental principles.
- 300.5 A professional accountant in service often holds a senior position within an organization. The more senior the position, the greater will be the ability and opportunity to influence events, practices and attitudes. A professional accountant in service is expected, therefore, to encourage

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an ethics-based culture in an employing organization that emphasizes the importance that senior management places on ethical behaviour.

- 300.6 The examples presented in the following sections are intended to illustrate how the conceptual framework is to be applied and are not intended to be, nor should they be interpreted as, an exhaustive list of all circumstances experienced by a professional accountant in service that may create threats to compliance with the principles. Consequently, it is not sufficient for a professional accountant in service merely to comply with the examples; rather, the conceptual framework should be applied to the particular circumstances faced.

Threats and Safeguards

- 300.7 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances. Many threats fall into the following categories:

- (a) Self-interest;
- (b) Self-review;
- (c) Advocacy;
- (d) Familiarity; and
- (e) Intimidation.

These threats are discussed further in Chapter 1.

- 300.8 Examples of circumstances that may create self-interest threats for a professional accountant in service include, but are not limited to:

- ☐ Financial interests, loans or guarantees.
- ☐ Incentive compensation arrangements.
- ☐ Inappropriate personal use of corporate assets.
- ☐ Concern over employment security.
- ☐ Commercial pressure from outside the employing organization.

- 300.9 Circumstances that may create self-review threats include, but are not limited to, business decisions or data being subject to review and justification by the same professional

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accountant in service responsible for making those decisions or preparing that data.

- 300.10 When furthering the legitimate goals and objectives of their employing organizations professional accountants in service may promote the organization's position, provided any statements made are neither false nor misleading. Such actions generally would not create an advocacy threat.
- 300.11 Examples of circumstances that may create familiarity threats include, but are not limited to:
- ☐ A professional accountant in service in a position to influence financial or non- financial reporting or business decisions having a relative who is in a position to benefit from that influence.
 - ☐ Long association with business contacts influencing business decisions.
 - ☐ Acceptance of a gift or preferential treatment, unless the value is clearly insignificant.
- 300.12 Examples of circumstances that may create intimidation threats include, but are not limited to:
- ☐ Threat of dismissal or replacement of the professional accountant in service or a relative over a disagreement about the application of an accounting principle or the way in which financial information is to be reported.
 - ☐ A dominant personality attempting to influence the decision making process, for example with regard to the awarding of contracts or the application of an accounting principle.
- 300.13 Professional accountants in service may also find that specific circumstances give rise to unique threats to compliance with one or more of the fundamental principles. Such unique threats obviously cannot be categorized. In all professional and business relationships, professional accountants in service should always be on the alert for such circumstances and threats.
- 300.14 Safeguards that may eliminate or reduce to an acceptable level the threats faced by professional accountants in service fall into two broad categories:
- (a) Safeguards created by the profession, legislation or regulation; and

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(b) Safeguards in the work environment.

- 300.15 Examples of safeguards created by the profession, legislation or regulation are detailed in paragraph 100.11.
- 300.16 Safeguards in the work environment include, but are not restricted to:
- ☐ The employing organization's systems of corporate oversight or other oversight structures.
 - ☐ The employing organization's ethics and conduct programs.
 - ☐ Recruitment procedures in the employing organization emphasizing the importance of employing high caliber competent staff.
 - ☐ Strong internal controls.
 - ☐ Appropriate disciplinary processes.
 - ☐ Leadership that stresses the importance of ethical behaviour and the expectation that employees will act in an ethical manner.
 - ☐ Policies and procedures to implement and monitor the quality of employee performance.
 - ☐ Timely communication of the employing organization's policies and procedures, including any changes to them, to all employees and appropriate training and education on such policies and procedures.
 - ☐ Policies and procedures to empower and encourage employees to communicate to senior levels within the employing organization any ethical issues that concern them without fear of retribution.
 - ☐ Consultation with another appropriate professional accountant.
- 300.17 In circumstances where a professional accountant in service believes that unethical behaviour or actions by others will continue to occur within the employing organization, the professional accountant in service should consider seeking legal advice. In those extreme situations where all available safeguards have been exhausted and it is not possible to reduce the threat to an acceptable level, a professional accountant in service may conclude that it is appropriate to resign from the employing organization.

Section 310

Potential Conflicts

- 310.1 A professional accountant in service has a professional obligation to comply with the fundamental principles. There may be times, however, when their responsibilities to an employing organization and the professional obligations to comply with the fundamental principles are in conflict. Ordinarily, a professional accountant in service should support the legitimate and ethical objectives established by the employer and the rules and procedures drawn up in support of those objectives. Nevertheless, where compliance with the fundamental principles is threatened, a professional accountant in service must consider a response to the circumstances.
- 310.2 As a consequence of responsibilities to an employing organization, a professional accountant in service may be under pressure to act or behave in ways that could directly or indirectly threaten compliance with the fundamental principles. Such pressure may be explicit or implicit; it may come from a supervisor, manager, director or another individual within the employing organization. A professional accountant in service may face pressure to:
- ☐ Act contrary to law or regulation.
 - ☐ Act contrary to technical or professional standards.
 - ☐ Facilitate unethical or illegal earnings management strategies.
 - ☐ Lie to, or otherwise intentionally mislead (including misleading by remaining silent) others, in particular:
 - The auditors of the employing organization; or
 - Regulators.
 - ☐ Issue, or otherwise be associated with, a financial or non-financial report that materially misrepresents the facts, including statements in connection with, for example:
 - The financial statements;
 - Tax compliance;
 - Legal compliance; or
 - Reports required by securities regulators.

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- 310.3. The significance of threats arising from such pressures, such as intimidation threats, should be evaluated and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Such safeguards may include:
- ☐ Obtaining advice where appropriate from within the employing organization, an independent professional advisor or a relevant professional body.
 - ☐ The existence of a formal dispute resolution process within the employing organization.
 - ☐ Seeking legal advice.

Section 320

Preparation and Reporting of Information

- 320.1 Professional accountants in service are often involved in the preparation and reporting of information that may either be made public or used by others inside or outside the employing organization. Such information may include financial or management information, for example, forecasts and budgets, financial statements, management discussion and analysis, and the management letter of representation provided to the auditors as part of an audit of financial statements. A professional accountant in service should prepare or present such information fairly, honestly and in accordance with relevant professional standards so that the information will be understood in its context.
- 320.2 A professional accountant in service who has responsibility for the preparation or approval of the general purpose financial statements of an employing organization should ensure that those financial statements are presented in accordance with the applicable financial reporting standards.
- 320.3 A professional accountant in service should maintain information for which the professional accountant in service is responsible in a manner that:
- (a) Describes clearly the true nature of business transactions, assets or liabilities;
 - (b) Classifies and records information in a timely and proper manner; and

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- (c) Represents the facts accurately and completely in all material respects.
- 320.4 Threats to compliance with the fundamental principles, for example self-interest or intimidation threats to objectivity or professional competence and due care, may be created where a professional accountant in service may be pressured (either externally or by the possibility of personal gain) to become associated with misleading information or to become associated with misleading information through the actions of others.
- 320.5 The significance of such threats will depend on factors such as the source of the pressure and the degree to which the information is, or may be, misleading. The significance of the threats should be evaluated and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Such safeguards may include consultation with superiors within the employing organization, for example, the audit committee or other body responsible for governance, or with a relevant professional body.
- 320.6 Where it is not possible to reduce the threat to an acceptable level, a professional accountant in service should refuse to remain associated with information they consider is or may be misleading. Should the professional accountant in service be aware that the issuance of misleading information is either significant or persistent, the professional accountant in service should consider informing appropriate authorities in line with the guidance in Section 140. The professional accountant in service may also wish to seek legal advice or resign.

Section 330

Acting with Sufficient Expertise

- 330.1 The fundamental principle of professional competence and due care requires that a professional accountant in service should only undertake significant tasks for which the professional accountant in service has, or can obtain, sufficient specific training or experience. A professional accountant in service should not intentionally mislead an employer as to the level of expertise or experience possessed, nor should a professional accountant in service

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fail to seek appropriate expert advice and assistance when required.

- 330.2 Circumstances that threaten the ability of a professional accountant in service to perform duties with the appropriate degree of professional competence and due care include:
- ☐ Insufficient time for properly performing or completing the relevant duties.
 - ☐ Incomplete, restricted or otherwise inadequate information for performing the duties properly.
 - ☐ Insufficient experience, training and/or education.
 - ☐ Inadequate resources for the proper performance of the duties.
- 330.3 The significance of such threats will depend on factors such as the extent to which the professional accountant in service is working with others, relative seniority in the business and the level of supervision and review applied to the work. The significance of the threats should be evaluated and, if they are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. Safeguards that may be considered include:
- ☐ Obtaining additional advice or training.
 - ☐ Ensuring that there is adequate time available for performing the relevant duties.
 - ☐ Obtaining assistance from someone with the necessary expertise.
 - ☐ Consulting, where appropriate, with:
 - Superiors within the employing organization;
 - Independent experts; or
 - A relevant professional body.
- 330.4 Where threats cannot be eliminated or reduced to an acceptable level, professional accountants in service should consider whether to refuse to perform the duties in question. If the professional accountant in service determines that refusal is appropriate the reasons for doing so should be clearly communicated.

Section 340

Financial Interests

- 340.1 Professional accountants in service may have financial interests, or may know of financial interests of relative, that could, in certain circumstances, give rise to threats to compliance with the fundamental principles. For example, self-interest threats to objectivity or confidentiality may be created through the existence of the motive and opportunity to manipulate price sensitive information in order to gain financially. Examples of circumstances that may create self-interest threats include, but are not limited to situations where the professional accountant in service or a relative:
- ☐ Holds a direct or indirect financial interest in the employing organization and the value of that financial interest could be directly affected by decisions made by the professional accountant in service;
 - ☐ Is eligible for a profit related bonus and the value of that bonus could be directly affected by decisions made by the professional accountant in service;
 - ☐ Holds, directly or indirectly, share options in the employing organization, the value of which could be directly affected by decisions made by the professional accountant in service;
 - ☐ Holds, directly or indirectly, share options in the employing organization which are, or will soon be, eligible for conversion; or
 - ☐ May qualify for share options in the employing organization or performance related bonuses if certain targets are achieved.
- 340.2 In evaluating the significance of such a threat, and the appropriate safeguards to be applied to eliminate the threat or reduce it to an acceptable level, professional accountants in service must examine the nature of the financial interest. This includes an evaluation of the significance of the financial interest and whether it is direct or indirect. Clearly, what constitutes a significant or valuable stake in an organization will vary from individual to individual, depending on personal circumstances.

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- 340.3 If threats are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate or reduce them to an acceptable level. Such safeguards may include:
- ☐ Policies and procedures for a committee independent of management to determine the level of form of remuneration of senior management.
 - ☐ Disclosure of all relevant interests, and of any plans to trade in relevant shares to those charged with the governance of the employing organization, in accordance with any internal policies.
 - ☐ Consultation, where appropriate, with superiors within the employing organization.
 - ☐ Consultation, where appropriate, with those charged with the governance of the employing organization or relevant professional bodies.
 - ☐ Internal and external audit procedures.
 - ☐ Up-to-date education on ethical issues and the legal restrictions and other regulations around potential insider trading.
- 340.4 A professional accountant in service should neither manipulate information nor use confidential information for personal gain.

Section 350

Inducements

Receiving Offers

- 350.1 A professional accountant in service or a relative may be offered an inducement. Inducements may take various forms, including gifts, hospitality, preferential treatment and inappropriate appeals to friendship or loyalty.
- 350.2 Offers of inducements may create threats to compliance with the fundamental principles. When a professional accountant in service or a relative is offered an inducement, the situation should be carefully considered. Self-interest threats to objectivity or confidentiality are created where an inducement is made in an attempt to unduly influence actions or decisions, encourage illegal or dishonest

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behaviour or obtain confidential information. Intimidation threats to objectivity or confidentiality are created if such an inducement is accepted and it is followed by threats to make that offer public and damage the reputation of either the professional accountant in service or a relative.

- 350.3 The significance of such threats will depend on the nature, value and intent behind the offer. If a reasonable and informed third party, having knowledge of all relevant information, would consider the inducement insignificant and not intended to encourage unethical behaviour, then a professional accountant in service may conclude that the offer is made in the normal course business and may generally conclude that there is no significant threat to compliance with the fundamental principles.
- 350.4 If evaluated threats are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a professional accountant in service should not accept the inducement. As the real or apparent threats to compliance with the fundamental principles do not merely arise from acceptance of an inducement but, sometimes, merely from the fact of the offer having been made, additional safeguards should be adopted. A professional accountant in service should assess the risk associated with all such offers and consider whether the following actions should be taken:
- (a) Where such offers have been made, immediately inform higher levels of management or those charged with governance of the employing organization;
 - (b) Inform third parties of the offer – for example, a professional body or the employer of the individual who made the offer; a professional accountant in service should, however, consider seeking legal advice before taking such a step; and
 - (c) Advise relatives of relevant threats and safeguards where they are potentially in positions that might result in offers of inducements, for example as a result of their employment situation; and

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- (d) Inform higher levels of management or those charged with governance of the employing organization where relatives are employed by competitors or potential suppliers of that organization.

Making Offers

- 350.5 A professional accountant in service may be in a situation where the professional accountant in service is expected to, or is under other pressure to, offer inducements to subordinate the judgment of another individual or organization, influence a decision-making process or obtain confidential information.
- 350.6 Such pressure may come from within the employing organization, for example, from a colleague or superior. It may also come from an external individual or organization suggesting actions or business decisions that would be advantageous to the employing organization possibly influencing the professional accountant in service improperly.
- 350.7 A professional accountant in service should not offer an inducement to improperly influence professional judgment of a third party.
- 350.8 Where the pressure to offer an unethical inducement comes from within the employing organization, the professional accountant should follow the principles and guidance regarding ethical conflict resolution set out in Chapter 1.

DEFINITIONS

In this section, the following expressions have the following meanings assigned to them:

- (a) Act The Chartered Accountants Act, 1949
- (b) Advertising The communication to the public of information as to the services or skills provided by professional accountants in public practice, with a view to procuring professional business.
- (c) Assurance client The responsible party that is the person (or persons) who:
 - (a) In a direct reporting engagement, is responsible for the subject matter; or

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- (b) In an assertion-based engagement, is responsible for the subject matter information and may be responsible for the subject matter.

(For an assurance client that is a financial statement audit client see the definition of financial statement audit client.)

(d) Assurance engagement

An engagement in which a professional accountant in public practice expresses a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the outcome of the evaluation or measurement of a subject matter against criteria.

(For guidance on assurance engagements, see the Framework for Assurance Engagements issued by the Council of the Institute which describes the elements and objectives of an assurance engagement and identifies engagements to which Standards on Auditing (SAs), Standards on Review Engagements (SREs) and Standards on Assurance Engagements (SAEs) apply.)

(e) Assurance team

- (a) All members of the engagement team for the assurance engagement;
- (b) All others within a firm who can directly influence the outcome of the assurance engagement, including:
 - (i) those who recommend the compensation of, or who provide direct supervisory, management or other oversight of the assurance engagement partner in connection with the performance of the assurance engagement. For the purposes of a financial statement audit engagement this includes those at all successively senior

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- levels above the engagement partner through the firm's chief executive;
- (ii) those who provide consultation regarding technical or industry specific issues, transactions or events for the assurance engagement; and
 - (iii) those who provide quality control for the assurance engagement, including those who perform the engagement quality control review for the assurance engagement; and
- (c) For the purposes of a financial statement audit client, all those within a network firm who can directly influence the outcome of the financial statement audit engagement.
- (f) Clearly insignificant A matter that is deemed to be both trivial and inconsequential.
- (g) Council The Governing body of the Institute constituted under the Act for the management of the affairs of the Institute and for discharging the functions assigned to it under the Act.
- (h) Direct financial interest ☐ Owned directly by and under the control of an individual or entity (including those managed on a discretionary basis by others); or
- ☐ Beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has control
- (i) Director or officer Those charged with the governance of an entity, regardless of their title, which may vary from country to country.
- (j) Engagement partner The partner or other person in the firm who is a member of the Institute of Chartered

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Accountants of India and is in full time practice and is responsible for the engagement and its performance, and for the report that is issued on behalf of the firm, and who, where required, has the appropriate authority from a professional, legal or regulatory body.

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| (k) Engagement quality control review | A process designed to provide an objective evaluation, before the report is issued, of the significant judgments the engagement team made and the conclusions they reached in formulating the report. |
| (l) Engagement team | All personnel performing an engagement, including any experts contracted by the firm in connection with that engagement. |
| (m) Existing accountant | A professional accountant in public practice currently holding an audit appointment or carrying out accounting, taxation, consulting or similar professional services for a client. |
| (n) Financial interest | An interest in an equity or other security, debenture, loan or other debt instrument of an entity, including rights and obligations to acquire such an interest and derivatives directly related to such interest. |
| (o) Financial statements | A complete set of financial statements normally includes a balance sheet, a statement of profit and loss (also referred to as 'income statement/Income and Expenditure Account'), a cash flow (wherever applicable), and those notes and other statements and explanatory material that are an integral part of the financial statements. They may also include supplementary schedules and information based on or derived from, and expected to be read with, such statements. Such schedules and supplementary information may deal, for example, with financial information about business and |

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- geographical segments, and disclosures about the effects of changing prices.
- (p) Financial statement audit client
An entity in respect of which a firm conducts a financial statement audit engagement. When the client is a listed entity, financial statement audit client will include its related entities, wherever applicable.
 - (q) Financial statement audit engagement
A reasonable assurance engagement in which a professional accountant in public practice expresses an opinion whether financial statements are prepared in all material respects in accordance with an identified financial reporting framework, such as an engagement conducted in accordance with Standards on Auditing. This includes a Statutory Audit, which is a financial statement audit required by legislation or other regulation.
 - (r) Firm
A sole practitioner/ proprietor, partnership or any such entity of professional accountants, as may be permitted by law.
 - (s) Independence
Independence is:
 - (a) Independence of mind – the states of mind that permits the provision of an opinion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional judgment
 - (b) Independence in appearance – the avoidance of facts and circumstances that are so significant a reasonable and informed third party, having knowledge of all relevant information, including any safeguards applied, would reasonably conclude a firm's, or a member of the assurance team's, integrity, objectivity or professional skepticism had been compromised.

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(t) Indirect financial Interest	A financial interest beneficially owned through a collective investment vehicle, estate, trust or other intermediary over which the individual or entity has no control.
(u) Institute	The Institute of Chartered Accountants of India constituted under the provisions of The Chartered Accountants Act, 1949.
(v) Listed entity	An entity whose shares, stock or debt are quoted or listed on a recognized stock exchange, or are marketed under the regulations of a recognized stock exchange or other equivalent body.
(w) Network firm	Networking amongst two or more firms under common control, ownership or management with the firm or having affiliation with an accounting entity or any entity that a reasonable and informed third party having knowledge of all relevant information would reasonably conclude as being part of the firm nationally.
(x) Office	A distinct sub-group, whether organized on geographical or practice lines which includes main office and branch office.
(y) Professional accountant	An individual who is a member of the Institute of Chartered Accountants of India.
(z) Professional accountant in service	A professional accountant employed or engaged in an executive or non-executive capacity in such areas as commerce, industry, service, the public sector, education, the not for profit sector, regulatory bodies or professional bodies, or a professional accountant contracted by such entities.
(za) Professional accountant in Public practice (Practitioner)	Member of the Institute of Chartered Accountants of India who is in practice in terms of section 2 of The Chartered Accountants Act, 1949. The term is also used to refer to a firm of chartered accountants in public practice.

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| (zb) Professional services | Services performed by a professional accountant including accounting, auditing, taxation, management consulting and financial management services. |
| (zc) Relative | A person shall be deemed to be a relative of a professional accountant when he is related to the professional accountant in the manner mentioned in Section 6 of Companies Act, 1956. |
| (zd) Related entity | <p>An entity that has any of the following relationships with the client:</p> <ul style="list-style-type: none">(a) An entity that has direct or indirect control over the client provided the client is material to such entity;(b) An entity with a direct financial interest in the client provided that such entity has significant influence over the client and the interest in the client is material to such entity;(c) An entity over which the client has direct or indirect control;(d) An entity in which the client, or an entity related to the client under (c) above, has a direct financial interest that gives it significant influence over such entity and the interest is material to the client and its related entity in (c); and An entity which is under common control with the client (hereinafter a "sister entity") provided the sister entity and the client are both material to the entity that controls both the client and sister entity. |

PART-B

CHAPTER 4

ACCOUNTING AND AUDITING STANDARDS

Authority Attached to Documents Issued by the Institute¹

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

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

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

- (a) to examine whether 'Statements' relating to accounting matters are complied with in the presentation of financial statements covered by their audit. In the event of any deviation from the 'Statements', it will be their duty to make adequate disclosures in their audit reports so that the users of financial statements may be aware of such deviations; and
- (b) to ensure that the 'Statements' relating to auditing matters are followed in the audit of financial information covered by

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

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

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

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their audit reports. If, for any reason, a member has not been able to perform an audit in accordance with such 'Statements', his report should draw attention to the material departures therefrom.

4.4 A list of Statements issued by the Institute and in force as on 1.10.2008 is given below.

- (i) Statement on the Companies (Auditor's Report) Order, 2003 (Revised 2005)
- (ii) Statement on Reporting under section 227(1A) of the Companies Act, 1956
- (iii) Statement on the Amendments to Schedule VI to the Companies Act, 1956.
- (iv) Statement on Peer Review.
- (v) Statement on Continuing Professional Education.

4.5 'Guidance Notes' are primarily designed to provide guidance to members on matters which may arise in the course of their professional work and on which they may desire assistance in resolving issues which may pose difficulty. Guidance Notes are recommendatory in nature. A member should ordinarily follow recommendations in a guidance note relating to an auditing matter except where he is satisfied that in the circumstances of the case, it may not be necessary to do so. Similarly, while discharging his attest function, a member should examine whether the recommendations in a guidance note relating to an accounting matter have been followed or not. If the same have not been followed, the member should consider whether keeping in view the circumstances of the case, a disclosure in his report is necessary. In respect of the following Guidance Notes, however, the Council had specifically stated that they should be considered as mandatory on members while discharging their attest function.

- (i) Guidance Note on Treatment of interest on Deferred Payments read along with the pronouncement of the Council, published in The Chartered Accountant, March, 1984, p.591
- (ii) Provision for Depreciation in respect of Extra or Multiple Shift Allowance, published in The Chartered Accountant May 1984, p.765.

4.6 The 'Accounting Standards' and 'Statements on Standard Auditing

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

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

ACCOUNTING STANDARDS AND QUALITY CONTROL AND ENGAGEMENT STANDARDS

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

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

⁴ Refer footnote 3.

⁵ Refer footnote 2.

⁶ *ibid*

⁷ *ibid*

⁸ *ibid*

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

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

A. Quality Control and Engagement Standards

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

4.13 The Council of the Institute of the Chartered Accountants of India, at its 267th meeting, held on March 12-14, 2007, approved the Revised Classification and Numbering Pattern of the Auditing and Assurance Standards. The Council, at the aforesaid meeting, had also approved the revised Preface, which replaces the existing Preface to the Statements on Standard Auditing Practices (issued in 1983). This Preface to the Standards on Quality Control, Auditing, Review, Other Assurance and Related Services has been issued to facilitate understanding of the scope and authority of the pronouncements of the AASB issued under the authority of the Council of the Institute. The Revised Preface makes it clear that it is the duty of the professional accountants to ensure that the Standards/Statements/General Clarifications are followed in the engagements undertaken by them. The need for the professional accountants to depart from a relevant requirement is expected to arise only where the requirement is for a specific procedure to be performed and, in the specific circumstances of the engagement, that procedure would be ineffective. If because of that reason, a professional accountant has not been able to perform an engagement procedure in accordance with any Standard/Statement/General Clarification, he is required to document how alternative procedures performed achieve the purpose of the procedure, and,

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unless otherwise clear, the reasons for the departure. Further, his report should draw attention to such departures. However, a mere disclosure in his report does not absolve a professional accountant from complying with the applicable Standards/Statements/General Clarifications. The revised Preface paves way for total revamp of the existing structure of the Auditing and Assurance Standards (AASs) issued by the Institute on the lines of the International Standards issued by the International Auditing and Assurance Standards Board (IAASB). The new Standards to be issued by the AASB henceforth would be collectively known as Engagement Standards and would comprise of Standards on Auditing (SAs), Standards on Review Engagements (SREs), Standards on Assurance Engagements (SAEs) and Standards on Related Services (SRSs). The revised Preface necessitated the need to adopt a new numbering pattern for the Engagement Standards. Whereas hitherto the auditing standards were being allotted sequential numbers as and when they were issued, as per the revised Classification and Numbering Pattern of the Auditing and Assurance Standard, these standards would be categorised on the basis of the specific aspect of audit that they deal with and accordingly allotted the number. The members may refer to “Handbook of Auditing Pronouncements – Compendium of Standards and Statements” for the details of Quality Control and Engagement Standards.

B. Accounting Standards

4.14 Accounting Standards are formulated by the Accounting Standards Board and issued under the authority of the Council of the Institute. As per the Preface to the Statements of Accounting Standards (revised 2004), Accounting Standards are designed to apply to the general purpose financial statements and other financial reporting, which are subject to the attest function of the members of the Institute. Accounting Standards apply in respect of any enterprise (whether organized in corporate, co-operative or other forms) engaged in commercial, industrial or business activities, irrespective of whether it is profit oriented or it is established for charitable or religious purposes. Accounting Standards will not, however, apply to enterprises only carrying on the activities which are not of commercial, industrial or business nature*, (e.g., an activity of collecting donations and giving

* It may be noted that the notified Companies (Accounting Standards) Rules, 2006 do not mention the words ‘Commercial, industrial or business activities’, meaning thereby that the notified Accounting Standards are applicable to all the companies, whether engaged purely in commercial, industrial or business activities or not.

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them to flood affected people). Exclusion of an enterprise from the applicability of the Accounting Standards would be permissible only if no part of the activity of such enterprise is commercial, industrial or business in nature. Even if a very small proportion of the activities of an enterprise is considered to be commercial, industrial or business in nature, the Accounting Standards would apply to all its activities including those which are not commercial, industrial or business in nature. The term General Purpose Financial Statements includes balance sheet, statement of profit and loss, a cash flow statement (wherever applicable) and statements and explanatory notes which form part thereof, issued for the use of various stakeholders, Governments and their agencies and the public. The Accounting Standards become mandatory on the dates specified in the respective Accounting Standards or notified by the Council in this behalf.

4.15 The Companies Act, 1956, as well as many other statutes require that the financial statements of an enterprise should give a true and fair view of its financial position and working results. This requirement is implicit even in the absence of a specific statutory provision to this effect. However, what constitutes ‘true and fair’ view has not been defined either in the Companies Act, 1956, or in any other statute. The Accounting Standards (as well as other pronouncements of the Institute on accounting matters) seek to describe the accounting principles and the methods of applying these principles in the preparation and presentation of financial statements so that they give a true and fair view.

4.16 Besides the requirement regarding ‘true and fair’ view under the Companies Act, 1956, as discussed in para 1.13 above, Section 211 of the Act requires the companies to prepare the profit and loss account and balance sheet in accordance with the accounting standards. In this regard, sub-Sections (3A), (3B) and (3C) have been inserted in Section 211 of the principal Act, which read as follows:

“(3A) Every profit and loss account and balance sheet of the company shall comply with the accounting standards.

(3B) Where the profit and loss account and the balance sheet of the company do not comply with the accounting standards, such companies shall disclose in its profit and loss account and balance sheet, the following, namely:

- (a) the deviation from the accounting standards;*
- (b) the reasons for such deviation; and*
- (c) the financial effect, if any, arising due to such deviation.*

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(3C) For the purposes of this section, the expression “accounting standards” means the standards of accounting recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949), as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards established under sub-section (1) of Section 210A:

Provided that the standards of accounting specified by the Institute of Chartered Accountants of India shall be deemed to be the Accounting Standards until the accounting standards are prescribed by the Central Government under this sub-section.”

In accordance with above mentioned Section 211(3C), the Government of India, Ministry of Company Affairs (now Ministry of Corporate Affairs), has issued Notification dated December 7, 2006, prescribing Accounting Standards 1 to 7 and 9 to 29 as recommended by the Institute of Chartered Accountants of India, which have come into effect in respect of the accounting periods commencing on or after the aforesaid date with the publication of these Accounting Standards in the Official Gazette under the Companies (Accounting Standards) Rules, 2006. It may be mentioned that the Accounting Standards notified by the Government are virtually identical with the Accounting Standards, read with the Accounting Standards Interpretations, issued by the Institute of Chartered Accountants of India.* For details of Accounting Standard, the members may refer “Compendium of Accounting Standards” issued by the Institute from time to time.

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

CHAPTER 5

THE CHARTERED ACCOUNTANTS ACT, 1949

(a) GENERAL PROVISIONS:-

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

5.2 Members who are deemed to be in practice

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

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

"A member of the Institute shall be deemed "to be in practice" when individually or in partnership with Chartered Accountants in practice, he, in consideration of remuneration received or to be received-

- (i) engages himself in the practice of accountancy; or
- (ii) offers to perform or performs services involving the auditing or verification of financial transactions, books, accounts or records, or the preparation, verification or certification of financial accounting and related statements or holds himself out to the public as an accountant; or

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- (iii) renders professional services or assistance in or about matters of principle or detail relating to accounting procedure or the recording, presentation or certification of financial facts or data; or
- (iv) renders such other services as, in the opinion of the Council, are or may be rendered by a Chartered Accountant in practice,

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

Explanation:- An associate or a fellow of the Institute who is a salaried employee of a Chartered Accountant in practice or a firm of such Chartered Accountants shall, notwithstanding such employment, be deemed to be in practice for the limited purpose of the training of articled assistants ”.

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

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

- * (i) Financial management planning and financial policy determination.
- * (ii) Capital structure planning and advice regarding raising finance.
- * (iii) Working capital management.
- * (iv) Preparing project reports and feasibility studies.
- (v) Preparing cash budget, cash flow statements, profitability statements, statements of sources and application of funds etc.
- (vi) Budgeting including capital budgets and revenue budgets.
- (vii) Inventory management, material handling and storage.
- (viii) Market research and demand studies.

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

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- (ix) Price-fixation and other management decision making.
- (x) Management accounting systems, cost control and value analysis.
- (xi) Control methods and management information and reporting.
- (xii) Personnel recruitment and selection.
- (xiii) Setting up executive incentive plans, wage incentive plans etc.
- (xiv) Management and operational audits.
- (xv) Valuation of shares and business and advice regarding amalgamation, merger and acquisition.
- (xvi) Business Policy, corporate planning, organisation development, growth and diversification.
- (xvii) Organisation structure and behaviour, development of human resources including design and conduct of training programmes, work study, job-description, job evaluation and evaluation of work loads.
- (xviii) Systems analysis and design, and computer related services including selection of hardware and development of software in all areas of services which can otherwise be rendered by a Chartered Accountant in practice and also to carry out any other professional services relating to EDP.
- (xix) Acting as advisor or consultant to an issue, including such matters as:-
 - (a) Drafting of prospectus and memorandum containing salient features of prospectus. Drafting and filing of listing agreement and completing formalities with Stock Exchanges, Registrar of Companies and SEBI.
 - (b) Preparation of publicity budget, advice regarding arrangements for selection of (i) ad-media, (ii) centres for holding conferences of brokers, investors, etc., (iii) bankers to issue, (iv) collection centres, (v) brokers to issue, (vi) underwriters and the underwriting arrangement, distribution of publicity and issue material including application form, prospectus and brochure and deciding on the quantum of issue material (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).

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- (c) Advice regarding selection of various agencies connected with issue, namely Registrars to Issue, printers and advertising agencies.
- (d) Advice on the post issue activities, e.g., follow up steps which include listing of instruments and despatch of certificates and refunds, with the various agencies connected with the work.

Explanation: For removal of doubts, it is hereby clarified that the activities of broking, underwriting and portfolio management are not permitted.

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

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

5.2.5 It is necessary to note that a person is deemed to be in practice not only when he is actually engaged in the practice of accountancy but also when he offers to render accounting services whether or not he in fact does so. In other words, the act of setting up of an

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establishment offering to perform accounting services would tantamount to being in practice even though no client has been served.

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

5.3 Significance of the certificate of Practice

5.3.1 A member who is not in practice, is precluded from accepting engagement to render services of any of the types normally prescribed for a Chartered Accountant, even though for doing so, he does not require special qualifications. For example, a member of the Institute who was in practice till the 10th November, 1954, was by an order of the High Court dated 11th November, 1954 suspended from practice for a period of six months though not removed from membership. [Ref. A.C. Kaher in Re:- Page 64 of Vol. IV(1) of Disciplinary Cases]. Pursuant to the order of the High Court, he was asked to surrender the Certificate of Practice issued to him for the period of suspension which he did. He, however, wrote to the Institute enquiring whether he could practice as an income-tax practitioner under Section 61 of the Indian Income-tax Act, 1922 being qualified otherwise than as a Chartered Accountant to do so. In reply he was informed that if a member acted as a representative in taxation matters, he would be deemed to be in practice as a Chartered Accountant, and his attention in this connection was drawn to Section 2(2) of the Chartered Accountants Act and Regulation 78 of the Chartered Accountants Regulations 1949. He wrote back to the Institute saying that he was not "going in for practice as Chartered Accountant but doing income-tax cases as per the provisions of Section 61 (iv) (a) (b) and (c) of the Indian Income-tax Act, 1922". He also stated that in his opinion Section 2(2) of the Chartered Accountants Act did not supersede Section 61 of the Indian Income-tax Act, and that he was entitled to practise as an Income-tax practitioner even before becoming a member of the Institute and he had only resumed this work since he could not practice as a Chartered Accountant. He was again informed by the Institute that he continued to be a member of the Institute but was only suspended from practice under the Order of the High Court for a period of six months, and that he should comply with the provisions of the Act and the Regulations in so far as they were applicable to a member of the Institute. The Commissioner of Income-tax, Punjab, PEPSU, Himachal Pradesh, J & K also informed the Institute that the member concerned had made similar representation to the Income-tax Department, that although he was suspended from practice, he could still practice as an

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income-tax practitioner under Section 61 of the Indian Income-tax Act, 1922.

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

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

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

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

5.4.1 Under Section 7 of the Chartered Accountants Act, 1949 a member in practice cannot use any designation other than that of a Chartered Accountant, nor can he use any other description, whether in addition thereto or in substitution therefor, but a member who is not in practice and does not use the designation of a Chartered Accountant may use any other description. Nevertheless a member in practice may use any other letters or description indicating membership of Accountancy Bodies which have been approved by the Council (See **Appendix ‘A’**) or of bodies other than Accountancy Institutes so long as such use does not imply adoption of a designation and/or does not amount to advertisement or publicity.

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

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

5.5 Disabilities for purpose of Membership

5.5.1 Section 8 of the Act enumerates the circumstances under which a person is debarred from having his name entered in or borne on the Register of Members, as follows:

- (i) If he has not attained the age of twenty one years at the time of his application for the entry of his name in the Register; or
- (ii) If he is of unsound mind and stands so adjudged by a competent court; or
- (iii) If he is an undischarged insolvent; or
- (iv) If he, being a discharged insolvent, has not obtained from the court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part; or

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- (v) If he has been convicted by a competent Court whether within or without India, of an offence involving moral turpitude and punishable with transportation or imprisonment or of an offence, not of a technical nature, committed by him in his professional capacity unless in respect of the offence committed he has either been granted a pardon or, on an application made by him in this behalf, the Central Government has, by an order in writing, removed the disability; or
- (vi) If he has been removed from membership of the Institute on being found on inquiry to have been guilty of professional or other misconduct:

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

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

5.6 Removal from the Register

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

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

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

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

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

5.7.2 Sections 21, 21A, 21B, 21C, 22-A and 22-G of the Act read with The Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct of Cases) Rules, 2007 have laid down the following procedure in regard to the investigation of misconduct of members which has been summarized as under:-

- (a) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) will process the same for its registration and shall form a prima facie opinion on the alleged misconduct.
- (b) After the prima facie opinion is formed, the Director (Discipline) shall place the matter before the Board of Discipline or Disciplinary Committee in respect of the cases relating to the First Schedule or the Second Schedule to the Act as the case may be. Where the matter relates to both the Schedules, it shall be placed before the Disciplinary Committee only. Where the Director (Discipline) is of the opinion that there is no prima facie case the Board of Discipline may, if agrees with the opinion of the Director (Discipline) close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter. Where the Director (Discipline) is of the opinion that there is a prima facie case, further action will be taken by the Board of Discipline or Disciplinary Committee, as the case may be.
- (c) The Board of Discipline (in respect of matters relating to First Schedule) has been empowered to pass the following orders:-
 - (i) reprimand the member
 - (ii) remove the name of the member from Register upto a period of three months
 - (iii) impose such fine which may extend to rupees one lakh.
- (d) The Discipline Committee (in respect of matters relating to

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Second Schedule or Both Schedules when the misconducts are related to both the Schedules) has been empowered to pass the following orders:-

- (i) reprimand the member
 - (ii) remove the name of the member from the Register permanently or for such period as it may think fit.
 - (iii) impose such fine which may extend to rupees five lakhs.
- (e) The Director (Discipline), Board of Discipline and the Disciplinary Committee have powers of Civil Court under the Code of Civil Procedure, 1908 in respect of the following matters, namely,
- (i) summoning and enforcing attendance of any person and examining him on oath;
 - (ii) discovery and production of any document; and
 - (iii) receiving evidence on affidavit.
- (f) Any member of the Institute aggrieved of any order of the Board of Discipline or the Disciplinary Committee may prefer an appeal under Section 22G to the authority constituted under the provisions of Section 22A – 22D of the Act.

5.8 Conduct of the members in any other Circumstances:

S.22. Professional or other Misconduct defined

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

(1) A member is liable to disciplinary action under Section 21 of the Chartered Accountants Act, if he is found guilty of any professional or “other misconduct”. This provision empowers the Director (Discipline) to enquire into any conduct of a member under any other circumstance. This is considered necessary because a Chartered Accountant is expected to maintain the highest standards and integrity even in his/her personal affairs and any deviation from these

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standards, would expose him/ her to disciplinary action. For example, a member who is found to have forged the will of a relative, may be liable to disciplinary action even though the forgery may not have been done in the course of his professional duty.

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

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

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

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

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

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

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

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

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

Where a Chartered Accountant had exercised undue influence and coercion in securing from the Company payment of his fee and the letter of appointment for the next year. -Held he was guilty of professional misconduct of a type not specified in the Schedules.

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

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

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

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

A Chartered Accountant was charged with misconduct for having used the services of his audit clerk during the period of his audit service for promoting the agricultural activities of the former. The Disciplinary Committee though satisfied from the evidence recorded that the audit clerk was required to attend to the agricultural activities of his employer during office hours, very regrettably came to the conclusion that engaging the services of the audit clerk for agricultural operations not casually but for a

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considerable time during his service as an audit clerk did not render the member guilty of professional or other misconduct. The Council, having found the member not guilty of any professional or other misconduct, dismissed the complaint.

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

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

A Chartered Accountant being the Secretary & Treasurer of the Central India Regional Council of the Institute misappropriated a large amount and utilised it for his personal use. - Held that the Chartered Accountant was guilty of charge of misappropriation and the Court directed the removal of his membership for a period of five years. It was observed that warnings and reprimands in such cases would undermine the basic purpose of Sections 21 and 22 of the Act and instead of acting as a deterrent for such misconduct may embolden erring members to entertain hopes of lenient punishment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(S.C. Katyal vs. O.P.C. Jain & O.P. Sharma –Page 1 of Vol. VIII-1 - 21(6) of Disciplinary cases – Council’s decision dated 25th to 27th February, 1999 - Judgement delivered on 27th April, 2001 and published in the September, 2001 issue of Journal at pages 309 to 311).

A Chartered Accountant while in employment with a Corporation conveyed acceptance as statutory auditor to the complainant and give a wrong declaration to the bank that he was a full time practicing Chartered Accountant and not employed elsewhere with an intention to obtain bank branch audits and derive undue

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benefits. The Respondent having committed an act which is unbecoming a Chartered Accountant was therefore inter alia guilty of "Other misconduct".

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

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

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

"... Having regard to the old age of the Respondent, ailments that he is suffering from, repentance that he has shown in the Court and the time lag that has elapsed, as also his statement that he has never published any such writing after the publication of the said book, in our opinion, interest of justice will be met if the Respondent is removed forthwith from the membership of the Institute for a period of five years. We accordingly, while upholding the Respondent guilty of misconduct, direct that the Respondent be removed forthwith from the membership of the Institute for a period of five years. The reference stands disposed of accordingly with no order as to costs.

At this stage, the learned counsel for the Respondent submits that the operation of this order may be stayed to enable the Respondent to approach the higher forum. In our opinion, in the facts and circumstances of the case, it will be improper for us to stay the operation of this order when the removal of the Respondent was due long back, having regard to the serious nature of the misconduct committed by him."

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

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

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

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

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

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

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of "Other misconduct". The Council also decided to recommend to the High Court that the name of the Respondent be removed permanently from the Register of Members.

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

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

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

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

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

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Misconduct”.

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

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

A Chartered Accountant demanded and received large sums of money towards advance payment and claimed expenses beyond the eligibility/entitlement as per RBI guidelines and failed to refund the unspent money. The Council held him guilty of “other misconduct” in terms of Section 22 read with Section 21 of the Chartered Accountants Act, 1949 which was accepted by the High Court.

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

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

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

A Chartered Accountant, appointed as concurrent auditor of a bank, firstly used his influence for getting some cheque purchased and thereafter failed to repay the loan/overdraft. He acted in an irresponsible manner and had not discharged his duties professionally. Being a Concurrent Auditor used his position to obtain the funds and failed to repay the same to the Complainant. Though such conduct may not directly attract any particular clause(s) specified in any of the schedule(s) of the Chartered Accountants Act, 1949, yet such act is certainly unpardonable. The

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Council held him guilty of “other misconduct” under Section 22 read with Section 21 of the Chartered Accountants Act, 1949 and the High Court further confirmed the same.

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

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

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

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

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

5.9 Penalty for falsely claiming to be a Member etc.

Section 24 provides that:-

“Any person who -

(i) not being a member of the Institute-

(a) represents that he is a member of the Institute; or

(b) uses the designation Chartered Accountant; or

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

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

5.10 Companies not to engage in accountancy

Section 25 provides that:-

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

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

5.11 Unqualified persons not to sign documents

Section 26 provides that:-

"(1) No person other than a member of the Institute shall sign any document on behalf of a chartered accountant in practice or a firm of such chartered accountants in his or its professional capacity.

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

5.12 Maintenance of Branch Offices

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

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

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

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

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

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

- (1) *Definition of Office* – “A place where a name-board is fixed

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or where such place is mentioned in the letter-head or any other documents as a place of business.”

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

Where a Chartered Accountant kept the branch office without putting a member in charge thereof thereby committing a breach of clause (i) of Section 27 of the Act. - Held that the fault was only technical which had been made good and ordered the papers to be filed.

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

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

1. On receipt of a notice of retirement from partner(s) of a firm, a communication would be sent to the other partner(s) of the firm to confirm within a specified period about the retirement of the partner(s) who had sent the notice to the Institute.
2. In case the other partner(s) do not confirm the retirement within the specified date or do not send the confirmation before the said date, the retirement of the partner(s) having sent the notice of the retirement from the firm would be noted in the records of the Institute.
3. In case of intimation of existence of dispute between/among partners received from the firm/other partners a suitable note would be kept in the records of the Institute and retirement will not be noted and the fact shall be mentioned in the entry on record of firms and firm constitution certificate, etc.
4. The fact that there was dispute among the partners of a firm would also be intimated to the C&AG/RBI while furnishing the particulars of the firm for empanelment of bank/C&AG audit.

(b) SCHEDULES TO THE ACT:-

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

The expression "*professional or other misconduct*" within the meaning of Section 22 of the Chartered Accountants Act shall be deemed to include any *act(s) or omission(s) provided in any* of the two Schedules viz the First Schedule and the Second Schedule to the Act *but nothing in that section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director(Discipline) under Subsection (1) of Section 21 to enquire into the conduct of any member of the Institute under any circumstances.*

The First Schedule is divided into four parts. Part I of the First Schedule deals with the professional misconduct of a member in practice which would have the effect generally of compromising his position as an independent person. Part II deals with professional

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misconduct of members of the Institute in service. Part III deals with the professional misconduct of members of the Institute generally and Part IV deals with other misconduct of Members *of the Institute* generally.

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

The implications of the different clauses in the Schedules are discussed below:-

5.15 The First Schedule

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

PART I OF FIRST SCHEDULE

Professional misconduct in relation to Chartered Accountants in practice

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

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

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

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*

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retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

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

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

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

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

The Institute came across certain Circulars/Orders issued by the Registrars of various State Co-operative Societies wherein it has been mentioned that certain amount of audit fee is payable to the concerned State Government and the auditor has to deposit a percentage of his audit fee in the state Treasury by a prescribed challan within a prescribed time of the receipt of Audit fee. In recent past, the Council considered the issue and while noting that the Government is asking auditors to deposit such percentage of their audit fee for recovering the administrative and other expenses incurred in the process, the Council

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decided that as such there is no bar in the Code of Ethics to accept such assignment wherein a percentage of professional fee is deducted by the Government to meet the administrative and other expenditure.

Goodwill

When there are two or more partners and one of them dies, the widow of the deceased partner can continue to receive a share of the profit of the firm. A legal representative, say widow of a deceased partner, would be entitled to share the profits only where the partnership agreement contains a provision that on the death of the partner his widow or legal representative would be entitled to such payment by way of sharing of fees or otherwise for some specified period. There could not be any sharing of fees between the widow or the legal representative of the proprietor of a single member firm and the purchaser of the goodwill of the firm on the death of the Sole proprietor of the firm. Payment of goodwill to the widow is permissible in such cases only for the goodwill of the firm and to enable such payments to be made in installments provided the agreement of the sale of goodwill contains such a provision. These payments even if they are spread over the specified period should not be linked up with participation in the earnings of the firm. The widow of a partner when the partnership agreement does not contain a provision entitling her to share in profits, would not be entitled to such profits.

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

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

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

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

Provided such a sale is completed/effectuated in all respects and the

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

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

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

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

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

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

Procedure to be fulfilled to transfer the goodwill of Firm of Chartered Accountants

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

1. An application in writing should be forwarded by a member, holding Certificate of Practice, intimating his intention to purchase goodwill.
2. The application should be made within 1 year from the date of death of the member.
3. The application should be sent along with the following details:-
 - a. "Death Certificate" of the deceased member; and

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

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

Some of the decisions under this clause are given below:

In a decision of the Council, where a Chartered accountant entered into an agreement whereby he had clearly agreed to pay the share in profits of his professional business to the complainant and

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another person who were not the members of the Institute, it was held that he was guilty of professional misconduct under the clause.

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

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

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

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

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

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

Clause (4): *enters into partnership, in or outside India, with any person other than a chartered accountant in practice or such other person who is a member of any other*

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professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under Clause (v) of sub-Section (1) of Section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships.

The Council has prescribed (Regulation 53 A(3) and 53B of The Chartered Accountants Regulations, 1988) for the persons qualified and the professional bodies.

A Chartered Accountant in practice is not permitted to enter into partnership with any person other than a Chartered Accountant in practice or such other persons as may be prescribed by the Council from time to time. However, partnership between members of the Institute and members of foreign professional bodies are permissible provided members of such bodies are eligible for the membership of the Institute.

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

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

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

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

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

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

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

However, the Council of the Institute at its meeting held in December, 1995 decided to withdraw the above resolution w.e.f. December 8, 1995. In view of the above, persons qualified from any of the aforementioned four Institutes in the United Kingdom are not entitled to have their names entered in the Register of Members maintained by the Institute effective from December 8, 1995. An announcement published in February 1998 issue of the Journal, 'The Chartered Accountant' at page 53 giving effect to the above decision of the Council is appearing as **Appendix 'B'** to this book.

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

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

An announcement published in May, 1998 issue of the Journal, 'The Chartered Accountant' from pages 93 to 96 giving effect to the

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above decision of the Council is appearing as **Appendix 'C'** to this Book.

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

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

The Council while considering the judgement dated 10th July, 1990 of Allahabad High Court in the case of Iqbal Hamid vs. ICAI (W.P. No. 1823 of 1988) and another judgement dated 9th February, 1989 of Bombay High Court in the case of Nalin S. Sualy vs. ICAI (W.P. No. 4906 of 1985) clarified that under this clause the prohibition on entering into partnership with non-Chartered Accountants was confined to the practice of the profession of Chartered Accountants. The reference to aforesaid judgments is appearing under clause (11) of this book.

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

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

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

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

(Assistant Director of Income Tax (Investment), Calicut v. P.

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Subramanian (25-CA(G-191)/2003) - to be published later under Disciplinary Cases Volume X -2B-21(4). Council decision of 281st Meeting held in October, 2008)

Clause (5): *secures, either through the services of a person who is not an employee of such chartered accountant or who is not his partner or by means which are not open to a chartered accountant, any professional business:*

Provided *that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this Part;*

“A man must stand erect, and not be kept erect by others” is a dictum by Marcus Aurelius which though applicable for a man in every walk of life is more so in the case of a professional. He must not seek work through a person who is not his employee or partner or by means which are not open to a chartered accountant. The work will follow him due to the respect that he commands for his professional talent, and skill and by the confidence he is able to inspire by his reputation. All forms of canvassing on that account are regarded unethical and are prohibited.

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

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

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

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

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

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

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

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

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

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

(a) Advertisement and Notes in the press

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

The exceptions to the above rule are-

- (i) A member may request another Chartered Accountant in practice for professional work

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- (ii) A member may advertise changes in partnerships or dissolution of a firm, or of any change in the address of practice and telephone numbers. Such announcements should be limited to a bare statement of facts and consideration given to the appropriateness of the area of distribution of the newspaper or magazine and number of insertions.
- (iii) A member is permitted to issue a classified advertisement in the Journal/Newsletter of the Institute intended to give information for sharing professional work on assignment basis or for seeking professional work on partnership basis or salaried employment in the field of accounting profession provided it only contains the accountant's name, address, telephone, fax number and E-mail address.

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

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

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

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

The Council has held that it would not be proper for a Chartered Accountant to have entries made in a Telephone Directory either by making a special request or by means of an additional payment. The Council has also considered the question of permitting entries in respect of Chartered Accountants and their firms under specified groups in telephone/trade directories brought out by government and non-government agencies. It has decided to permit such entries

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subject to the following restrictions:-

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

(d) Responding to Tenders, Advertisements and Circulars

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

(e) Publication of Books or Articles

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

(f) Issue of greeting cards or invitations

The Council does not approve of the issue of greeting cards or personal invitations by members indicating their professional designation, status and qualifications etc. However, the Council is of the view that the designation "Chartered Accountant" as well as the name of the firm may be used in greeting cards, invitations for marriages and religious ceremonies and any invitations for opening or

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inauguration of office of the members, change in office premises and change in telephone numbers, provided that such greeting cards or invitations etc. are sent only to clients, relatives and friends of the members concerned.

(g) Soliciting professional work by making roving enquiries

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

(h) Seeking work from professional colleagues

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

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

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

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

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

(k) Giving public interviews

While giving any interview or otherwise furnishing details about

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

(l) Members and/or firms who publish advertisements under Box numbers

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

(m) Website

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

- (1) The Chartered Accountants and/or Chartered Accountants' Firms would be free to create their own Website subject to the overall guidelines laid down by the Council hereunder. The actual format of the Website is not being prescribed nor any standard format of the Website is being given to provide independence to the Members. There is no restriction on the colours which may be used in the Website.
- (2) Individual Members would also be permitted to have their Webpages in their trade name or individual name.
- (3) The Chartered Accountants and/or Chartered Accountants' Firms would ensure that their Websites are run on a "pull" model and not a "push" model of the technology to ensure that any person who wishes to locate the Chartered Accountants or Chartered Accountants' firms would only have access to the information and the information should be provided only on the basis of specific "pull" request.
- (4) The Chartered Accountants and/or Chartered Accountants' Firms should ensure that none of the information contained in the Website be circulated on their own or through E-mail

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or by any other mode or technique except on a specific “pull” request.

- (5) The Chartered Accountants would also not issue any circular or any other advertisement or any other material of any kind whatsoever by virtue of which they solicit people to visit their Website. The Chartered Accountants would, however, be permitted to mention their Website address on their professional stationery.
- (6) The following information may be allowed to be displayed on the Firms/Members’ Websites:
 - (i) Member/Trade/Firm name.
 - (ii) Year of establishment.
 - (iii) Member/Firm’s Address (both Head Office and Branches)
 Tel. No(s)
 Fax No(s)
 E-mail ID(s)
 - (iv) Nature of services rendered (to be displayable only on specific “pull” request)
 - (iv) Partners

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

Professional	Others	Name	Designation	Area of experience (to be displayable only on specific “pull” request)
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- (vii) Job vacancies for the Chartered Accountant/firm of Chartered Accountants (including articleship).
- (viii) No. of articled clerks. (to be displayable only on specific “pull” request).
- (ix) Nature of assignments handled (to be displayable only

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on specific “pull” request). Names of clients and fee charged cannot be given.

- (7) Since Chartered Accountants in practice/firms of Chartered Accountants are not permitted to use logo with effect from 1st July, 1998, they cannot use logo on Website also.
- (8) Display of Passport size photograph is permitted.
- (9) The members may include articles, professional information, professional updation and other matters of larger importance or of professional interest.
- (10) The bulletin boards can be provided.
- (11) The chat rooms can be provided which permit chatting amongst members of the ICAI and between Firms and its clients. The confidentiality protocol would have to be observed.
- (12) The members/firms can provide on line advice to their clients who specifically request for the advice whether free of charge or on payment.
- (13) The listing on suitable search engine should be permitted. However, the field of search should be restricted only to the field of “Chartered Accountants” or “CA” or “Indian CA”, “Indian CPA”, “Indian Chartered Accountant” or any permutation or combination related thereto. The Websites would be subjected to the guidelines contained herein and normally would not be vetted by the Institute of Chartered Accountants of India (ICAI). ICAI at its sole discretion may vet any of the Websites created by its members or individual Chartered Accountant or firms of Chartered Accountants and would have powers to direct deletion of certain portions and/or issue specific directions. In addition, necessary action can be taken in accordance with the Chartered Accountants Act, 1949 and the Regulations framed thereunder, in case there is any violation of the above guidelines.
- (14) The details in the Website should be so designed that it does not amount to soliciting client or professional work. In case any content or technical feature of Website is against the professional Code of Conduct and Ethics as well as the restrictions contained in the schedules to the Chartered Accountants Act, 1949 or against the guidelines or directions issued by ICAI from time to time, appropriate

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action will be initiated by the ICAI in terms of its disciplinary mechanism either suo-motto or on complaint as provided under the Chartered Accountants Act, 1949.

- (15) The Website should ensure adequate secrecy of the matters of the clients handled through Website.
- (16) A number of Chartered Accountants Societies or other bodies are creating data-bases of Chartered Accountants or Chartered Accountants' Firms and are offering listing to Chartered Accountants. Such listing would be permitted with or without payment. In case a Chartered Accountant or Chartered Accountants' Firm is a member of a professional body or association or Chamber of Commerce and they offer listing to the members or firm, the same would be permitted.
- (17) The Institute of Chartered Accountants of India will regularly inform the aforesaid guidelines to the members and the Chartered Accountants' Firms to ensure the strict compliance of the guidelines. The guidelines may be revised from time to time.
- (18) No Advertisement in the nature of banner or any other nature will be permitted on the Website.
- (19) The Website should be befitting the profession of Chartered Accountants and should not contain any information or material which is unbecoming of a Chartered Accountant.
- (20) The Website may provide a link to the Website of ICAI, its Regional Councils and Branches and also the Website of Govt./Govt. Departments/Regulatory authorities/other Professional Bodies, such as, American Institute of Certified Public Accountants (AICPA), the Institute of Chartered Accountants of England & Wales (ICAEW) and The Canadian Institute of Chartered Accountants (CICA).
- (21) The address of the Website can be different from the name of the firm. But it should not amount to soliciting clients or professional work or advertisement of professional attainments or services. The Website address should be as near as possible to the individual name/trade name, firm name of the Chartered Accountant in practice or firm of Chartered Accountants in practice. The Ethical Standards Board (ESB) of ICAI will decide in case there is any difficulty.

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

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

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

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

Solicitation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A Chartered Accountant wrote several letters to Assistant Registrars/Registrars of Co-operative Societies, Government of West Bengal requesting for allotment of audit work and to enroll his

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name on panel of auditors. - Held he was guilty of professional misconduct under the clause. The activities of the Chartered Accountant went much beyond the instructions of the Council to the effect that roving enquiries should not be made with the Government Department for empanelling the name unless it had been ascertained in advance that specific panel was being maintained. It was also held that an auditor of co-operative societies under a licence granted by co-operative department was not its employee and, therefore, he could not solicit work.

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

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

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

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

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

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

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

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

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

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

- (a) The advertisement which had been put in by the member is a noticeable one and the profession of Chartered accountancy should maintain high standards of integrity, professional ethics and efficiency.
- (b) If soliciting of work is allowed the independence and forthrightness of a Chartered Accountant in the discharge of duties cannot be maintained and therefore some discipline must be maintained by the profession.

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

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

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

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

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

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

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

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

- (i) the nature of the advertisement
- (ii) the function organised on that occasion
- (iii) the persons invited
- (iv) the medium used
- (v) the names of various concerns which had conveyed their good wishes
- (vi) the advertisement having been released by the Respondent himself, and he had solicited professional work by advertisement, he was found guilty in terms of this clause.

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

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

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

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

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

A member wrote a letter to a Company in standard format highlighting his expertise in Sales tax matters and had requested for a draft of Rs. 200/- if his knowledge of the Sales tax matters

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has been found worthwhile. The member was found guilty in terms of this Clause.

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

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

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

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

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

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

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

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

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

Where a Chartered Accountant had issued undated and unsigned

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cyclostyled inland letter containing the name & address of his firm and also bearing his firm's rubber stamp with address on its reverse in the space earmarked for sender's name and address seeking audit assignment from a Cooperative Society. Held that the member was guilty under the clause.

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

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

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

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

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

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

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

A Chartered Accountant had issued a letter to a shareholder of a Company informing him about his eligibility for appointment as statutory auditor of any Company and the said shareholder had forwarded the aforesaid letter of the Chartered Accountant to the Company proposing the Chartered Accountant's appointment as auditor, as a special notice under Section 225 read with Section 224(2)(d) of the Companies Act, 1956. The Company had informed the shareholder that it could not take any action on his letter as the Chartered Accountant's certificate in terms of Section 224(1) of the

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Companies Act had not been received. The Chartered Accountant had directly written to the Complainant Company certifying that the appointment, if made, would be in accordance with the limits specified in Section 224(1B) of the Companies Act. Besides the above Company, other 9 Companies had also received such notices under Section 225 of the Companies Act. It was held by the Council that he was guilty under Clause (6). The Council decided that his name be removed from the Register of Members for a period of one month. He appealed against the decision of the Council to the High Court. The High Court allowed the appeal in part. While upholding the finding of the Council that he was guilty of committing professional misconduct, the Court modified the punishment awarded to him by substituting the same with a censure that he shall be careful in future in observing the high tradition and best standards of the noble profession of Chartered Accountants.

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

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

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

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

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

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

“List of super hit books written by Suresh D. Chauhan. Guide to win girls – Income-Tax raid. Contact for any type of bank for

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institutional loans or deposits”. Held that the Chartered Accountant contravened Clause (6) & (7) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 in having solicited assignment relating to any type of bank or institutional loans or deposits.

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

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

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

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

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

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

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

(Sanjeev Srivastava in Re: – Page 249 Vol. IX-2A-21(4) of

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Disciplinary Cases – Council's decision dated 11th to 13th November 2002)

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

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

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

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

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

Provided *that a member in practice may advertise through a write up, setting out the services provided by*

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him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council;

This clause prohibits advertising of professional attainments or services of a member. However, the services can be advertised in a restricted way through a write up subject to the guidelines of the council issued from time to time. Refer chapter 6 of the book. It also restrains a member from using any designation or expression other than that of a Chartered Accountant in documents through which the professional attainments of the member would come to the notice of the public.

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

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

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

The date of setting up the practice by a member or the date of establishment of the firm on the letter heads and other professional documents etc. should not be mentioned. However in the Website, the year of establishment can be given on the specific "pull" request.

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

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

Members of the Institute in practice who are otherwise eligible may also practice as Company Secretaries and/or Cost Accountants. Such

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members shall, however, not use designation/s of the aforesaid Institute/s simultaneously with the designation “Chartered Accountant”.

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

It is not proper for a Chartered Accountant to use the designation ‘Chartered Accountant’ except on professional documents, visiting cards, letter heads or sign boards and under the circumstances clarified under para (f) of Clause (6).

The name, description and address of member (or firm) may appear in any directory or list of members of a particular body in which the names are listed alphabetically. For a specialised directory or a publication such as a “Who’s Who” (including those compiled on purely local basis), a member should use his discretion in supplying information, bearing in mind the nature and purpose of the publications. In addition to his name, description and address and those of his firm, a member may give where appropriate, directorships held and reasonable personal details and may state his outside interests. He should not, however, give the names of any of his clients. The details of the services offered by his firm can be given through a write-up subject to guidelines of the Council issued from time to time. Refer Council Guidelines Chapter 3 of the book.

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

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

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

- (a) Advertisement for recruiting staff in the member’s own office.

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

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

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

It is usual for local papers to publish details of the examination success of local candidates. Some biographical information is often included. The rule aforementioned is not intended to discourage the printing of news of local interest but is intended to indicate the need for restraint. The candidate's name and address, school and local background, examination passed with details of any prize or place gained, the name of the principal, firm and town in which the principal practices may be published.

The reports and certificates issued by a Chartered Accountant bring him to the notice of the public in a greater or lesser degree. It is therefore incumbent upon him to ensure that the extent and manner of publication of certificates are limited to what is necessary to enable the report or certificate to serve its proper purpose.

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

Publicity is permitted for appointments to positions of local or national importance or for the views of members on matters of similar importance. Mention of the membership of the Institute is desirable in

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such cases. What should be aimed at is to achieve suitable publicity for the Institute and its members generally. Members giving talks or lectures or attending conference may describe themselves as Chartered Accountants only when they are acting in their capacity as Chartered Accountants. Here again reference to the professional firm of the member should not be given.

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

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

With regard to the size of sign board for his office that a member can put up, it is a matter in which the members should exercise their own discretion and good taste. Use of glow signs or lights on large-sized boards as is used by traders or shop-keepers would not be proper. A member can have a name board at the place of his residence with the designation of a Chartered Accountant, provided it is a name plate or name board of an individual member and not of the firm.

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

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

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to ensure that the above noted provisions are complied with both in letter and spirit.

It is advisable for a member that as soon as he is appointed as a director on the Board of a Company, he should specifically invite the attention of the management of the Company to the aforesaid provisions and should request that before any such prospectus or public announcements or public communication mentioning the name of the member concerned, is issued, the material pertaining to the member concerned should, as far as practicable be got approved by him.

The use of the expression 'Chartered Accountant' is permissible. However, the member must ensure that descriptions about his expertise, specialisation and knowledge in any particular field or other appellations or adjectives are not published with his name. Particulars about directorships held by the member in other Companies can, however, be given, but the name of the firm of Chartered Accountants in which the member is a partner, should not be given.

The Council has permitted Network amongst the firms registered with the Institute. A Network is neither permitted to advertise nor to use logo. The firms constituting a Network are permitted to use the words "Affiliates/Members of" (a Network of Indian CA firms) on their professional stationery. Once the relationship of network arises, whether registered or not with the Institute, it will be necessary for such a network to comply with all applicable ethical requirements prescribed by the Institute from time to time. Members attention is drawn to the announcement hosted in the website of the Institute and published in February 2005 issue of the Journal in this regard.

For use of logos by Members on letter heads, visiting cards etc. the Council had decided that the logos unconnected with the first letter of the name of the firm or its partners or proprietors would not be permitted for use by members in practice/firms of Chartered Accountants on their letter heads, visiting cards etc. as the same would have amounted to advertisement or smacking of publicity. Accordingly, an announcement was published in October 1995 issue of Journal at page 66.

Subsequent to above, the Institute came across cases of registration of firm name in circumvention of the provisions contained in the Regulation 190 of the Chartered Accountants Regulations, 1988. The members/firms by themselves or through engineered name had been seeking to obtain firm name approval based on the name of the partner/s selected in the manner that logo of the firm would be identical

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Where a Chartered Accountant had used the designation and expression other than the Chartered Accountant, mentioned his experience as General Manager of a Cooperative Bank, expressed

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himself as President and Chief Executive of an Institute in his professional documents and had depicted religion and politics in his letterheads and letters for professional attainments. Held he was guilty under clause (7).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Yogesh Kumar Sharma v. O.P. Maheshwari of M/s O.P. Maheshwari & Co. (25-CA(212)/2003). - to be published later under Disciplinary Cases Volume X-2B–21(4). Council decision of 281st Meeting held in October, 2008)

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

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

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

The existence of a dispute as regards the fees may be root cause of an auditor being changed. This would not constitute valid professional reasons on account of which an audit should not be accepted by the member to whom it is offered. However, in the case of an undisputed audit fees for carrying out the statutory audit under the Companies Act, 1956 or various other statutes having not been paid, the incoming auditor should not accept the appointment unless such fees are paid. In respect of other dues, the incoming auditor should in appropriate circumstances use his influence in favour of his predecessor to have the dispute as regards the fees settled. The professional reasons for not accepting an audit would be:

- (i) Non-compliance of the provisions of Sections 224 and 225 of the Companies Act as mentioned in Clause (9);
- (ii) Non-payment of undisputed audit fees by auditees other than in case of sick units for carrying out the statutory audit

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under the Companies Act, 1956 or various other statutes;
and

(iii) Issuance of a qualified report.

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

In the last case, however, he may accept the audit if he is satisfied that the attitude of the retiring auditor was not proper and justified. If, on the other hand, he feels that the retiring auditor had qualified the report for good and valid reasons, he should refuse to accept the audit. There is no rule, written or unwritten, which would prevent an auditor from accepting the appointment offered to him in these circumstances. However, before accepting the audit, he should ascertain the full facts of the case. For nothing will bring the profession to disrepute so much as the knowledge amongst the public that if an auditor is found to be “inconvenient” by the client, he could readily be replaced by another who would not displease the client and this point cannot be too over-emphasised.

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

As stated earlier, the object of the incoming auditor, in communicating with the retiring auditor is to ascertain from him whether there are any circumstances which warrant him not to accept the appointment. For example, whether the previous auditor has been changed on account of having qualified his report or he had expressed

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a wish not to continue on account of something inherently wrong with the administration of the business. The retiring auditor may even give out information regarding the condition of the accounts of the client or the reason that impelled him to qualify his report. In all these cases it would be essential for the incoming auditor to carefully consider the facts before deciding whether or not he should accept the audit, and should he do so, he must also take into account the information while discharging his duties and responsibilities.

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

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

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

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

Members should therefore communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the delivery of the communication to the addressee. In the opinion of the

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Council, communication by a letter sent “Registered Acknowledgement due” or by hand against a written acknowledgement would in the normal course provide such evidence.

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

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

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

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

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

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

1. The requirement for communicating with the previous auditor being a Chartered Accountant in practice would apply to all types of audit viz., statutory audit, tax audit, internal audit, concurrent audit or any other kind of audit.
2. Various doubts have been raised by the members about the terms “audit”, “previous auditor”, “Certificate” and “report”, normally while interpreting the aforesaid Clause (8). These terms need to be clarified.
3. As per para 2 of the Institute’s publication viz. Standard on Auditing (SA) 200, “Basic Principles Governing an Audit”, an

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“audit” is the independent examination of financial information of any entity, whether profit oriented or not, and irrespective of its size or legal form, when such an examination is conducted with a view to expressing an opinion thereon.

4. The term “previous auditor” means the immediately preceding auditor who held same or similar assignment comprising same/similar scope of work. For example, a Chartered Accountant in practice appointed for an assignment of physical verification of inventory of raw materials, spares, stores and finished goods, before acceptance of appointment, must communicate with the previous auditor being a Chartered Accountant in practice who was holding the appointment of physical verification of inventory of raw materials, stores, finished goods and fixed assets. The mandatory communication with the previous auditor being a Chartered Accountant is required even in a case where the previous auditor happens to be an auditor for a year other than the immediately preceding year.
5. As explained in para 2.2 of the Institute’s publication viz., ‘Guidance Note on Audit Reports and Certificates for Special Purposes’, a “certificate” is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion. A “report”, on the other hand, is a formal statement usually made after an enquiry, examination or review of specified matters under report and includes the reporting auditor’s opinion thereon. Thus, when a reporting auditor issues a certificate, he is responsible for the factual accuracy of what is stated therein. On the other hand, when a reporting auditor gives a report, he is responsible for ensuring that the report is based on factual data, that his opinion is in due accordance with facts, and that it is arrived at by the application of due care and skill.
6. A communication is mandatorily required for all types of audit/report where the previous auditor is a Chartered Accountant. For certification, it would be healthy practice to communicate. In case of assignments done by other professionals not being Chartered Accountants, it would also be a healthy practice to communicate.
7. Although the mandatory requirement of communication with previous auditor being Chartered Accountant applies, in uniform manner, to audits of both government and non-

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

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

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

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

A chartered Accountant commenced the work of audit on the very day he sent letter to the previous auditor - Held, he was guilty of professional misconduct under the clause. The appointment could be accepted only when the outgoing auditor does not respond within a reasonable time.

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

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

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

A Chartered Accountant commenced the audit within five days of the date of his appointment without sending any communication to

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the previous auditor. The previous auditor also denied the receipt of any communication - Held he was guilty of professional misconduct under the clause.

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

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

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

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

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

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

A Chartered Accountant sent a letter by ordinary post to the previous auditor after the acceptance of the audit assignment. Moreover, no evidence was produced to show that the said letter was either sent to or was received by the previous auditor. - Held he was guilty of professional misconduct under the clause as the same amounts to non-communicating with the previous auditor.

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

A member sent under Certificate of posting a letter to the previous

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

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

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

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

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

- (i) if there is evidence that a communication to the previous auditor had been by R.P.A.D.
- (ii) if there was positive evidence about delivery of the communication to the previous auditor.

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

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

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

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

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A member sent “under Certificate of posting” letter to the previous auditor before accepting the tax audit of a partnership firm. But there was no proof that the said letter was received by the outgoing auditor. He was found guilty in terms of this Clause because a mere posting of a letter “under certificate of posting” is not sufficient to establish communication with the retiring auditor unless there is some other evidence to show that the letter has in fact reached the person communicated with.

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

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

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

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

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

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

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

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

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

Where a Chartered Accountant had accepted the position as an auditor of two Companies previously held by the Complainant

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without first communicating with him in writing. Held that he was guilty under the clause.

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

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

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

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

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

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

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

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

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

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

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

A Chartered Accountant conducted the tax audit of a unit without first communicating with the retiring auditor and the same was admitted by him during the course of enquiry. He was held guilty under Clause (8).

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

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

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

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

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

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

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

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

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

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

(V.K. Khanna vs. Rakesh K. Mehrotra & Deepak Seth – Page 207 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001)

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

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

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

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

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

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

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

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

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

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

A Chartered Accountant had accepted position of Tax Auditor without communicating with the previous auditor. Held that the Respondent was guilty of professional misconduct falling within the meaning of Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

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

A Chartered Accountant accepted statutory audit of a private limited Company without first ascertaining from the Company whether the requirements of Section 225 of the Companies Act, 1956 in respect of such appointment, have been duly complied

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with. He also accepted the audit of the Company without making any communication with the previous auditor and completed and signed the audit report. Held that he was inter alia guilty of professional misconduct under the Clauses (8) and (9).

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

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

(D.R. Soni vs. H.L. Joshi - Page 101 Vol.IX-2B-21(4) of Disciplinary Cases – Council's decision dated 11th to 14th September 2002)

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

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

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

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

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

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the meaning of Clauses (8) & (9) of the Part I of the First Schedule of the Chartered Accountants Act, 1949.

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

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

(R.L.P. Sinha of M/s R.L.P. Sinha & Associates vs. A.K. Manglik - Page 126 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 11th to 13th November, 2002)

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

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

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

(V.K. Wadhwa vs. G.P. Makkar – Page 451 Vol.IX-2A-21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December, 2002)

Where a Chartered Accountant accepted the tax audit u/s 44AB of

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the Income-Tax Act without first communicating with the previous auditor. The complainant wrote a letter to the Respondent to bring the aforesaid default to his notice but did not received any reply from the Respondent. The Respondent had telephonically talked to the complainant and said that the client explained him that the previous auditor had gone out of station and therefore he wanted him to audit his firm's account. The Respondent accepted the said explanation of the client without communicating with the complainant in writing. Held that he was guilty of professional misconduct under Clause (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

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

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

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

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

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

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

(J. Patnaik vs. G.R. Mekap – Page 511 Vol.IX-2A-21(4) of

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Disciplinary Cases – Council's decision dated 26th to 28th December, 2002)

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

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

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

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

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

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

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

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

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

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

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

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

The Complainant was appointed statutory auditor of a private limited Company but the Company did not get their accounts audited by the Complainant. Later the Company produced a Balance Sheet and Profit and Loss Account before the complainant for statutory audit and report prepared by the Respondent's firm in the capacity as an internal auditor without any books of account, which the complainant refused to do. The Respondent was appointed as internal auditor, then as branch auditor and finally as statutory auditor without any knowledge of the complainant. The Respondent signed the unaudited financial statement as the statutory auditor and the same was filed with the Registrar of Companies under section 220 of the Companies Act, 1956. Held that the Chartered Accountant is guilty of professional misconduct within the meaning of Clauses (8) & (9) of Part I of First Schedule to the Chartered Accountants Act, 1949.

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

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

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

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

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

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

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

Communication sent through Registered Post without acknowledgement due-

A member accepted the position of a statutory auditor and sent the communication to the previous auditor through Registered Post without Acknowledgement Due. The Council held the member guilty of professional misconduct under Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

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

Communication sent through some other mode-

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

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

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

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

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

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

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

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

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

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

A member accepted the position of tax auditor without communicating with the previous auditor when the previous auditor was acting as tax auditor without having appointment letter for the same. The Council held him guilty of professional misconduct under Clause (8) of Part I of the First Schedule of the Chartered Accountants Act, 1949 but not under Notification No. 1 CA (7)/46/99 dated 28th October, 1999 as payment of fees outstanding towards internal audit does not fall the requirement of the notification.

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

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

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

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

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

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

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

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The Complainant conducted the Statutory Audit of a Company and issued the Auditor's Report. Subsequently, the Company conducted its AGM and requested the complainant to conduct statutory audit for the subsequent year. But, the Respondent-firm accepted and conducted the statutory audit, without first communicating with the previous auditor in writing and also without ascertaining whether the requirements of Section 224 and 225 of the Companies Act, 1956 have been complied with, and signed the accounts and audit report (through its partner) without knowledge of the Complainant. The Council held the incoming auditor guilty of professional misconduct under Clauses (8) and (9) of Part I of the First Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

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

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

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

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

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Second Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

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

A Member accepted the position as auditor without first communicating with the previous auditor. He accepted the appointment even before the undisputed fees payable to the Complainant was paid. The compliance with Section 224 and 225 of the Companies Act, 1956 were not complied with by the Incoming Auditor.

The Council held the incoming auditor:

- (a) guilty of professional misconduct falling within the meaning of Clauses (8) and (9) of Part I of First Schedule to the Chartered Accountants Act, 1949 and also
- (b) guilty within the meaning of Notification No.1-CA(7)/46/99 dated 28th October, 1999 under Clause (ii) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

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

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

The Council held him guilty of:

- (a) professional misconduct under Clauses (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
- (b) professional misconduct falling within the notification no.1-CA(7)/46/99 dated 28th October, 1999 under Clause (ii) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

(Prafull R. Gandhi of M/s. P.R. Gandhi & Co Vs. Padam Chand

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

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

- (a) professional misconduct under Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
- (b) professional misconduct under Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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

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

- (a) professional misconduct falling within the meaning of Clauses (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
- (b) professional misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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

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

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of:

- (a) professional misconduct under Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 and
- (b) under Notification No.1-CA(7)/46/99 dated 28th October, 1999 issued under Clause (ii) of Part II of the Second Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

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

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

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

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

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

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

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

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

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

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

The Companies Act, 1956 provides for the requirements which an auditor appointed in respect of a Company should satisfy himself about, before he accepts the appointment. The relevant provisions are contained in Sections 224 and 225 of the said Act and the Council has notified that the provisions to be complied with under Clause (9) are those contained in Sections 224 and 225 of the Act. Section 224 contains several provisions in the matter of appointment of auditors in different circumstances and situations whereas Section 225 lays down the procedure which must be followed whenever a Company desires to change its auditors. In order that the validity of the appointment of an auditor is not challenged or objected to by shareholders or the retiring auditors at a later date, it has been made obligatory on the incoming auditor to ascertain from the Company that the appropriate procedure in the matter of appointment has been faithfully followed.

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

1. Clause (9) of Part I of the First Schedule to Chartered Accountants Act, 1949, provides that a member in practice shall be deemed to be guilty of professional misconduct if he accepts an appointment as auditor of a Company without first ascertaining from it whether the requirements of Sections 224 and 225 of the Companies Act, 1956, in respect of such appointment have been duly complied with. Under this clause it is obligatory on the incoming auditor to ascertain from the Company that the appropriate procedure in the matter of his appointment has been duly complied with so that no shareholder or retiring auditor may, at a later date, challenge the validity of such appointment.
2. A question arises as to what is the duty of the incoming auditor under this clause and what steps he should take in order to ascertain whether the Company has complied with the provisions of Sections 224 and 225 of the Companies Act. These guidelines are issued by the Council in order to assist the members in practice to ensure that the provisions of clause (9) are duly complied with.

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

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

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

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

5.1 The first auditor can be appointed by the Board of Directors within one month of the date of registration of the Company. The auditor so appointed will hold office up to the conclusion of the first Annual General Meeting.

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

5.3 The first auditor appointed by the Board of Directors can be removed at any General Meeting and any other auditor can be appointed at such meeting if any member gives due notice of such resolution and such notice, is sent to all the members of the Company at least fourteen days before the date of the meeting. The notice of such a resolution will have to be dealt with as provided in Sections 225(2) and 225(3). In this connection, the procedure discussed in paras 7.4 to 7.7 below will have to be followed before any resolution for removal of the first auditor is passed at the General Meeting. For

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the removal of the first auditor of a Company approval of the Central Government as mentioned in para 5.14 below is not necessary.

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

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

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

5.7 The Company has to give intimation of the appointment to the auditor within seven days of his appointment.

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

5.9 The members of the Company can pass a resolution at the Annual General Meeting to the effect that the retiring auditor shall not be reappointed. They can also pass a resolution at that meeting to appoint some-one else in place of the retiring auditor. Where a notice has been given of an intended resolution to appoint some other auditor(s) in the place of a retiring auditor but such a resolution cannot be proceeded with in view of the fact that the person or persons proposed to be appointed has incurred an incapacity or disqualification or has died, the retiring auditor shall not be reappointed. For this purpose the procedure laid down in Section 225 is to be complied with.

5.10 Except in the circumstances mentioned in 5.8 and 5.9 above, a retiring auditor shall be reappointed if he is otherwise qualified for such reappointment.

5.11 If the Company fails to appoint an auditor at the Annual General Meeting, such appointment will be made by the Central Government. The Company has to give intimation to the Central Government within seven days about the fact that no such appointment has been made.

5.12 The Board of Directors, except for the situation covered by 5.13 below, can fill any casual vacancy in the office of the auditor. Until this appointment is made the remaining auditor, in case there are joint auditors, can function as auditor of the Company.

5.13 If the casual vacancy is caused by the resignation of an auditor,

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such vacancy can only be filled by the Company in any General Meeting. The auditor appointed to fill any casual vacancy shall hold office until the conclusion of the next Annual General Meeting.

5.14 The Company can remove the auditor before the expiry of his term of office by a resolution passed at any General Meeting and after obtaining previous approval of the Central Government.

6. Section 224A of the Companies Act lays down the procedure for appointment of auditor by a Company in which 25% or more of the subscribed capital is held, whether singly or in combination, by the following institutions:-

- (i) A public financial institution.
- (ii) Any financial or other institution established under a State Act in which the State Government holds 51% or more of the subscribed share capital.
- (iii) Government Company, Central Government or any State Government.
- (iv) A nationalised Bank or an Insurance Company carrying on general insurance business.

The procedure to be followed by such a Company, in brief, is as under:

6.1 The appointment or reappointment of auditor at each Annual General Meeting shall be made by a special resolution.

6.2 If the Company fails to make such appointment or reappointment of auditor, the Central Government will have to make the appointment of auditor as provided in Section 224(3).

6.3 The provisions relating to appointment of first auditor, filling of casual vacancy, removal of auditor etc. which are contained in Section 224 will apply to the Company specified in Section 224A.

7. Section 225 of the Companies Act lays down the procedure for appointment of auditor other than the retiring auditor and for removal of existing auditor. The procedure for giving special notice as contained in Section 225(1) does not apply to the removal of the first auditor appointed by the Board of Directors, because separate provision as stated in para 5.3 above is made for this purpose. The procedure to be followed by the Company, is as under:

7.1 If a member of the Company wants that the retiring auditor should not be reappointed or that an auditor other than the retiring auditor should be appointed, he has to give a special notice to the Company

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and specify the resolution which he proposes to move at the Annual General Meeting for this purpose.

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

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

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

7.5 The Company is also required to send the special notice to the members of the Company at least seven days before the Meeting as per the provisions of Section 190(2) read with Sections 172(2) and 53(1) to 53(4) of the Companies Act. According to these provisions, the notice should be sent by post or if that is not practicable then it should be given either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the Articles of Association of the Company.

7.6 After receipt of the above notice, the retiring auditor can submit his representation to the members of the Company. Such representation, on receipt by the Company, is required to be sent to its members as required under Section 225(3) of the Companies Act.

7.7 The representation received from the retiring auditor will have to be considered at the General Meeting of the Company before the resolution proposed by the concerned member is passed. The resolution proposed by the concerned member can be passed only in accordance with the provisions of Section 189 of the Companies Act.

8. Under Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949, the incoming auditor has to ascertain whether the Company has complied with the provisions of the above sections. The word "ascertain" means "to find out for certain". This would mean that the incoming auditor should find out for certain as to whether the Company has complied with the provisions of Sections 224, 224A and 225 of the Companies Act. In this respect, it would not be sufficient for the incoming auditor to accept a certificate from the management of the Company that the provisions of the above sections have been complied with. It is necessary for the incoming auditor to verify the relevant records of the Company and ascertain as to whether the Company has, in fact, complied with the provisions of the above sections. If the Company is not willing to allow the incoming auditor to

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verify the relevant records in order to enable him to ascertain as to whether the provisions of the above sections have been complied with, the incoming auditor should not accept the audit assignment.

9. It is suggested that the incoming auditor should verify the following records of the Company:-

9.1 If the appointment of the auditor is being made for the first time after incorporation of the Company, the auditor should verify as to whether the Board of Directors have passed the resolution for his appointment within one month of the date of registration of the Company.

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

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

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

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

9.6 If the provisions of Section 224A apply to the Company, the incoming auditor should verify as to whether a special resolution as required under the said Section has been duly passed.

9.7 Where the auditor other than the retiring auditor is proposed to be appointed, the incoming auditor should ascertain whether the provisions of Section 225 have been complied with. These provisions equally apply where an auditor who was jointly holding office with another auditor or auditors and any one or more of such joint auditors has not been reappointed.

9.8 For the purpose of ascertaining whether the Company has complied with the provisions of Section 225 of the Companies Act the

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incoming auditor should verify the records of the Company in respect of the following matters:-

- (i) Whether a member of the Company has given special notice of the resolution as required under Section 225(1) at least 14 days before the date of the general meeting. A true copy of this notice should be obtained by the incoming auditor.
- (ii) Whether this special notice has been sent to all the members, of the Company as required under Section 190(2) at least 7 days before the date of the General Meeting.
- (iii) Whether this special notice has been sent to the retiring auditor forthwith as required under Section 225(2).
- (iv) Whether the representation received from the retiring auditor has been sent to the members of the Company as required under Section 225(3).
- (v) Whether the representation received from the retiring auditor has been considered at the general meeting and the resolution proposed by the special notice has been properly passed at the general meeting.

9.9 (A) As regards the mode of sending the notice of the resolution to the members of the Company as provided in Sections 224 & 225, it should be noted that there is no provision that the notice should necessarily be sent by registered post. The notice can be sent by the Company in accordance with the provisions contained in Section 53. The relevant provisions of this section can be briefly summarised as under:

- (i) The notice can be sent by ordinary post by preparing and posting the letter after putting proper address of the person concerned.
 - (ii) If the member or the person concerned has given specific direction to the Company that the notice should be sent to him under certificate of posting or by registered post, with or without acknowledgement due, and has deposited with the Company the sum sufficient to defray the expenses for this purpose, the notice should be sent in such specified manner.
 - (iii) When there are joint holders of shares in a Company, the notice is to be sent to the joint holder whose name appears first in the register of members.
- (B) If it is not practicable to send the notice of the resolution to the

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members by post, such notice can be given either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the Articles of Association of the Company.

(C) In order to ascertain whether notice of the resolution has been sent to the members, the incoming auditor should ascertain whether there is sufficient evidence with the Company to indicate that the notice has been sent by any of the modes stated in (A) or (B) above. The despatch register, postage register, postal certificate (if notice is sent under postal certificate) or such other satisfactory evidence available with the Company should be verified.

(D) As regards the mode of sending the notice of the resolution to the retiring auditor as provided in Sections 224 & 225, attention is invited to the Department of Company Affairs circular dated 17.10.1981 issued to all Chambers of Commerce, which is reproduced below:-

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

(E) Accordingly, it is necessary for the incoming auditor to satisfy himself that the notice provided for in Sections 224 & 225 has been effectively served on the outgoing auditor (e.g. by seeing that the notice has been duly served through hand delivery or by Regd. Post with A.D.). Production of a certificate of posting by the Company would not be adequate for the purpose of the incoming auditor satisfying himself about compliance with Sections 224/225. Acknowledgement received from the outgoing auditor would be one of the forms in which such satisfaction can be obtained.

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

10. Sometimes the annual general meeting is adjourned without

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conducting any business or after conducting business in respect of some of the items on the agenda. The items in respect of which the business is conducted may or may not include the item relating to appointment of auditors. Under Section 224(1) the retiring auditor holds office till the conclusion of the annual general meeting. Therefore, when the annual general meeting is adjourned in the circumstances stated above, the retiring auditor will continue to hold the office of auditor till the adjourned meeting is held and the business listed in the agenda of the meeting is concluded. In case a new auditor is appointed at the original meeting (which is adjourned) such auditor can assume office only after the conclusion of such adjourned meeting.

10.1 If any annual general meeting is adjourned without appointing an auditor, no special notice for removal or replacement of the retiring auditor received after the adjournment can be taken note of and acted upon by the Company, since in terms of Section 190(1) of the Companies Act, special notice should be given to the Company at least fourteen clear days before the meeting in which the subject matter of the notice is to be considered. The meeting contemplated in Section 190(1) undoubtedly is the original meeting.

11. If the incoming auditor is satisfied that the Company has complied with the provisions of Sections 224, 224A and 225 of the Companies Act, he should first communicate with the outgoing auditor in writing as provided in Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 before accepting the audit assignment.

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

1. Where an auditor resigns his appointment as an auditor of a Company or does not offer himself for reappointment as auditor of such Company, he shall send a communication, in writing, to the Board of Directors of the Company giving reasons therefor, if he considers that there are professional reasons connected with his

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resignation or not offering himself for re-appointment which, in his opinion, should be brought to the notice of the Board of Directors, and shall send a copy of such communication to the Institute. It shall be obligatory on the incoming auditor, before accepting appointment, to obtain a copy of such communication from the Board of Directors and consider the same before accepting the appointment.

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

3. The Ethical Standards Board, on a review of the communications referred to in paras (1) and (2), may call for such further information as it may require from the incoming auditor, the outgoing auditor and the Company and make a report to the Council in cases where it considers necessary.

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

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

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

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

Failure to ascertain the requirements of Companies Act re: appointment of auditors.

Where a Board of Directors appointed a Chartered Accountant as auditor of a Company, the Company having failed to appoint one at its annual ordinary general meeting and he wrote to the previous auditor of his appointment and finished the audit on the same date-Held, the vacancy was not a casual vacancy and as the Chartered Accountant was under misapprehension as to the true legal position, he was warned.

(U.C. Majumdar vs. J.N. Saikia - Page 292 of Vol. I of the Disciplinary Cases and page 93 of August, 1954 issue of the

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Institute's Journal - Judgement delivered on 20th May, 1954).

Where a Chartered Accountant applied in response to an advertisement in a newspaper for appointment as auditor and was appointed by the Directors and failed to communicate with the previous auditor and ascertain from the Company whether the requirements of the Companies Act as regards the appointment of the auditors were duly complied with. - Held the Respondent, was guilty on both the counts under clauses (8) and (9).

(B.N. Mohan vs. K.C.J. Satyawadi - Page 11 of Vol. II of the Disciplinary Cases and page 494 of May, 1955 issue of the Institute's Journal-Judgement delivered on 10th March, 1955).

A Chartered Accountant accepted the appointment as statutory auditor of the Company on the basis of resolution of Board of Directors. There was no compliance with the requirement of Section 224 of the Companies Act, 1956 which in the present case required the appointment by the Central Government as the Company did not make appointment in the general meeting. Held, that the Chartered Accountant was guilty of professional misconduct under the Act.

(M.K. Biswas in Re: - Page 979 of Vol.IV of the Disciplinary Cases - decided on 11th September, 1962).

Acting as Auditor inspite of disqualification under law as to the indebtedness to the Company

A Chartered Accountant who was indebted to the Company towards a loan for a sum exceeding Rs. 1000/- taken for the purchase of a car, in the ordinary course of financing business of the Company against the hire purchase agreement and thus was disqualified under Section 226(3) of the Companies Act, 1956 to be appointed as auditor of the Company, acted as the auditor of the Company. Held on borrowing loan, he would be deemed to have vacated his office as auditor but inspite of that he acted as the auditor of the Company. The Chartered Accountant was guilty of professional misconduct under the clause. The word 'indebted' occurring in Section 226(3) means the obligation to pay.

(Ram Parshad Handa & Hari Krishan Khosla vs. B.K. Choudhury - Page 1013 of Vol. IV of the Disciplinary Cases - decided on 14th September, 1968).

A Chartered Accountant accepted the appointment as auditor of the Company without ascertaining from the Company about the

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compliance with the requirements of Sections 224 and 225 of the Companies Act, 1956. He had not taken care to see whether a vacancy existed against which he was appointed, whether the notice of the extraordinary general meeting at which he was appointed was given to the previous auditor. - Held he was guilty of professional misconduct under the clause.

(M. Abdul Rahim vs. L.R.Kamath - Page 264 of Vol. V of the Disciplinary Cases - decided on 13th and 14th September, 1974).

A Chartered Accountant accepted the appointment as auditor of the Company without first ascertaining whether the requirement of the Companies Act, 1956 in respect of such appointment have been complied with. The Central Government agreed to the removal of previous auditor and the appointment of the Chartered Accountant as auditor in his place subject to the approval of the shareholders in the general meeting. However, the Chartered Accountant accepted the audit on the basis of the resolution of the Board of Directors and before the General Meeting ratified of the resolution of the Board of Directors. - Held he was guilty of professional misconduct under the clause.

(D.L.Sukhadia in Re: - Page 279 of Vol. V of the Disciplinary cases - decided on 22nd & 23rd December, 1976).

A Chartered Accountant accepted the appointment as auditor without first ascertaining from the Company whether the provisions of Section 225 of the Companies Act, 1956 in respect of such an appointment have been duly complied with. Special notice received from one of the shareholders, though sent to outgoing auditor, was not sent to the members which is one of the important requirements of Section 225. - Held Chartered Accountant was guilty of professional misconduct under the clause.

(M.R. Gulati vs. S.C. Chirania - Page 317 of Vol. V of the Disciplinary Cases - decided on 26th, 27th and 28th October, 1978).

A member had accepted appointment as auditor of a Company without ascertaining from the Company whether the requirements of Sections 224 and 225 of the Companies Act had been complied with. However, he realised this defect only after acceptance. It was held that the member had not taken care to see if he had been properly appointed as he had:

- (i) accepted the appointment the very next day
- (ii) satisfied himself on the basis of "No objection certificate"

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from the previous auditor but without going through the Directors report, Minutes Book or any other documents.

It was observed that if he had taken care to go through this exercise before accepting the appointment, he could have satisfied himself whether or not the provisions of Sections 224 and 225 had been complied with. The member was found guilty in terms of this Clause.

(Y.S. Muzumdar & Co. vs. H.S. Sardeshpande - Page 116 of Vol. VI(2) of Disciplinary Cases - Decided on 11th, 12th, 13th February, 1988).

A member had been appointed the first auditor of a Company within 30 days of the incorporation as required by Section 224(5) of the Companies Act. Later another member was appointed as the joint auditor nearly after 8 months of the incorporation of the Company, by a resolution of the Board of Directors. It was found that the appointment of the second member was not valid in terms of Section 224(5) of the Companies Act. It was also found that the second member did not ascertain whether there was compliance with the provisions of Sections 224(5) and 225 of the Companies Act. The second member was therefore found guilty in terms of this Clause. It was also found that Respondent had not communicated with the complainant as required by Clause (8) and in so far as he had not done so, he was guilty.

(C.L. Tomson vs. K.A. Chandrasekhara Menon - Page 357 of Vol. VI(2) of Disciplinary Cases - Decided on 18th, 19th and 20th December, 1989)

A member who was appointed as auditor of a Company failed to ascertain first from the Company whether the requirements of Sections 224 and 225 of the Companies Act, 1956, have been duly complied with. He also, did not communicate with previous auditor before accepting the auditor. Therefore, the member was found guilty in terms of Clauses (8) and (9).

(B.B. Shah vs. N.K. Nagarkar - Page 380 of Vol. VI(2) of Disciplinary Cases - Decided on 18th, 19th and 20th December, 1989)

Where a Chartered Accountant had accepted the appointment as auditor of a Company without ascertaining from the Company whether the provisions of Sections 224 & 225 of the Companies Act were complied with in respect of his appointment and he had accepted the position as auditor of the Company without

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communicating with the previous auditors in writing and without waiting for a reasonable time for a reply from the said auditors whether they had no professional objection in his accepting the appointment. Held by the Council and the High Court that the member was guilty under clauses (8) & (9) of Part I of the First Schedule.

(P.P. Sangani in Re: - Page 356 of Vol.VII(2) of Disciplinary Cases – Council's decision at 7th to 9th March, 1991 - Judgement dated 10th August, 1994)

A Chartered Accountant had accepted the appointment as auditor of a private limited Company without communicating with the previous auditor. He accepted the audit and surprisingly completed the audit on the same day and signed the balance sheet on the very next day. He did not ensure that the client Company had complied with the provisions of Section 225, or 224(6) of the Companies Act, 1956, in changing its auditor. He was held guilty under Clauses (8) & (9)

(S.I. Majumdar vs. Vinod Rana - Page 484 of Vol VII(2) of Disciplinary Cases – Council's decision dated 5th to 6th December 1996).

A Chartered Accountant accepted the position as auditor of a private limited Company for a year which was previously and continuously held by the Complainant without communicating with him in writing. He had accepted the appointment as auditor of the above Company without ascertaining whether the requirements of Sections 224 and 225 of the Companies Act, 1956 had been complied with. It was also charged against him that while accepting the said appointment, he had been grossly negligent in the conduct of his professional duties. The Council found that this charge had been misconstrued by the Complainant. This clause would apply only where it is found that the auditor has been negligent in the conduct of his professional duties while discharging his obligations as an auditor and the same would not be applicable in the matter of failure to communicate with the previous auditor or failure to ascertain compliance with Sections 224 and 225 of the Companies Act, 1956 which are covered by different Clauses of the Schedule to the Act. The Complainant had not brought out any material to establish the charge of gross negligence. Therefore, he was held guilty under Clauses (8) and (9). The charge of gross negligence in the conduct of professional duties was not established.

(V.K. Gupta vs. Rajiv Savara - Page 517 of Vol. VII(2) of

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Disciplinary Cases – Council's decision dated 5th to 6th December, 1996).

A Chartered Accountant had accepted the appointment as auditor of a Company without first ascertaining whether the requirements of Section 225 of the Companies Act, 1956 had been duly complied with. Neither the notice for original annual general meeting nor the notice for adjourned annual general meeting was received by the Complainant and even the purported special notice under Section 190(1) for removal/ replacement of the Complainant's firm was received by the Company after the original Annual General Meeting was adjourned without appointing an auditor.

As per Code of Conduct, adjourned meeting is in continuation of the original meeting. The Company cannot act on the special notice received by it in between the period of original meeting and the adjourned meeting. The Company had not received special notice before 14 days of the original meeting. It was held that he had not properly verified the procedure to be followed under Sections 224 and 225 of the Companies Act, 1956 and hence was guilty under Clause (9).

(V.K. Dhingra vs. Satish Tandon - Page 541 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 5th to 6th December, 1996).

The Respondent by letter dated 19th January, 1987 had informed the Complainant that at the adjourned General Meeting of a Company held on 28th February, 1986, he had been appointed as statutory auditor of the Company for the year ended 31st December, 1985. The Complainant had received the notice for holding the Annual General Meeting of the said Company which was fixed for 28th September, 1985. The meeting was adjourned and the adjourned Annual General Meeting was held on 28th February, 1986. The Complainant had received the notice for the adjourned Annual General Meeting also. In both the notices, there was no mention of any proposed change in the auditors of the Company for the year ended 31st December, 1985. In response to the Respondent's letter dated 19th January, 1987, the Complainant informed the Respondent about his continuance as Statutory auditor because neither he had resigned nor the Company had issued any notice for the intended change. The Respondent was held guilty of violation of Clauses (8) & (9). The Council felt that in view of the facts and circumstances of the case, and the repentant

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attitude of the Respondent, there was insufficient justification for imposing any penalty on him.

(T. Ravindra vs. K.F. Jetsey - Page 762 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 8th to 10th December, 1997).

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

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

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

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

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

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

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

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professional misconduct under the Clauses (8) and (9).

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

While the audit was pending, the complainant came to know that the Respondent had signed the accounts of the Company for the two years. The Respondent never communicated with that complainant. The complainant had never resigned from the Auditorship of the Company. No notice for the complainant's removal was sent by the Company. The provision of the Section 225 of the Companies Act, 1956 were not complied with properly by the Company and all this was ignored by the Respondent. Held that the Respondent was guilty of professional misconduct within the meaning of Clauses (8) & (9) of the Part I of the First Schedule of the Chartered Accountants Act, 1949.

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

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

(R.L.P. Sinha of M/s R.L.P. Sinha & Associates vs. A.K. Manglik - Page 126 of Vol. IX-2A – 21(4) of Disciplinary Cases – Council's decision dated 11th to 13th November, 2002)

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

(S.P. Khemka vs. T.G. Ramanathan – Page 387 of Vol. IX-2A –

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21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December, 2002)

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

(V.K. Wadhwa vs. G.P. Makkar – Page 451 of Vol. IX-2A – 21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December, 2002)

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

(Sunil Kashyap of M/s P.C. Bafna & Co. vs. Deepak Batra – Page 435 of Vol. IX-2A – 21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December 2002)

The Complainant was appointed statutory auditor of a private limited Company but the Company did not get their accounts audited by the Complainant. Later the Company produced a Balance Sheet and Profit and Loss Account before the complainant for statutory audit and report prepared by the Respondent's firm in the capacity as an internal auditor without any books of account, which the complainant refused to do. The Respondent was appointed as internal auditor, then as branch auditor and finally as statutory auditor without any knowledge of the complainant. The Respondent signed the unaudited financial statement as the statutory auditor and the same was filed with the Registrar of Companies under section 220 of the Companies Act, 1956. Held that the Chartered Accountant is guilty of professional misconduct

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within the meaning of Clauses (8) & (9) of Part I of First Schedule to the Chartered Accountants Act, 1949.

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

A member accepted the audit without ascertaining the compliance of Section 225 of the Companies Act, 1956. The Previous auditor did not receive any communication from the said company regarding convening of Extra Ordinary General Meeting and his removal as statutory auditor. Also, by accepting the audit before the undisputed fees payable to the previous auditor was duly paid, the member violated the Notification No.1-CA (7)/46/99 dated 28th October, 1999. The Council held him guilty of:

- (a) professional misconduct under Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949,
- (b) guilty of professional misconduct under Clause (ii) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

(Dilip J. Kitawat vs. Sunil P. Shah - Page 361 of Vol. X-2A – 21(4) of Disciplinary Cases – Council's decision dated 26th May, 2005)

The Complainant's firm was the statutory auditor of a company and was re-appointed in Annual General Meeting for the subsequent year. A member accepted the statutory audit of a Company while the Complainant's firm was already re-appointed in AGM, without first communicating with the previous auditor i.e. the Complainant, in writing. Also, the compliance of provisions of Section 224 and 225 of the Companies Act, 1956 was not ascertained before accepting the auditorship of the company.

Also, he accepted the position as auditor previously held by the complainant by under cutting thereby resulting in contravention of clause (12) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 (now repealed vide CA Amendment Act, 2006). Further, he was also negligent in conduct of professional duties. The Council held him guilty of:

- (a) professional misconduct falling within the meaning of Clauses (8), (9) and (12) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

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

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

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

The Council held the him guilty of:

- (a) professional misconduct under Clauses (8) and (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
- (b) professional misconduct falling within the notification no.1-CA(7)/46/99 dated 28th October, 1999 under Clause (ii) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

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

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

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

The Complainant audited the accounts of six Companies and

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

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

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

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

Member accepted the position as auditor without first communicating with the previous auditor. He accepted the appointment even before the undisputed fees payable to the Complainant was paid. The compliance with Section 224 and 225 of the Companies Act, 1956 were not complied with by the Incoming Auditor.

The Council held the incoming auditor:

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

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

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

The Complainant conducted the Statutory Audit of a Company and issued the Auditor's Report. Subsequently, the Company conducted its AGM and requested the complainant to conduct statutory audit for the subsequent year. But, the Respondent-firm accepted and conducted the statutory audit, without first communicating with the previous auditor in writing and also without ascertaining whether the requirements of Section 224 and 225 of the Companies Act, 1956 have been complied with, and signed the accounts and audit report (through its partner) without knowledge of the Complainant. The Council held the incoming auditor guilty of professional misconduct under Clauses (8) and (9) of Part I of the First Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

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

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

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

The Chartered Accountant was alleged to have accepted position of auditor of Company, whereas the Complainant (previous auditor) had not resigned nor had been removed. The Respondent accepted the statutory audit of Company without first

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communicating with the Complainant who was the previous auditor of the Company. The Respondent did not ensure the compliance of requirement of Section 224/225 of the Companies Act, 1956 before accepting appointment as auditor of the Company. Held the Chartered Accountant is guilty under Clauses (8) & (9) of Part I of First Schedule.

(T. S. Kakkar & Co. v. Vipul N. Chauhan of M/s D. Kothary & Co. - to be published later under Disciplinary Cases Volume X-2B-21(4). Council decision of 277th Meeting held in March – April 2008)

A Chartered Accountants firm accepted the appointment of seven companies and completed the audit of accounts, without ascertaining whether the requirements of Section 224 of the Companies Act, 1956 in respect of such appointment have been duly complied with. No communication made with previous auditor in writing. Extensive canvassing was done. Respondent held guilty under clauses (8) & (9) of Part I of First Schedule.

(Brijesh C. Parikh of M/s Brijesh C. Parikh Co. v. Anil A. Shah & Co. (25-CA(57)/2000). - to be published later under Disciplinary Cases Volume X-2B-21(4). Council decision of 278th Meeting held in May, 2008)

Clause (10): *charges or offers to charge, accepts or offers to accept in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or results of such employment, except as permitted under any regulation made under this Act;*

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

Professional services should not be offered or rendered under an arrangement whereby no fee will be charged unless a specified finding

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or result is obtained or where the fee is otherwise contingent upon the findings or results of such services. However, fee should not be regarded as being contingent if fixed by a Court or other public authority.

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

192. Restriction on fees

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

Provided that:

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

The decision of the High Court on this clause is given below:

Where a Chartered Accountant had charged fees at certain percentage of the expected relief - Held, he was guilty of the charges.

(R.B. Basu vs. P.K. Mukherji - Page 137 of Vol.III of the Disciplinary Cases and pages 184-194 of October, 1956 issue of the Institute's Journal - Judgement delivered on 17th July, 1956).

Clause (11): *engages in any business or occupation other than the profession of chartered accountants unless permitted by the Council so to engage:*

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

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

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

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

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

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

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

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

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

As regards the question of permitting a member in practice to be a Director, Promoter/Promoter- Director, Subscriber to the Memorandum

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and Articles of Association of any Company, it was decided that:

(a) Director of a Company

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

(b) Promoter/Promoter-Director

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

Item Nos. 4 of the Specific Resolution would be equally applicable to member carrying out the activities referred to therein in his capacity as Karta/representative of HUF provided he is not actively engaged in carrying on such activities.

The decisions of the Council/High Courts on this clause are given below.

A Chartered Accountant engaged himself in carrying on a business known as Shivaji Engineering Works. Held he was guilty of professional misconduct under the clause.

(D.S. Sadri vs. B.M. Pithawalla - Page 300 of Vol.V of the Disciplinary Cases - decided on 14th, 15th, 16th & 17th September, 1977).

A Chartered Accountant in practice entered into partnership with persons who were not the members of the Institute, for the purpose of carrying on business. The share of the Chartered Accountant in the profit and losses was 25%. He was to take part in the business and was entitled to represent the firm before Govt. authorities etc.

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He was operating the Bank account of the firm, was receiving moneys from the customers and was also looking after the affairs of the partnership - Held he was guilty of professional misconduct under the clause, as he was engaged in the business, without the permission of the Council.

(K.S. Dugar in Re: - Page 1 of Vol. VI(2) of the Disciplinary Cases - decided on 2nd, 3rd and 4th April 1980).

A member in practice was authorised by a resolution of the Board of directors of a Company held on 4.9.81 to look after the day to day affairs of the Company and other Directors were requested to give maximum co-operation to him. Also the member held more than 51% of the shares of the said Company. Later on 8.5.82, he applied to the Council for permission to hold the office of the Executive Chairman of the said Company. It was held on the basis of facts and circumstances of the case that during the period 4.9.81 to 8.5.82 the member had engaged himself in "other occupation" without the permission of the Council and was found guilty in terms of this Clause.

(M.K. Abrol and S.S. Bawa vs. V.P. Vijn - Page 256 of Vol. VI(2) of Disciplinary Cases - Decided on 11th, 12th and 13th February, 1988)

A member having a certificate of practice and having 2 Articled Clerks with him was simultaneously working as a Financial Controller of a Company without the permission of the Council. He was held to be guilty in terms of this Clause in so far as he was engaged in other occupation without the permission of the Council.

(S.K. Kaul vs. S.C. Mangal - Page 132 of Vol. VI(2) of Disciplinary Cases - Decided on 9th and 10th August, 1988)

A member as a Karta of his Hindu Undivided Family entered into partnership business for a short period with non-Chartered Accountants for engaging in business other than the profession of Chartered Accountants, without prior permission of the Council. Therefore, he was found guilty in terms of clauses (4) and (11).

(R.D. Bhatt vs. K.B. Parikh - Page 191 of Vol. VI(2) of Disciplinary Cases - Decided on 15th, 16th and 17th December, 1988)

The Bombay High Court in WP No. 4906 of 1985 decided on 9th February, 1989 has held that the prohibition to enter into any partnership with any person other than a Chartered Accountant under Clause (4) of Part I of the First Schedule is absolute but not so under Clause (11). According to the Court, Clause (11) enables

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the Chartered Accountant to engage in any business or any occupation other than the profession of Chartered Accountancy provided the Council grants permission to engage in such business or occupation. According to the Court, it is obvious that the Council desired to retain the power to permit a Chartered Accountant to engage in any business or occupation which may be incidental or would be useful for carrying on the profession of chartered accountancy. Regulation 166 reiterates what Clause (11) provides. In pursuance of Regulation 166, the Council of the Institute has resolved that permission would be granted to the Chartered Accountants engaged in any business or occupation other than the profession of chartered accountancy in the cases set out in the resolution (Appendix 9). Clause (4) and (11) contemplate two distinct and separate contingencies and Clause (4) cannot be so read as to make Clause (11) and the power retained by the Council to grant permission redundant.

(Nalin S. Sualy vs. Institute of Chartered Accountants of India - Bombay High Court WP No. 4906 of 1985 dated 9th February, 1989)

While dealing with the reasonableness of Clause (11), the Allahabad High Court in CWP No. 1823 of 1988 has decided on 10th July, 1990 that it is always open to place reasonable restriction or to regulate any professional activity. Such restrictions are not new; they are to be found in many fields where it is provided that a person practising any particular profession shall not be engaged in any other business. According to the Court, it may be necessary to have such regulatory provision so that proper and undivided attention of the person practising a profession is available to those to whom they are supposed to render their services. Such professional services should be available to the needy with full and proper care and attention. The profession also requires to maintain certain standard of efficiency which it may not be possible to acquire if a person has his interest somewhere else.

(Iqbal Hamid vs. Institute of Chartered Accountants of India - Allahabad High Court - W.P. No. 1823 of 1988 dated 10th July, 1990)

Where a Chartered Accountant had not disclosed to the Institute at any time about his engagement as a proprietor of a non-Chartered Accountant's firm while holding certificate of practice and had not furnished particulars of his engagement as a Director of a Company despite various letters of the Institute which remained

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unreplied. Held that he was guilty under clause (11) of Part I and clauses (1) and (3) of Part III of the First Schedule.

(P.S. Rao in Re: - Page 110 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 9th to 11th April, 1992).

Where a Chartered Accountant was Karta of the HUF and was engaged in the business of a firm without permission of the Council. Held that he was guilty of professional misconduct under the Clause.

(V. Krishnamoorthy vs. T.T. Krishnaswami - Page 192 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 27th to 29th September, 1992).

Where a Chartered Accountant had already held employment with a Company without prior permission of the Institute as required under the Regulations. Held that he was guilty under the clause.

(R.K. Jain in Re: - Page 252 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 10th to 12th June, 1993).

Where a Chartered Accountant had held a salaried employment as Assistant Manager (Finance & Accounts) in addition to the practice of chartered accountancy without obtaining permission of the Institute as required under Regulations. Held he was guilty held under the clause.

(Anil Kumar in Re: - Page 330 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 16th to 18th January, 1994)

Where a Chartered Accountant had offered to help the Complainant in disposing of odd lot shareholding, sold the shares of the Complainant at much lower rates than the prevailing market rates, had sent to the Complainant contract notes etc. and the said Chartered Accountant was personally involved in the share transfers and broker's business besides his professional activities. Held that he was guilty under the clause.

(Pradeep R. Ghatge vs. Ashvin Bajaria - Page 423 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 13th to 15th June, 1996)

Where a Chartered Accountant in practice had engaged himself in other occupation as an LIC agent without obtaining permission of the Council. Held that he was held guilty under the clause.

(Chief Commissioner (Admn.) & Commissioner of Income-tax, Karnataka-I, Bangalore vs. H. Mohanlal Giriya - Page 443 of

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Vol. VII(2) of Disciplinary Cases – Council's decision dated 13th to 15th June, 1996)

A Chartered Accountant in practice had held full-time salaried employment with a Company without obtaining prior permission of the Council, as required under Regulation 190A of the Chartered Accountants Regulations 1988. He was held guilty under the Clause for being engaged in employment without the permission of the Council.

(R.K. Verma in Re: - Page 650 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 16th to 18th January, 1997).

The charge against a Chartered Accountant, inter alia, was that he had more than 20% shareholdings in a finance and management consultancy private Company, and he could not enter into the business of brokering. It was held that he had to be considered to be a Managing Director or a whole-time Director under the provisions of Section 2(26) of the Companies Act, 1956, since he was entrusted with the whole or substantially the whole of the management of the affairs of the Company. Since he failed to obtain specific and prior approval of the Council for the above, he was held guilty under the Clause.

(J.P. Gupta vs. T.C. Garg - Page 670 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 21st to 23rd July, 1997).

A Chartered Accountant had entered into partnership in a firm with the husband of the Complainant and others and agreed to look after general administration, appointment of office staff, finance and legal matters of civil and taxation nature. He was held guilty of violation of Clause (11).

(Satwant Kaur vs. Rakshit Khosla - Page 696 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 21st to 23rd July, 1997).

The Complainant alleged that the Respondent had engaged in business and occupation other than the profession of Chartered Accountancy and carried on consultancy services under a name which though applied for by him was not approved by the Institute. Thus he was guilty under the Clause.

(Amalendu Gupta vs. R.N. Kapur - Page 726 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 8th to 10th December, 1997).

A Chartered Accountant had been in full-time employment in a

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Company besides holding Certificate of Practice without obtaining Institute's permission and in the bank empanelment form, he had given declaration to the effect that he was not devoting any time to any occupation/vocation/business etc. other than the profession of Chartered Accountant. He was held guilty for violation of Clause (11) of Part I and Clause (1) of

(N.K. Gupta in Re: - Council's decision dated 1st to 4th July, 1998 - Page 1 of Volume VIII(2) of Disciplinary Cases).

The Respondent entered into a partnership with the Complainant for running the business of manufacturing readymade garments. He was held guilty for violation of Clause (11).

(D. Hemalatha vs. P.N. Malolan – Council's decision dated 15th to 17th December, 1999 – Page 87 of Volume VIII(2) of Disciplinary Cases).

Two members, while holding Certificate of Practice, had been in full time employment with an Insurance Company without obtaining the Institute's permission to be so engaged. They also did not disclose the particulars of their full time salaried employment at the time of furnishing particulars in the prescribed Form for registration of the articled clerks. They were held inter alia guilty for violation of Clause (11) of Part I and Clause (1) of Part III of the First Schedule.

(C.M. Mehrotra in Re: - Council's decision dated 11th to 13th October, 1999, Page 76 of Volume VIII(2) of Disciplinary Cases and A.P. Gupta in Re:- Council's decision dated 15th to 17th December, 1999, Page 134 of Volume VIII(2) of Disciplinary Cases).

Where a Chartered Accountant was a partner in a business firm without disclosing his interest and obtaining permission from the Council of the Institute. Held that he was inter alia guilty of professional misconduct under the Clause.

(R.K. Gupta of M/s Gupta Rajendra & Co. vs. M.G. Baig – Page 158 of Vol. VIII(2) of Disciplinary Cases decided by the Council on 1st to 3rd August, 2001)

Where a Chartered Accountant was in full time employment with a Company and had continued his services even after intimating the Institute that he had resigned from service. He had shown himself in full time practice while applying for bank empanelment for 3

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years. Held that he was inter alia guilty of professional misconduct under Clause (11) and Regulation 190A of Chartered Accountant Regulations 1988.

(S.C. Srivastava in Re: – Page 194 of Volume VIII(2) of the Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001)

A Chartered Accountant while in employment with a Corporation conveyed acceptance as statutory auditor to the complainant and declared that he was a full time practicing Chartered Accountant and not employed elsewhere. Held that the Chartered Accountant was inter alia guilty of professional misconduct under Clause (11) for not obtaining permission of the Council for engaging himself in full time employment with the Corporation while holding Certificate of Practice.

(The Senior Manager, Punjab National Bank vs. N.K. Chopra – Pages 271 of Volume VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001)

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

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

A Chartered Accountant who was enrolled as a fellow member of the Institute disclosed in the form "entry of record" that he was engaged as partner of "M/s X Group of Magazines". He was also working as a Director of "M/s. A & Co.". On enquiry, the Respondent informed the Institute that he was engaged as a partner of the said M/s. X Group of Magazines since 1978. The Respondent had never disclosed about this even while he was holding Certificate of Practice in all these years and nor did he seek permission from the Institute to engage himself as a partner in any other occupation. Held that the Chartered Accountant was guilty of professional misconduct under Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(Rajkumar H. Advani in Re: - Pages 373 of Volume VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001. Also published in the December 2002 issue of Institute's journal at page 627)

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The Souvenir published on the occasion of “Navaratrotsav” by ‘Parel Paschim Vibhag Va Tata Mills Welfare Centre 1991’ contained an advertisement with a caption “With best compliments from Abhiraj R. Ranawat B.Com., A.C.A. (Chartered Accountant) Share and Stock Sub-Broker. The said advertisement also contained office timing 8 A.M. to 10 A.M., telephone nos. of market and residence and addresses of office and market. Arising out of the above, the Respondent inter alia held guilty in not taking Institute’s permission for engaging in other occupation i.e. share and stock sub-broker while holding certificate of practice in violation of Clause (11) of Part I of Chartered Accountants Act, 1949.

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

While holding Certificate of Practice the Chartered Accountant had been in full time employment. However, he did not obtain the Institute’s permission to be so engaged as required under Regulation 190A of the Chartered Accountant Regulation 1988. Held that he was inter alia guilty of professional misconduct under Clause (11) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(N.K. Malhotra in Re: - Pages 443 of Volume VIII (2) of Disciplinary Cases – Council’s decision dated 26th to 28th August, 2001)

Where a Chartered Accountant was holding Certificate of Practice and was also in salaried employment elsewhere without obtaining the permission of the Council. Held that he was inter alia guilty of professional misconduct under Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(S.K. Ahuja in Re: - Pages 496 of Vol. VIII (2) of Disciplinary Cases – Council’s decision dated 6th to 8th December, 2001)

A Chartered Accountant had helped private Financial Services Company through his friends in Mumbai to investment in equity and they had invested to the tune of Rs. 30 Lakhs for a limited company. The Financial Services Company which was a consultancy firm was run by his wife. Held that he was guilty of professional misconduct under Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(M. Hariharan in Re: - Pages 1 of Vol. IX-2A–21(4) of Disciplinary Cases – Council’s decision dated 2nd to 4th July, 2002)

Where a Chartered Accountant was doing the brokership of shares

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apart from holding Certificate of Practice without taking permission from the Council. Held that he was inter alia guilty of professional misconduct under Clause (11) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(A.C. Sharma & Mrs. Indu Sharma, Proprietor, M/s Sharma Share Trading Co. vs. Sandeep Abbot – Page 22 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 11th to 14th September 2002)

Where a Chartered Accountant entered into partnership for export of garments without obtaining permission from the Institute. Held that he was inter alia guilty of professional misconduct under Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Mrs. Vimla Manchanda vs. Ashok Kumar Malik - Page 38 of Vol. IX-2A-21(4) of Disciplinary Cases – Council's decision dated 11th to 14th September, 2002)

The Respondent accepted the position of Director and of auditor of a Company for the year 1992 from May 1992 till March 1993. It was argued that the Respondent audited the accounts of the Company only after March 1993 when he was not the Director of the Company. However, the appointment of the auditor, having been made when he was director of the Company, the Respondent was disqualified under Section 226(3)(b) of the Companies Act and that he should not have accepted the position as auditor being the Director of the Company. Held that the Respondent was guilty under the Clause for not having obtained the prior permission of the Council for engaging himself in other occupation, as director of the Company despite of the fact that he was interested in the Company as auditor and has also contravened the provisions of section 224-A read with section 226 of the Companies Act, 1956.

(A.V. Deshmukh vs. J.D. Sanghvi – Page 491 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December 2002)

The Respondent was in full time employment with a Company without obtaining permission of the Institute besides holding Certificate of Practice. Held that the Respondent was inter alia guilty under the Clause.

(Arvind Kumar in Re: – Page 553 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December 2002)

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The Respondent, while in employment with a Company, passed Chartered Accountancy Examination and sought permission in the year 1987 to do practice, on a part time basis from the Complainant Company. While still in employment, he wrote a letter to the Institute that he had resigned, which was false and misleading. Held that the Respondent was inter alia guilty of professional misconduct under the Clause.

(Managing Director, A.P. Handicrafts Dev. Corpn. Ltd. vs. A. Bhimeswara Swamy – Page 590 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 7th to 8th & 24th to 25th April 2003)

Where a Chartered Accountant acted as karta of a Hindu Undivided Family (HUF) without taking prior permission of the Council. Held that he was inter alia guilty of professional misconduct under the clause.

(B.L. Asawa, Chief Manager, Punjab National Bank, Delhi vs. P.K.Garg – Page 728 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 16th to 18th Sept. 2003)

Where a Chartered Accountant continued to remain as a Director of a Company when one of his partners was interested in that Company as an auditor. Held that he was guilty of professional misconduct by continuing to hold office as a Director of the Company,

(Registrar of Companies, West Bengal vs. K.C. Lunawat – Page 819 of Vol. IX-2A-21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September, 2003)

The Respondent was engaged in business of Share Dealer and Financial Advisor in which he was sole proprietor and was also practicing as CA from the same address. Held that the Chartered Accountant was inter alia guilty of professional misconduct within the meaning of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Chatar Lal Mantri vs. Vinod Kumar Agarwal – Page 869 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September, 2003)

The Respondent who was a partner in a C.A. firm besides being in employment was also holding Certificate of Practice without taking prior permission of the Institute. Held that the Chartered Accountant was guilty of professional misconduct within the

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meaning of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Sudesh Pandit in Re: – Page 882 of Vol. IX – 2A – 21(4) of Disciplinary Cases–Council’s decision dated 16th to 18th Sept. 2003)

Where a Chartered Accountant had been carrying on business on “Share Market” at the Calcutta Stock Exchange being a member of the said exchange and was also holding Certificate of Practice without taking prior permission of the Institute. Held that he was guilty of professional misconduct within the meaning of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(S.K. Sharma vs. V.K. Kandoi – Page 122 of Vol. IX – 2B – 21(4) of Disciplinary Cases – Council’s decision dated 2nd to 4th February, 2004)

Where a Chartered Accountant was engaged in business other than the profession of Chartered Accountancy without taking prior permission of the Institute. Held that he was guilty of professional misconduct within the meaning of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

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

Where a Chartered Accountant was engaged in business of purchase and sale of imported glasses other than profession of Chartered Accountant without taking prior permission of the Institute. Held that he was inter alia guilty of professional misconduct within the meaning of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(Chintamany Abhyankar in Re: – Page 53 of Vol. IX – 2B – 21(4) of Disciplinary Cases – Council’s decision dated 2nd to 4th February, 2004)

A member, without surrendering her certificate of practice, and without obtaining prior permission from the Council of the ICAI, accepted the job of a full time lecturer and as HOD (18 hrs per week) in a College. The Council held that the member guilty of professional misconduct under Clause (11) of Part I of the First Schedule read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Saraswati Gurunath Joshi vs. Himangi S. Prabhu - Page 555 of

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Vol. X – 2A – 21(4) as decided on 21st June, 2006, 260th Meeting of the Council)

A member while employed with the Complainant Company as Chief Accountant had not taken permission of the Institute to engage himself in employment while holding Certificate of Practice. The Council held him guilty of professional misconduct falling within the meaning of Clause (11) of Part I of the First Schedule of the Chartered Accountants Act, 1949.

(Abdul Aziz Mohd. Khan, Director of M/s Precision Dies and Tools Mfg. Co. vs. Rajesh Laddha - Page 537 of Vol. X – 2A – 21(4) as decided on 4th February, 2006, 257th Meeting Of The Council)

A Chartered Accountant's wife was made Chairperson of a Company and the Company and the respondent firm operated from same premises. The respondent as MD of Company, executed an agreement for appointment of the Complainant as a stockist and accepted deposit as security money. Respondent was held guilty under clause (11) of Part I of First Schedule.

(Atul K. Gupta v. Swadesh C. Srivastava (25-CA(57)/99). - to be published later under Disciplinary Cases Volume X -2B-21(4). Council decision of 277th Meeting held in March – April 2008)

A Chartered Accountant was whole time Director of a Company and managing day to day affairs of Company along with another person. Respondent was having Certificate of Practice. In equity issue, the respondent along with another person siphoned out the money leaving the shareholders valueless and also, solicited clients by advertisements. Held, the Respondent is guilty under Clause (11) of Part I of First Schedule and is not guilty of remaining charges.

(Dr. Abhijit Sen, Alliance Credit & Investment Ltd. v. Parmanand Tiwari of M/s Tiwari & Co. (25-CA(75)/98) - to be published later under Disciplinary Cases Volume X -2B-21(4). Council decision of 278th Meeting held in May, 2008).

A Chartered Accountant firm was working as Recovery Agent for Housing Finance Company without taking any permission from the Council to engage in any work other than the profession of Chartered Accountancy. The Respondent had written a letter to the Complainant for recovery of money wherein he represented himself as an agent of LIC housing Finance Ltd. He intimidated the Complainant with harsh and coercive method of recovery. Held

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that the Respondent is guilty under clauses (7) & (11) of Part I of First Schedule.

(Yogesh Kumar Sharma v. O. P. Maheshwari of M/s O. P. Maheshwari & Co. (25-CA(212)/2003) - to be published later under Disciplinary Cases Volume X-2B-21(4). Council decision of 281st Meeting held in October, 2008)

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

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

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

The term 'financial statement' for the purposes of this clause would cover an examination of the accounts or of financial statements given under a statutory enactment or otherwise.

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

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

- (i) Issue of audit queries during the course of audit.
- (ii) Asking for information or issue of questionnaire.
- (iii) Letter forwarding draft observations/financial statements.

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- (iv) Initialing and stamping of vouchers and of schedules prepared for the purpose of audit.
- (v) Acknowledging and carrying on routine correspondence with clients.
- (vi) Issue of memorandum of cash verification and other physical verification or recording the results thereof in the books of the clients.
- (vii) Issuing acknowledgements for records produced.
- (viii) Raising of bills and issuing acknowledgements for money receipts.
- (ix) Attending to routine matters in tax practice, subject to provisions of S.288 of Income-tax Act.
- (x) Any other matter incidental to the office administration and routine work involved in practice of accountancy.

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

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

PART II OF THE FIRST SCHEDULE

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

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

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

Clause (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;*

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

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

PART III OF THE FIRST SCHEDULE

Professional Misconduct in Relation to Members of the Institute Generally

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

Clause (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;*

Where a Chartered Accountant had not disclosed to the Institute at any time about his engagement as a proprietor of a non-Chartered Accountants' firm while holding certificate of practice and had not furnished particulars of his engagement as a Director of a Company despite various letters of the Institute which remained unreplied. Held that he was guilty under clause (11) of Part I and clauses (1) and (3) of Part III of the First Schedule.

(P.S. Rao in Re:- Page 110 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 9th to 11th April, 1992).

Where a Chartered Accountant had continued to train an articled clerk though his name was removed from the membership of the Institute and he had failed to send any reply to the Institute asking him to send his explanation as to how he was training as his articled clerk when he was not a member of the Institute. Held that he was guilty under clause (3) of Part III of the First Schedule.

(S.M. Vohra in Re:- Page 151 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 16th to 18th July, 1992).

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.*

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

PART IV OF THE FIRST SCHEDULE

Other misconduct in relation to members of the Institute generally

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

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

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

Clause (2): *in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.*

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

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

5.16 The Second Schedule

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

PART I OF SECOND SCHEDULE

Professional misconduct in relation to chartered accountants in practice:

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

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

An accountant, in public practice, has access to a great deal of information of his client which is of a highly confidential character. It is important for the work of an accountant and for maintaining the dignity and status of the profession that he should treat such information as having been provided to him, only to facilitate the performance of his professional duties for which his services have been engaged. To divulge such information would be a breach of professional confidence which may give rise to the most serious consequences, even to an action by the client for the loss suffered by him through such a breach. But for this confidence that the public has developed in the integrity of accountants, it would not be possible for persons in a similar trade or industry to appoint the same accountant. The accountant's duty not to disclose continues even after the completion of his assignment. In the context of disclosure of information, attention of members is invited to the provisions of Securities and Exchange Board of India (Insider Trading) Regulations, 1992.

If disclosure is required as a part of performance of professional duty by a practising member in relation to a client, the fact that such performance is required by the client would itself amount to the client

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consenting to such disclosure. Thus, a member in practice submitting information to, say, Exchange Control authorities, while performing his professional duties cannot be considered to have made disclosure without the aforesaid consent. But, in all cases, the request or the initiative that the member does prefer the service which would entail such disclosure must come from the client in relation to whose affairs the disclosure would be entailed.

If disclosure is required in other cases, it would be necessary to ensure that the consent of the client is given by a person who is competent to accord such consent. Thus, in the case of a sole-proprietory concern, the consent may be given by the proprietor or his constituted attorney who is legally empowered to give such consent. In the case of a partnership firm, since in turn, every partner has the authority to bind the firm by his acts, the consent may be given by any partner. In the case of a Company, by virtue of Section 291 of the Companies Act, the Board of Directors is empowered to do all that the Company in a general meeting may do unless a resolution by the Company in a general meeting is required by the Act or by the Memorandum or Articles of the Company. Hence, the consent may be given by the Managing Director if the powers of the Board of Directors are delegated to him comprehensively enough to include the power to give such consent, but if the powers of the Board of Directors are not so delegated, the consent should be obtained by means of resolution of the Board of Directors of the Company.

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

However, the auditor may, at his discretion, in cases considered appropriate by him, make portions of or extracts from his working papers available to the client. The above clarification has been published in April, 2000 issue of the Journal, 'The Chartered Accountant' at page 89.

There is a difference between sharing of working papers and

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sharing of information. So far as the information is concerned, he can provide the same to the client or to a Regulatory body after obtaining the consent of the client.

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

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

Role of Chartered Accountants in relation to unlawful acts by their Clients.

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

1. The question of the member's liability when he is not directly involved in tax frauds committed by his client but he discovers such fraud in the course of his professional work, the action recommended to be taken by him is indicated below.

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

- (a) No duty is cast on a member, whether by Section 39 of the Code of Criminal Procedure 1973, or by any other enactment, to inform the Income-tax Authorities about taxation frauds by his client of which he comes to know during the course of his professional work.
- (b) Under Section 126 of the Evidence Act, a barrister, attorney, pleader or Vakil is barred from disclosing, except with the express consent of his client, any communication made to him in the course of and for the purpose of his employment or to state the contents or conditions of any document with which he has become acquainted with in such course. The proceedings before the Income-tax authorities are judicial proceedings and the assessee is authorised to be represented by a Chartered Accountant. The privilege given and the restrictions imposed by Section 126 apply as

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between the client and the member, as the member is the client's attorney. Nothing in Section 126 shall protect from non-disclosure any fact observed by a barrister, pleader, attorney or Vakil in the course of his employment at such showing that any crime or fraud has been committed since the commencement of his employment.

- (c) Subject to the above, it is not the duty of a member to shield a client from the consequences of his tax frauds, on the contrary it is guiding principle of professional conduct to discourage tax evasion.

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

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

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

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

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

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

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

10. It should be impressed on the client that:

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

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

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

The decisions of the Court on this clause are given below:

Disclosure of information Where a Chartered Accountant disclosed to the Income-tax Officer information acquired in the course of his professional engagement without the consent of his clients - Held, he was guilty under clause (1).

(Jamnadas Harakchand and Others vs. P.C. Parekh - Page 492 of Vol. IV of the Disciplinary Cases and pages 26-44 of July, 1967

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issue of the Institute's Journal - Judgement delivered on 12/16th January, 1967).

Where a Chartered Accountant had disclosed information acquired by him in the course of his professional engagement to persons other than his clients without the consent of his client and without requirement in any law. It was held that he was guilty of professional misconduct under Clause (1) of Part I of the Second Schedule to the Chartered Accountants Act.

(Bank of India vs. Ved Prakash - Page 458 of Vol.VI(1) of Disciplinary Cases - Judgement dated 13th July, 1989).

The Respondent was the auditor of a Branch of a Bank for the years ended 31st December, 1985 and 31st December, 1986. In the course of audit, he found certain irregularities/ violations on which he drew the attention of the Managing Director of the Bank by his letter dated 5th August, 1986. Since to his knowledge, no action was taken by the Managing Director, he wrote letters to the various Government authorities informing them various irregularities/violations as aforesaid. The Complainant alleged that the Respondent was guilty under this Clause. Having regard to the opinion of the Disciplinary Committee that there was no malafide intention on the part of the Respondent in writing letters to various Government authorities in regard to the irregularities noted by him in course of his audit of the Bank as well as the disturbed mental condition of the Respondent during the relevant time, the Council thought it fit to recommend to the Kerala High Court that the proceedings against the Respondent may be filed. Under the circumstances of the case, the High Court decided to file the case.

(State Bank of Travancore vs. Mani S. Abraham - Page 247 of Vol. VII(1) of Disciplinary Cases - Judgement dated 17th January, 2000).

Where a Chartered Accountant discloses to the Registrar of Companies (ROC) information acquired during the course of his professional engagement without the consent of the Client and without there being any requirement in Law to disclose the same. The Court rejected the contention of the respondent that the voluntary disclosure made by him to the ROC was in public interest and that the same was done with a view to bring home the circumstances under which he was wrongfully removed from the auditorship. The Court observed that:

“From the facts on record it is evident that the respondent was

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aggrieved by the action of the company in removing him from the auditorship and there were disputes regarding non-payment of his professional fees and in these circumstances the letter was written more out of vengeance rather than public interest. If the public interest was the paramount consideration, then the respondent would have made a report disclosing all such information to the shareholders/creditors. The fact that no such report was made and the fact that after his removal from the auditorship on 14.12.1982, the respondent chose to write a letter on 28.12.1982 to the ROC without there being such obligation, clearly shows that the plea of public interest raised is only a ruse and not a bonafide action on the part of the respondent. It cannot also be stated that the letter was written with a view to protect his own interest. No action was contemplated by the ROC against the respondent and hence there was no question of addressing a letter to protect his own interest. Therefore, addressing a letter to the ROC was neither in public interest nor with a view to protect his own interest.”

Held that the respondent had committed gross professional misconduct under Clause 1 of Part I of the Second Schedule of the Chartered Accountants Act, 1949.

(Director, M/s Shree Industrial Rubber Works Pvt. Ltd. vs. S.R. Khanna - Page 437 of Vol. VIII-1-21(6) of Disciplinary Cases-Judgement dated 5th August, 2004)

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

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

An exception however has been made in respect of an examination carried out by another Chartered Accountant in practice. This enables two or more members to accept a joint assignment or enables a member also to carry out the examination of financial statements by or with the assistance of another Chartered Accountant in practice.

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Where the joint auditors are appointed, the work is normally divided among themselves in terms of identifiable units or specified areas, or with reference to the items of assets or liabilities, or income or expenditure or to the period of time etc. Such division should be adequately documented and communicated to the auditee.

In the course of his work, where a joint auditor comes across matters which are relevant to the areas of responsibility of other joint auditors and which deserve their attention, or which require disclosure or require discussion with, or application of judgement by, other joint auditors, he should communicate the same to all the other joint auditors in writing. This should be done by the submission of a report or note prior to the finalisation of the audit.

In respect of audit work divided among the joint auditors, each joint auditor is responsible only for the work allocated to him, whether or not he has prepared a separate report on the work performed by him. On the other hand, all the joint auditors are jointly and severally responsible-

- (a) in respect of the audit work which is not divided among the joint auditors and is carried out by all of them;
- (b) in respect of decisions taken by all the joint auditors concerning the nature, timing or extent of the audit procedures to be performed by any of the joint auditors. It may, however, be clarified that all the joint auditors are responsible only in respect of the appropriateness of the decisions concerning the nature, timing or extent of the audit procedures agreed upon among them; proper execution of these audit procedures is the separate and specific responsibility of the joint auditor concerned;
- (c) in respect of matters which are brought to the notice of the joint auditors by any one of them and on which there is an agreement among the joint auditors;
- (d) for examining that the financial statements of the entity comply with the disclosure requirements of the relevant statute; and
- (e) for ensuring that the audit report complies with the requirements of the relevant statute.

Each joint auditor should decide for himself the appropriateness of using test checks or sampling, the nature, timing and extent of audit procedures to be applied in relation to the work allotted to him.

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Obtaining and evaluating the information and explanations from the management is the joint responsibility of the joint auditors unless they agree upon a specific pattern of distribution of this responsibility. In case of distribution of the responsibility, the liability of the joint auditors is limited to the area allotted to that auditor.

For detailed consideration of the subject, the members must refer to Standard on Auditing (SA) 299, "Responsibility of Joint Auditors".

The decisions of the Court on this clause are given below:

Where a Chartered Accountant issued certificates of consumption which did not reflect the correct factual position of the consumption of raw materials by the concerned units. Also the same certificates have been issued without examining and scrutinising thoroughly/properly the requisite records. Held that the respondent was guilty of professional misconduct under clauses (2) and (7) of part I of second schedule read with section 21 & 22 of the Chartered Accountants Act, 1949.

(JDI, Bombay vs. B.K. Kurhade - Page 585 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 12th August, 2004)

Where a Chartered Accountant issued false certificates to several parties for past exports for monetary consideration without verifying any supporting records or documents. On the strength of these false certificates, certain unscrupulous importers were able to obtain import license, effect imports and clear these free of duty, perpetuating a fraud on Government revenue and depriving the Government of its legitimate revenue to the tune of several Crores of Rupees. On his statements to the Department he confessed the above fact and disclosed that he had issued these certificates for monetary consideration and without verification of supporting documents on record. Held that the respondent was guilty of professional misconduct within the meaning of clauses (2), (7) & (8) of Part I of the second schedule of the Chartered Accountants Act, 1949 in terms of section 21 & 22 of the said Act.

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

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

The Council has issued Standard on Assurance Engagements

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

Further, the attention of the members is drawn to "Guidance Note on Reports in Company Prospectuses (Revised)" issued by the Council in October, 2006. This Guidance Note provides guidance on compliance with the provisions of the Companies Act, 1956 and the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 relating to the reports required to be issued by chartered accountants in prospectus/statement in lieu of prospectus issued by the companies for the offerings made in India.

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;*

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

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In this connection attention of members is also invited to Chapter IV of Council Guidelines No. 1-CA(7)/02/2008 dated 8TH August, 2008. The said guidelines state that a member of the Institute shall not express his opinion on financial statements of any business or enterprise in which one or more persons, who are his “relatives” within the meaning of Section 6 of the Companies Act, 1956, have either by themselves or in conjunction with such members, a substantial interest in the said business or enterprise.

For the purpose of said guideline and aforesaid clause, the expression “substantial interest” shall have meaning as is assigned thereto, under Appendix (9) of the Chartered Accountants Regulations, 1988. (see **Appendix-‘F’**).

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

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

Member must take care to see that they do not land themselves in situations where there could be conflict of interest and duty. For example, where a Chartered Accountant is appointed the Liquidator of a Company, he should not qua a Chartered Accountant himself, audit the Statement of Accounts to be filed under Section 551(1) of the Companies Act, 1956. The audit in such circumstances should be done by a chartered Accountant other than the one who is the Liquidator of the Company.

In this connection, the Council has decided not to permit a Chartered Accountant in employment to certify the financial statements of the concern in which he is employed, or of a concern under the same management as the concern in which he is employed, even though he holds certificate of practice and that such certification can be done by any Chartered Accountant in practice. This restriction would not however apply where the certification is permitted by any law, e.g. Section 228(iv) of the Companies Act, 1956 and the

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Companies (Branch Audit Exemption) Rules, 1961 made thereunder. The Council has also decided that a Chartered Accountant should not by himself or in his firm name:-

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

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

Attention of the members is invited to the provisions of Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act which provides that a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he expresses his opinion on financial statements of any business or any enterprise in which he, his firm or a partner in his firm has a substantial interest.

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

1. Where the member, his firm or his partner or his relative has substantial interest in the business or enterprise.

The independence of mind is a fundamental concept of audit and/or expression of opinion on the financial statements in any form and, therefore, must always be maintained. Nothing can substitute for the essential and fundamental requirements of independence. Therefore, the Council's views are clarified in the following circumstances.

- (i) An enterprise/concern of which a member is either an owner or a partner

The holding of interest in the business or enterprise by a member himself whether as sole-proprietor or partner in a firm, in the opinion of the Council, would affect his independence of mind in the performance of professional duties in conducting the audit and/or expressing an opinion on financial statements of such enterprise. Therefore, a

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member should not audit financial statements of such business or enterprise.

- (ii) Where the partner or relative of a member has substantial interest

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

- 2. Where the member or his partner or relative is a director or in the employment of an officer or an employee of the Company. Section 226 of the Companies Act specifically prohibits a member from auditing the accounts of a Company in which he is a director or in the employment of an officer or an employee of the Company. Although the provisions of the aforesaid section are not specifically applicable in the context of audits performed under other statutes, e.g. tax audit, yet the underlying principle of independence of mind is equally applicable in those situations also. Therefore, the Council's views are clarified in the following situations.

- (i) Where a member is a director

In cases where the member is a director of a Company the financial statements of which are to be audited and/or opinion is to be expressed, he should not undertake such job and/or express opinion on the financial statements of that Company.

- (ii) Where a partner or relative of the member is a director in the Company who has a substantial interest.

In such cases for the reason as not to compromise with the independence of mind, the member may desist from undertaking the audit of financial statements and/or expression of opinion thereon.

The meaning of the words "relative" and "substantial interest" shall be the same as are contained in the Resolution passed by the Council in pursuance to Regulation, 190A of Chartered Accountants Regulations, 1988 (see **Appendix-'F'**).

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

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

A statutory auditor of a Company cannot also be its internal auditor, as it will not be possible for him to give independent and objective report issued under sub-Section 4A of Section 227 of the Companies Act read with the Companies (Auditor's Report) Order, 2003.

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

The decisions of the Courts on this clause are briefly given below:-

Where a Chartered Accountant conducted the audit of accounts of an evening college in Mangalore besides working in the same college as Lecturer/Vice-Principal. Held that he was guilty of professional misconduct under the Clause.

(H.R. Shetty in Re: – Page 402 of Vol. VIII–1–21(6) of Disciplinary Cases – Judgement delivered dated 17th December, 2003 and

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published in the April, 2004 issue of Institute's Journal at page 1122)

Where a Chartered Accountant was auditor of a private limited Company in Ambala City since its inception, while his wife held 65 per cent of the shares in the said Company, and was the Director of the Company. Held that the Respondent was inter alia guilty of professional misconduct under Clause (4) of Part I of the Second Schedule.

(Promila Jain vs. Hardeh Kant – Page 416 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered dated 6th May, 2004)

Where a Chartered Accountant accepted the audit of a company inspite of the fact that his wife was the Director of the company and also holding substantial interest in that Company. He had also not disclosed such interest in his report while expressing his opinion on the financial statements of such Company. Held that the respondent was guilty of professional misconduct within the meaning of clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 in terms of section 21 read with section 22 of the said Act.

(Bharat D. Bhatia vs. Vijay R. Ashar - Page 807 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 13th August, 2004)

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

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

"Information is material, if its mis-statement (i.e., omission or erroneous statement) could influence the economic decisions of users taken on the basis of the financial information. Materiality depends on the size and nature of the item, judged in the particular circumstances of its misstatement. Thus, materiality provides a threshold or cut-off point rather than being a primary qualitative characteristic which the information must have if it is to be useful."

It should be borne in mind that there may be cases where an item

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may not be material from the point of view of the balance sheet, but may have material significance in relation to the profit and loss account for that year and vice-versa. It is therefore essential that care should be taken to ensure that the aspect of materiality should be judged in relation to both the balance sheet and the profit and loss account.

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

The decisions of the Courts on this clause are briefly given below:-

Where a Chartered Accountant failed to report to the shareholders of a Company about the non-creation of a sinking fund in accordance with the Debenture Trust Deed and did not make clear that the amounts shown as towards Sinking Fund were borrowed from the Managing Agents of the Company - Held, that the Chartered Accountant was in duty bound to see that the nature and subject matter of the charge over a security and the nature and mode of valuation of the Sinking Fund Investments were disclosed in the Balance Sheet in accordance with Form F and he was found guilty of misconduct.

(Davar & Sons Ltd. vs. M.S. Krishnaswamy - Page 120 of Vol.I of the Disciplinary Cases and pages 33-40 of June, 1952 issue of the Institute's bulletin - Judgement delivered on 3rd October, 1952).

Where a Chartered Accountant failed to examine how debts became bad and were written off - Held he was guilty under Clause (5).

(A.Doraiswamy Naidu vs. P.N. Raghavendra Rao - Page 468 of Vol. IV of the Disciplinary Cases and pages 463-465 of February 1966 issue of the Institute's Journal -Judgement delivered on 27th October, 1965).

Where a Chartered Accountant had falsely certified the circulation figures of a newspaper by stating that he had checked inter alia the newsprint sheets and machine room returns when they had not at all been maintained by the publisher. - Held he was guilty under Clauses (5) and (9).

(Audit Bureau of Circulations Ltd. vs. K.L. Agarwal - Page 616 of

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Vol.IV of the Disciplinary Cases and Page 438 of February, 1968 issue of the Institute's Journal - Judgement delivered on 24th July, 1967).

Where a Chartered Accountant had not disclosed the fact that a large amount of loan had been given out of the funds of an Employees Provident Fund to the Employer Company in contravention of the Rules of the Provident Fund and had failed to report on the default in clearing the cheques received in repayment of the loan. Held by the High Court that he was not guilty of any non- disclosure to the individual subscribers of the Provident Fund because he owed no duty to disclose to them and he was well within his rights to have disclosed the irregularities to the Trustees themselves and to the Company which had appointed him.

Held by the Supreme Court on appeal that it was no defence for the Chartered Accountant to say that he had disclosed the irregularities to the Company as it was his duty to have made a disclosure thereof to the beneficiaries of the Provident Fund in the statement of accounts signed by him as the legal position of the Auditor in the present case was similar to that of the auditor appointed under the Companies Act. He was therefore guilty of professional misconduct under Clause (5).

(Kishori Lal Dutta vs. P.K. Mukherjee - Page 646 of Vol. IV of the Disciplinary Cases and page 573 of April, 1968 issue of the Institute's Journal -Judgement delivered on 26th February, 1968).

Where a Chartered Accountant had issued publishers certificates of circulations in disregard of the Complainants Rules which he had undertaken to comply with -Held he was guilty under clauses (5), (6) & (9) of Part I of the Second Schedule.

(Audit Bureau of Circulations vs. V.I. Oommen - Page 51 of Vol.VII (1) of Disciplinary cases - judgement dated 6th October, 1995)

Where a Chartered Accountant had issued a false Certificate, certifying existence of assets created by company, on the basis of which a Financial Corporation released a sum of Rs.4.65 lakhs to the said Company. The Respondent, it was alleged, had certified that the Company had invested Rs.5,04,424/- whereas on inspection by officers of the Corporation, it was found that the investment by the Company was only to the extent of Rs.58,169/-. Held that the Respondent was guilty of professional misconduct under Clause (5), (6), (7) and (8) of Part I of the Second Schedule.

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(Deputy General Manager, Rajasthan Financial Corporation, Pali vs. C.K. Vyas – Page 321 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered dated 29th November, 2003)

Where a chartered accountant failed to bring attention to the heavy cash transaction entered into by the assessee in his audit report submitted in Form 3CD in terms of section 44AB of the Income Tax Act, 1961 for the Assessment year 1988-89. Held that the respondent was guilty of professional misconduct within the meaning of Clauses (5), (6), (7) and (8) of part I of the second schedule to the Chartered Accountants Act, 1949 in terms of section 21 read with section 22 of the said Act.

(V.C. Agarwal in Re. - Page 768 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 13th August, 2004)

Where a Chartered Accountant concealed material facts, which jeopardized a Bank's interest by introducing a non-existing firm to the Bank. Held that, he was guilty of professional misconduct within the meaning of clause (5) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(B.L. Asawa, Chief manager, PNB, Delhi v. P.K. Garg; Pg- 116 of Vol. IX (1) of the Disciplinary Cases- Judgement of Hon'ble High Court dated 19th January, 2007).

A Chartered Accountant issued certificates certifying the utilization of funds by the Company for the amount granted and disbursed by a bank without verifying the records properly before issuing the aforesaid certificates. Also, the said certificate did not reflect the end use of the funds. He was grossly negligent in issuing the said certificate(s). The auditor knowingly certified the end use of money received by the auditee incorrectly and improperly which is undoubtedly an un-pardonable act on the part of the Respondent and thus was held guilty by the Council under Clauses (5), (6), (7) and (8) of Part I of the Second Schedule which was accepted by the High Court.

(Thampy Mathews, Dy. General Manager, IIBI Vs. R.K. Tayal, Delhi - Page 254 of Vol. IX-1-21(6) Decision of the Council on 25th June, 2004, 243rd Meeting of the Council and Judgement of High Court dated 23rd July, 2007).

Clause (6): *fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;*

This clause refers to failure on the part of a member to point out in

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

The decisions of the Courts on this clause are briefly given below:

A Company did not provide for depreciation as required by Section 205 and Section 250 of the Companies Act, 1956 and although the Chartered Accountant was aware that the Company had under-provided depreciation, he did not bring out this fact in his report. - Held the Chartered Accountant was guilty of professional misconduct under the clause. He had failed to disclose a material fact known to him but disclosure of which was necessary to make the financial statement not misleading.

A Chartered accountant was charged under Clauses (5) and (6) for failure to report that there was a reduction of capital with corresponding reduction in the loans and advances on the assets side, which contravened Section 59 of the Travancore Companies Act and Form F prescribed under the Act. There was also a failure on his part to report on the non- disclosure of the forfeiture and cancellation of share. - Held the Respondents conduct was not proper.

(Registrar of Joint Stock Companies vs. S.S. Iyer - Page 94 of Vol. IV of the Disciplinary Cases and pages 405-408 of April, 1960 issue of the Institute's Journal - Judgement delivered on 25th January, 1960).

A Chartered Accountant failed to disclose a mis-statement or under-statement by the Company in the balance sheet of its liabilities, which amounted to a suppression of the correct state of affairs. He also failed to report a material mis-statement by the Company in not giving the previous years figures in the corresponding column of the balance sheet. Held he was guilty of professional misconduct under Clauses (6) and (7).

(Registrar of Companies, Bombay vs. V.P. Bagadthey - Page 210 of Vol. IV of the Disciplinary Cases and pages 80-82 of August, 1961 issue of the Institute's Journal - Judgement delivered on 24th March, 1961).

Where a Chartered Accountant prepared a balance sheet of a firm and subsequently prepared a statement regarding the state of affairs of the firm without taking into account the balance sheet

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already prepared by him showing a lesser amount by way of opening stock and a lesser amount to the credit of the proprietor and subsequently when he was called upon by his client to prepare a fresh balance sheet and profit and loss account for the same year so that it should tally with the statement of affairs prepared by him he did so without reference to the actual account books but on instructions of the client, and as such it was a false and incorrect balance sheet. Held, he was guilty under Clauses (5) & (6).

(Attorney General of Kenya vs. V.B. Joshi - Page 688 of Vol. IV of the Disciplinary Cases and page 681 of June, 1968 issue of the Institute's Journal - Judgement delivered on 19th February, 1968.).

Where a Chartered Accountant had issued publishers certificates of circulation in disregard of the Complainants Rules which he had undertaken to comply with -Held he was guilty under clauses (5), (6) & (9) of Part I of the Second Schedule.

(Audit Bureau of Circulations vs. V.I. Oommen - Page 51 of Vol.VII (1) of disciplinary cases - judgement dated 6th October, 1995)

Where a Chartered Accountant had issued a false Certificate, certifying existence of assets created by a company, on the basis of which a Financial Corporation released a sum of Rs.4.65 lakhs to the said Company. The Respondent, it was alleged, had certified that the Company had invested Rs.5,04,424/- whereas on inspection by officers of the Corporation, it was found that the investment by the Company was only to the extent of Rs.58,169/-. Held that the Respondent was guilty of professional misconduct under Clause (5), (6), (7) and (8) of Part I of the Second Schedule.

(Deputy General Manager, Rajasthan Financial Corporation, Pali vs. C.K. Vyas – Page 321 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered dated 29th November, 2003)

Where a chartered accountant failed to bring attention to the heavy cash transaction entered into by the assessee in his audit report submitted in Form 3CD in terms of section 44AB of the Income Tax Act, 1961 for the Assessment year 1988-89. Held that the respondent was guilty of professional misconduct within the meaning of Clauses (5), (6), (7) and (8) of part I of the second schedule to the Chartered Accountants Act, 1949 in terms of section 21 read with section 22 of the said Act.

(V.C.Agarwal in Re:- Page 768 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 13th August, 2004).

A Chartered Accountant issued certificates certifying the utilization

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of funds by the Company for the amount granted and disbursed by a bank without verifying the records properly before issuing the aforesaid certificates. Also, the said certificate did not reflect the end use of the funds. He was grossly negligent in issuing the said certificate(s). The auditor knowingly certified the end use of money received by the auditee incorrectly and improperly which is undoubtedly an un-pardonable act on the part of the Respondent and thus was held guilty by the Council under Clauses (5), (6), (7) and (8) of Part I of the Second Schedule which was accepted by the High Court.

(Thampy Mathews, Dy. General Manager, IIBI Vs. R.K. Tayal - Page 254 of Vol. IX – 1 – 21(6) Decision of the Council on 25th June, 2004, 243rd Meeting of the Council and Judgement of High Court dated 23rd July, 2007).

A Chartered Accountant wrote the books of account of the Complainant Association apart from conducting the audit. While preparing and auditing the accounts, he did not comply with the decision of the Complainant Association taken in its Annual General Body Meeting, thereby being grossly negligent in his conduct. He neither ensured nor qualified his report regarding non-provision of various liabilities in the accounts such as salaries and wages, electricity charges, water charges etc., which again shows that he was grossly negligent in the discharge of his duties as Chartered Accountant and Auditor. None of the figures in the Balance Sheet and Income & Expenditure Account of the Complainant-Association for the year 1998-99 certified by him tallied with the balances in the unauthenticated Cash Book and Ledger. He further did not prove the accuracy of the accounts prepared and audited by him nor furnished details of various items appearing in the statements certified by him. The Council held him guilty under Clauses (6), (7), (8) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and also guilty of "Other Misconduct" under Section 22 read with Section 21 of the Chartered Accountants Act, 1949.

The High Court also accepted the decision of the Council.

(Hon. General Secretary, Rohit House Occupants Welfare Association, New Delhi vs. K.K. Gupta - Page 299 of Vol. IX – 1 – 21(6), Decision of the Council dated 22nd July, 2004, 244th Meeting of the Council and Judgement of High Court dated 25th September, 2007).

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

Though very simply worded, it is a vital clause which unusually gets attracted whenever it is necessary to judge whether the accountant has honestly and reasonably discharged his duties. Diligence means care; caution; attention and care required from a person in a given situation and the expression 'due diligence' means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. A member should maintain updated knowledge and skill well performing his professional works which is based on the knowledge of appropriate/applicable legislations of the industry in which the client operates its activity. The member should also act diligently in accordance with applicable technical and professional standards. Diligence encompasses the responsibility to act in accordance with the requirements of an assignment carefully and thoroughly. The expression '*negligence*' covers a wide field and extends from the frontiers of fraud to collateral and minor negligence. The meaning and significance of this clause is well contained in the following passage quoted from the judgement of the Karnataka High Court in a disciplinary case of *B. Shantaram Rao in Re page 168 Vol-V of Disciplinary cases in 1977*.

"It is the duty of an auditor to bring to bear on the work he has to perform that skill, care and caution which a reasonably competent, careful, and cautious auditor would use. What is reasonable skill, care and caution must depend on the particular circumstances of each case. An auditor is not bound to be a detective, or, as was said, to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watch-dog but not a blood-hound. If there is anything calculated to excite suspicion he should probe it to the bottom; but in the absence of anything of that kind he is only bound to be reasonably cautious and careful."

What constitutes professional misconduct

Professional misconduct on the part of a person practising one of the technical professions cannot fairly or reasonably be found merely on a finding of a bare non-performance of a duty or some default in performing it. The charge is not one of inefficiency but of misconduct. Imputation of certain mental condition is always involved. The test must always be whether in addition to the failure to do the duty, there has also been a failure to act honestly and reasonably.

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(S. Ganesan vs. A.K. Joscelyne - Page 39 of Vol. III of the Disciplinary Cases and pages 43-56 of July, 1956 issue of the Institute's Journal - Judgement delivered on 19th April, 1956).

The misconduct implies failure to act honestly and reasonably either according to the ordinary and natural standard or according to the standard of a particular profession.

(Registrar of Companies, Bihar vs. M.N. Basu - Page 323 of Vol. IV of the Disciplinary Cases and pages 523-526 of June, 1963 issue of the Institute's Journal-Judgement delivered on 7th December, 1962).

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

The decisions on this clause are briefly mentioned below:

Where a Chartered Accountant signed two Balance Sheets on two different dates for the same financial year, the first one without qualification and the later one with a qualification, but admitted having signed only one Balance Sheet, i.e., the later one in the criminal proceedings against him, the Council found that the second Balance Sheet was a fabrication and that the statement before the Magistrate was false. - Held the first charge, viz., fabrication, failed in the absence of evidence and the second charge, viz., false statement, also failed as the falsity of the statement in the witness box could not give rise to any disciplinary proceedings against him as his conduct or action must be qua his profession or in the course of carrying on that profession. The High Court, however, found him guilty in respect of the first Balance Sheet for certifying it knowing fully well, that it did not represent the correct state of affairs of the Company and also for signing the Balance Sheet under an earlier date, while his report, on his own admission, was on a later date.

(Govind Piraji Uplap vs. G.M. Oka - Page 20 of Vol. 1 of the Disciplinary Cases and pages 37-40 of July, 1952 issue of the Institute's Journal-Judgement delivered on 18th March, 1952).

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Where a Chartered Accountant furnished a certificate under Section 27 of the Insurance Act that there was no charge on the securities held as investments by way of loan or overdraft while, as a fact, one of the securities had been sold and the proceeds thereof utilised for the discharge of a loan. -Held he was guilty of misconduct.

(G.M. Oka in Re. - Page 35 of Vol. 1 of the Disciplinary Cases and pages 40-42 of July, 1952 issue of the Institute's Journal-Judgement delivered on 19th March, 1952).

Where a Chartered accountant failed to indicate the mode of valuation of investments in shares as required by the Companies Act and also to draw attention to the inclusion of uniforms in the depreciation account. - Held that he was guilty under Clause (7).

(M.C.Poddar vs. P.S. Sodhbans - Page 259 of Vol. I of the Disciplinary Cases and page 554 of May, 1954 issue of the Institute's Journal -Judgement delivered on 1st April, 1954).

Where a Chartered Accountant, in a bank audit reported to the shareholders that he had not verified the cash on hand and that he had also signed the balance sheet in anticipation of the receipt of confirmation letters from the banks in respect of the cash said to be lying with them and failed to report on the weakness of the banks financial position. -Held that he was guilty of the first and third charges falling under Clause (7). Verification of cash was an essential duty of an auditor which he failed to discharge and in signing the report in anticipation of receiving the confirmation letters from banks, he had failed to perform his duties with the requisite skill and diligence.

(S.N.Das Gupta in Re:- Page 57 of Vol.II of the Disciplinary Cases and pages 80-92 of September, 1955 issue of the Institute's Journal -Judgement delivered on 1st August, 1955).

Where a Chartered Accountant was appointed auditor of a Co-operative Society, it was alleged that he took active part in the Management of the Society and issued false certificates regarding the verification of cash on hand. - Held that there was nothing unprofessional in helping the administration of the Society by rendering occasional services. As regards the issue of the false certificate, he was found guilty of misconduct.

(Paradise Co-operative Housing Society Ltd., Bombay vs. R. Viraswami - Page 1 of Vol. III of the Disciplinary Cases and pages

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87-88 of August, 1956 issue of the Institute's Journal - Judgement delivered on 24th November, 1955).

Where a Chartered Accountant certified the circulation of a newspaper based on the statistical record but stated in his certificate that he had given it after examination of the books of account without verifying that the books of account and the statistical records agreed and also without taking into account the return of copies unsold. - Held that he was guilty of gross negligence.

(V.K. Madhava Rao in Re:- Page 21 of Vol.III of the Disciplinary Cases and pages 88-92 of August, 1956 issue of the Institute's Journal - Judgement delivered in 17th April, 1956).

Where a certificate issued by a Chartered Accountant under Regulation 7(c) & 7(d) (i) of Part I of the First Schedule to the Insurance Act, 1938 was not correct, as the Company had granted loans on policies which had already lapsed for non-payment of premia and also the claims in respect of two policies which had matured were not included in estimated liability in respect of outstanding claims shown in the Balance Sheet. -Held he was guilty under Clauses (7) and (8).

(Controller of Insurance vs. H.C. Das - Page 240 of Vol.III of the Disciplinary Cases and page 422-429 of March, 1957 issue of the Institute's Journal - Judgement delivered on 4th January, 1957).

Where a Chartered Accountant, appointed as auditor of the Madras branch of a limited Company at Bombay, was charged with failure to report to the Bombay Office that some entries in the bank pass book have not been passed through the cash book of the branch. - Held he was guilty of gross negligence. The High Court observed that a small fee paid to the Respondent should not come in the way of his doing his duty without fear or favour, although it involved unpleasant consequences, namely, he might not be appointed again.

(The Fairdeal Corporation Ltd. Bombay vs. K.Gopalakrishna Rao - Page 361 of Vol. III of the Disciplinary Cases and pages 196-203 of Oct. 1957 issue of the Institute's Journal - Judgement delivered on 23rd August, 1957).

A Chartered Accountant was charged under Clauses (5), (6), (7) and (8) of Part I of Second Schedule in regard to a loss of Rs. 1.84 lakhs in a bank of sale of some investments out of which only a sum of Rs. 21,500 was written off by the bank. The value of

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investment in the balance sheet was inflated and it did not exhibit the correct position and the profit and loss account did not show a true balance of profit and loss. Held, the Respondent was guilty of conduct so as to render him unfit to be a member of the Institute.

(B.V. Warkerkar in Re:- Page 448 of Vol.III of the Disciplinary Cases and pages 470-472 of January, 1958 issue of the Institute's Journal - Judgement delivered on 9th December, 1957).

A certificate issued by a Chartered Accountant to a proprietor of a firm in respect of the turnover of betelnuts to enable the firm, which was not dealing in betel nuts, to obtain import licence without checking the books and documents himself, but relying on his articulated clerk for its correctness. - Held he was guilty of gross negligence.

(Sunderlal Fatehpuria in Re:- Page 591 of Vol.III of the Disciplinary Cases and page 224 of January, 1959 issue of the Institute's Journal - Judgement delivered on 14th November, 1958).

Where a Chartered accountant failed in his duty to check the bank balances with the pass books of the banks and failed to obtain certificates of balances from the bankers in respect of those balances, the Council found him guilty of misconduct under Clauses (7) and (8) of Part I of the Second Schedule - Held there being no proof of dishonesty or malafide on the part of the Chartered Accountant and in view of the circumstances of the case, the High Court took no more serious view of the matter than to express disapprobation of the conduct of the Chartered Accountant in the form of an admonition.

(Deptt. of Economic Affairs vs. D.B.Kulkarni - Page 185 of Vol.IV of the Disciplinary Cases and pages 410-412 of April, 1960 issue of the Institute's Journal - Judgement delivered on 1st March, 1960).

In the course of some investigation of the affairs of a bank on liquidation, it was found that the authorities of the bank failed to disclose the total indebtedness of the directors in the balance sheet and to report on the numerous alterations and fictitious entries in the books of account of the bank. -Held that no auditor could escape from personal liability by taking shelter under the misconduct of his own employees. There was nothing to indicate the status, qualifications or capacity of the assistants. Under the circumstances, the conduct of the Chartered Accountant in abdicating his functions to his subordinates amounted to gross negligence.

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(Superintendent of Police Madras vs. M.Rajamany - Page 232 of Vol. IV of the Disciplinary Cases and page 27-29 of July, 1961 issue of the Institute's Journal - Judgement delivered on 5th May, 1961).

On the basis of the investigation report on the affairs of a Company by an Inspector appointed by the Government, the auditor of the Company was charged with failure of duty in not carrying out a complete audit, verify the assets and liabilities in the Balance Sheet and report on the objectionable vouchers. - Held that he was guilty of gross negligence. The case was one of inefficiency, as there was no suggestion of any moral turpitude. He should not have taken into account the Social position of those in management while discharging his duties as an auditor.

(Registrar of Companies, Kerala State vs. P. Arunajatai - Page 262 of Vol. IV of the Disciplinary Cases and pages 102-104 of September, 1962 issue of the Institute's Journal - Judgement delivered on 26th June, 1962).

Where a Chartered Accountant failed to report on the over-payment of remuneration to the managing agents of a Company, which contravened Section 18(2) and Section 87CC, of the Indian Companies Act, 1913 and was, therefore, not in accordance with law. - Held he was guilty under Clauses (5), (7) and (9).

(B.K.Ray in Re:- Page 300 of Vol.IV of the Disciplinary Cases and pages 521-523 of June, 1963 of the Institute's Journal -Judgement delivered on 30th November, 1962).

Where a certificate issued by a Chartered Accountant to the Joint Chief Controller of Imports & Exports, Calcutta stating that a firm had exported a certain quantity of onions during a certain period contained false and inaccurate particulars in respect of three items of invoice value the particulars themselves related to exports not by this firm but by two other firms. - Held he was guilty of the charge of gross negligence.

(The Chief Controller of Exports vs. G.P.Acharya - Page 311 of Vol.IV of the Disciplinary Cases and pages 189-194 of September, 1963 issue of the Institute's Journal - Judgement delivered on 30th November, 1962).

Where a Chartered Accountant signed the accounts of an institution subject to separate notes. -Held he was guilty of gross negligence. In the view of the High Court, the essential part was the separate notes. Any one going through his report would at least

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assume that those notes were prepared and were ready at the time when the report was signed by him. It could not be supposed that those notes were not in existence at that time and were written at some later date on some facts which were still to be verified or ascertained. His act, though not suffering from bad or vicious intention, was still an act of gross negligence.

(Hitkarini Mahavidyalaya, Jabalpur vs. P.C. Madan - Page 341 of Vol. IV of the Disciplinary Cases and pages 29-31 of July, 1963 issue of the Institute's Journal - Judgement delivered on 11th April, 1963).

On the basis of the investigation report on the affairs of a Company by an inspector appointed by the Government, the auditor of that Company was charged with failure of duty in not carrying out a complete audit, verify the assets and liabilities in the balance sheet and report on the objectionable vouchers. -Held, he was guilty under Clause (7)

(Registrar of Companies, Kerala State vs. T.S. Vaidyanath Iyer - Page 349 of Vol.IV of the Disciplinary Cases and pages 187-189 of September, 1963 issue of the Institute's Journal - Judgement delivered on 22nd, July 1963).

Gross Negligence and failure to obtain sufficient information to warrant the expression of an opinion.

The Disciplinary Committee having found that the main charges as set out in the information letter were not substantiated if proceeded with two new charges and found the Respondent guilty under clauses (7) and (8) and for failure (a) to invite attention to omission in the balance sheet about information relating to the maximum amount due from the directors and from the Companies under the same management and (b) to carry out the statutory duty to obtain sufficient information before making his report inspite of it having been brought to his notice by his assistants that there was difference in the Trial Balance prepared by the Company. Held in a matter like this brought out during the proceedings in examination of the Respondent without it having been made the subject matter of a clear and specific charge to the knowledge of the Respondent with an opportunity to meet the same and to disprove the same, cannot be, either according to the provisions of the statute or having regard to the principals of natural justice, the basis for an adverse finding against the Respondent.

(V.K. Verma in Re:- Page 425 of Vol.IV of the Disciplinary Cases

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and pages 465-471 of February, 1966 issue of the Institute's Journal - Judgement delivered on 21st September, 1964).

Where a Chartered Accountant had been extremely negligent and careless in not attaching due importance expected of a professional man to the factor of delay in the matter of preparation of the Profit and Loss Account and the Balance Sheet of his client. - held he was guilty of misconduct.

(Sterling Electrical Traders Corporation Pvt. Ltd. vs. S.L. Batra - Page 590 of Vol. IV of the Disciplinary Cases and pages 810-820 of June, 1967 issue of the Institute's Journal - Judgement delivered on 2nd March, 1967).

Where a Chartered Accountant gave clean reports on the balance sheets whereas the reports on the special audit conducted subsequently revealed certain irregularities which amounted to failure to examine the pass book and to verify the cash balance. - Held - he was guilty under Clause (7).

(Director of Accounts, Gujarat State, Ahmedabad vs. K.D. Patel - Page 636 of Vol. IV of the Disciplinary Cases and page 572 of April, 1968 issue of the Institute's Journal - Judgement delivered on 16th February, 1968).

Where a Chartered Accountant failed to make a reference in the Income Certificates prescribed by the ABC to the report which he had separately submitted to the newspaper concerned which did represent the correct state of affairs in all respects but which was not sent by the newspaper to the Bureau - Held, he was guilty under Clauses (7) and (9).

(Audit Bureau of Circulations Ltd. vs. A.D. Shinde - Page 725 of Vol. IV of the Disciplinary Cases and page 627 of May, 1968 issue of the Institute's Journal - Judgement delivered on 26th February, 1968).

Where a Chartered Accountant had placed implicit reliance on his paid assistant who took absolutely no step whatsoever to check the cash balances facilitating and resulting in serious defalcations. - Held he was guilty under Clauses (5), (7), (8) and (9).

(D.C. Sopariwala in Re:- Page 783 of Vol. IV of the Disciplinary Cases and pages 502-504 of March, 1969 issue of the Institute's Journal - Judgement delivered on 27th November, 1968).

Where a Chartered Accountant had not completed his work relating to the audit of the accounts of a Company and had not

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submitted his audit report in due time to enable the Company to comply with the statutory requirements in this regard. Held, he was guilty of professional misconduct under Clause (7).

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

Where a Chartered Accountant had certified the circulation claim of a periodical which was practically not published. - Held he was guilty by the Council under Clause (7). However on being reported that the member was dead the High Court dismissed the reference being infructuous.

(Registrar of Newspapers for India vs. V. Ramaratnam - Page 877 of Vol. IV of the Disciplinary Cases - Judgement delivered on 9th September, 1970)

Where a Chartered Accountant failed to exercise sufficient care and diligence in the discharge of his professional responsibilities in not checking the cash memos and not verifying the alterations in the trial balance with the original books in respect of one Company and in not checking the journal entries and the final figures of the balance sheet with the general ledger in respect of another Company. - Held, he was guilty under Clause (7).

(Messrs. O.M. Agency Private Ltd. & Messrs. Oriental Mercantile Distributors Private Ltd. vs. M. Surendra Sastry - Page 891 of Vol. IV of the Disciplinary Cases and pages 452-455 of November, 1971 issue of the Institute's Journal - Judgement delivered on 21st April, 1971).

Where a Chartered Accountant issued two different certificates of circulation of a daily for one and the same period showing different figures in respect of the number of copies printed and circulated, - Held, he was guilty under Clauses (7) and (8).

(Registrar of Newspapers for India vs. P.K. Mukherji - Page 937 of Vol. IV of the Disciplinary Cases and pages 615-617 of January, 1972 issue of the Institute's Journal - Judgement delivered on 20th August, 1971).

A Chartered Accountant was found guilty of professional misconduct under Clauses (5), (6), (7) & (9) of Part I of the Second Schedule on the following grounds:

- (1) that he failed to point out the contravention of Note (C) to

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Schedule VI of the Companies Act, that is, the requirement in the case of a subsidiary Company that the number of shares held by the holding Company as well as by the ultimate holding Company and its subsidiaries must be separately stated;

- (2) that he failed to point out the contravention of Part I Form of Balance Sheet Schedule VI, that is share capital issued in pursuance of a contract without payment being received in cash and shares allotted as fully paid up by way of bonus shares should have been shown separately;
- (3) that he failed to point out, in his report, that the Company, of which he was the auditor, was a public limited Company or deemed to be a public limited Company by virtue of Section 43A of the Companies Act;
- (4) that he failed to comment in his report on the debit balance in the current account with managing agents, in accordance with Section 369 of the Companies Act;
- (5) that he failed to report the non-maintenance of the contract register required to be maintained under Section 360(3); and
- (6) that he failed to report the money value of the contract for the supply of service with the associates of managing agents as required under Schedule VI Part I.

(Registrar of Companies, West Bengal vs. V.V. Bapat - Page 8 of Vol. V of Disciplinary Cases and Page 281 of December, 1974 issue of the Institute's Journal - Judgement delivered on 21st August, 1974).

A Chartered Accountant had failed to detect a fraud committed by the accountant of a canteen which could have been detected if he had checked the castings of the cash books and also checked the contra entries of the bank and cash columns of the cash book. - Held, he was guilty of professional misconduct under Clauses (7), (8) and (9).

(Air Commodore Dilbagh Singh vs. C.G. Apte - Page 107 of Vol. V of the Disciplinary Cases and page 224 of September, 1976 issue of the Institute's Journal - Judgement delivered on 5th July, 1976).

In his audit report of a school, the auditor failed to point out wrong and misleading entries and a sum of Rs. 7,000/- on account of reserve fund did not find a place at all in the original statement sent to the school. The correction slip alleged to be sent by the

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Chartered Accountant was never received by the school. The Chartered Accountant had not proved that the correction slip was sent to the school. - Held, the Chartered Accountant was guilty of gross negligence in the conduct of professional duties and his conduct was quite unbecoming of a professional person entrusted with responsibility of dealing with the accounts.

(B.L. Choudhury vs. M.K. Deb - Page 121 of Vol. V of the Disciplinary Cases and pages 196-198 of March, 1977 issue of the Institute's Newsletter - Judgement delivered on 3rd November, 1976)

A Chartered Accountant, without examination of stock register of the firm and without examining other relevant matters connected with the certificate, issued wrong consumption certificate in respect of raw material and components on the basis of which, licence of higher value, for which the unit was not entitled, was issued by the Deputy Controller of Imports and Exports - Held, the Chartered Accountant was guilty of gross negligence under the Clause (7).

(T.S. Vaidyanatha Iyer in Re:- Page 153 of Vol. V of the Disciplinary Cases and pages 211-212 of April, 1977 issue of the Institute's Newsletter - Judgement delivered on 27th January, 1977).

A Chartered Accountant adopted arbitrary valuation of closing stock and no verification at all was done by him. Further he accepted the capitalisation of a large sum of expenditure which was in the nature of revenue. He had merely adopted an adhoc basis in deciding upon capitalisation of expenditure and failed to apply his mind and bring to bear on the subject the due diligence and care expected of a member of the profession. - Held, the Chartered Accountant was guilty of gross negligence in the performance of his duties.

(B. Shantharam Rao in Re:- Page 168 of Vol. V of the Disciplinary Cases and pages 241-243 of May, 1977 issue of the Institute's Newsletter - Judgement delivered on 13th/18th February, 1977).

A member was found guilty under this Clause (7) in the following circumstances:-

- (1) That he had indicated in his audit report that there was inadequate provision for depreciation but had not disclosed in his audit report the extent of arrears of depreciation.
- (2) He had not dealt with in his audit report, the facts of arrears of depreciation and the dividend recommended in the

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context of the provisions of Section 205 of the Companies Act.

- (3) He had not dealt with in the audit report, the implications of the provisions of the Companies (Temporary Restrictions on dividends) Act, of 1974 which was then in force at the time.
- (4) The above omissions represented significant defects of substance and the member has failed to act in the discharging of his duties reasonably though his honesty was not in question.

(Registrar of Companies, West Bengal vs. R.K. Gangopadhyay - Page 202 of the Vol.VI(1) of Disciplinary Cases - judgement dated 7th January, 1981).

The Chartered Accountant relied upon the internal control without satisfying himself about the propriety and surrendered to the pressure of management and certified the accounts without examining and getting necessary clarification. - Held that he was guilty of misconduct.

(B.L. Purohit vs. J.N. Chandak, decided on 10th December, 1980 Page 175 of Vol.VI of the Disciplinary Cases. The Institute's Journal March, 1981 pages 703-11).

A member had issued certificates in regard to consumption of materials and book value of production in connection with an application for import which was later found to be false. He was found guilty of gross negligence by the Council which finding was confirmed by High Court with the following observations:-

- (a) The member was unable to produce any working papers or any evidence of the work done by him.
- (b) Evidence showed that he had not himself examined the records. Even if he had examined the records, he could not confirm the accuracy of the figures.
- (c) He had not examined the Exchange Control copy of the licence without the examination of which the certificates could not have been issued.
- (d) There need not be element of dishonesty on the part of a member in case of gross negligence.

(C.S. Hariharan page 265 Vol.-VI-1-21(6) and S.B. Pathak in Re. page 272 Vol.-VI-21(6))

A member in practice, while auditing the accounts of a hospital

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committed the following mistakes:-

- (a) Repayment of loan of Rs.2,940/- to the Trustees had not been entered in the Receipts and Payment Accounts though shown in the Cash Book and Ledger. This was explained as an inadvertent omission.
- (b) Professional fee of Rs.450/- paid to an Advocate was found to be bogus and no voucher was available. The member had not verified the vouchers and no explanation was given by the member.
- (c) Stock of medicines as on 31.3.73 and 31.3.74 was shown as identical figures and no verification of the stock of medicine or stock register or other records had been made.
- (d) The cash balance in cash book was different from that shown by the balance-sheet. The cash balance was not admittedly verified during audit nor any written confirmation regarding cash had been obtained.
- (e) The figures of the amount of grant as shown by the books and the Income and Expenditure statement differed and the explanation given by the member was found neither true nor reasonable.
- (f) The High Court held that the member was guilty of gross negligence in so far as he has not exercised due care and caution which is expected of a Chartered Accountant.

(P.D.J. Solomon vs. L.A. Patnaik - Page 334 of Vol.VI(1) of Disciplinary cases - judgement dated 23rd January, 1984).

Where the Respondent had issued the consumption certificate of a firm against the SSI application submitted by the above firm which did not maintain stock, consumption and production records and the amount certified by the Chartered Accountant in the licencing application was fictitious. -Held that the Respondent was guilty of gross negligence.

(The Joint Chief Controller of Imports and Exports, Calcutta vs. Barun Ray - Page 525 of Vol.VI(1) of Disciplinary cases - Judgement dated 15th November, 1989).

Where a Chartered Accountant had issued a false consumption certificate to a non-existent firm for submission before the Chief Controller of Imports and Exports, on the basis of which an import licence of a higher value was issued to the firm. -Held that the member was guilty of gross negligence.

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(Tapas Chakrabarti in Re:- Page 539 of Vol.VI(1) of Disciplinary cases - judgement dated 7th February, 1990)

Where a Chartered Accountant had issued two sets of certificates for the export of marine products, the first one stating that the exports were effected in one year and the second one stating that some products were exported in 3 different years, he had not properly checked the yearwise figures of exports while issuing the two different sets of certificates. -Held that he was guilty of gross negligence.

(Govind Kanodia in Re:- Page 553 of Vol.VI(1) of Disciplinary cases - judgement dated 7th February, 1990).

Where a Chartered Accountant was charged with gross negligence and breach of trust in the course of his professional services rendered to the Complainant in computation of accounts and income-tax matters. -Held that he was guilty under Clause (7).

(S. Sarkar vs. K.K. Mullick - Page 593 of Vol.VI(1) of Disciplinary cases - judgement dated 12th April, 1990)

Where a Chartered Accountant had certified the sale value of a production of a firm which was fictitious and the certificate given by the Chartered Accountant was without proper verification and on the basis of false documents/account books etc. -Held that the Chartered Accountant was guilty under this Clause.

(Jt. Chief Controller of Imports & Exports vs. Ananda Murthy, FCA - Page 606 of Vol.VI(1) of Disciplinary cases - judgement dated 7th June, 1990)

Where the Chartered Accountant had issued a fictitious certificate of purchase turnover of books to a firm. -Held that the member was guilty under Clause (7).

(The Joint Chief Controller of Imports & Exports vs. B.K. Nagraj - Page 645 of Vol.VI(1) of Disciplinary cases - judgement dated 10th January, 1991).

Where the Complainant had sanctioned an additional loan to a Company on the basis of a proforma balance sheet duly certified by a Chartered Accountant while the audited balance sheet of the Company for the same period duly certified by the statutory auditors revealed a completely different picture. Held that the Chartered Accountant was guilty under clauses (7) & (8).

(Assam Financial Corporation vs. S.K. Beria – Page 17 of Vol.VII (1) of Disciplinary Cases - Judgement dated 10th July, 1992)

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The opening and closing stock of tea as well as turnover of tea were not correctly reflected in the Profit and Loss Account and/or Notes on Accounts of a tea Company for the years 1982, 1983 and 1984. It was alleged that the Respondent had failed to bring out these material discrepancies in his reports in the relevant years accounts. The Council found him guilty under Clauses (7) & (8) and decided to recommend to the High Court that he be reprimanded. After analysing facts of the case and various judicial pronouncements in detail, the High Court was of the opinion that it was not a fit case where the alleged misconduct on the Respondent demanded imposition of any punishment.

(The Regional Director, Ministry of Industry, Department of Consumer Affairs, Calcutta vs. Inderjit Roy – Page 218 of Vol. VII(1) of the Disciplinary Cases - Judgement dated 19th March, 1999)

The Respondent had certified a profit and loss account wherein the total expenditure was shown at Rs. 3,19,163.55 but the correct amount of total expenditure worked out to Rs. 2,19,163.55 only. Accordingly, the total expenditure had been over-stated by rupees one lakh and instead of a profit, a loss of Rs. 153.38 appeared in the said profit and loss account. The correct position was that there was a net profit of Rs. 99,846.62 (Rs. 1 lakh minus 153.38). The Council took into consideration two reports of the Disciplinary Committee viz. majority report and dissenting report by one member. Agreeing with the majority report, the Council was satisfied that on the facts of the case, the aforesaid difference was a very material difference. The Council also noted the admitted position that no reconciliation of capital account was made by the Respondent which could have enabled him to discover the error. The Respondent had taken the plea that he did not conduct the audit and his certificate only stated that the said profit and loss account was prepared from the books of account. The Council was of the view that when a Chartered Accountant prepares a profit and loss account from the books of account and signs the certificate to that effect, he is expected to verify the accuracy of the figures appearing in the profit and loss account with reference to the relevant books of account and he cannot escape the responsibility in this behalf by pleading that he did not conduct the audit. The Council also found that though the Chartered Accountant was entitled to place reliance upon the work of his assistants, he had a professional duty and responsibility for the certificate signed by him and he must take reasonable steps to satisfy himself that the work

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has been carried out in a proper and efficient manner. Considering the facts of the case, the Council found that the mistake of Rs. 1 lakh in total figure of Rs. 3,19,163.55 was not only material but also very substantial. He was held guilty under this clause.

(Commissioner of Agricultural Income-tax vs. T.S. Ranganathan – Page 266 of Vol. VII(1) of Disciplinary Cases - Judgement dated 9th February, 2000)

The Respondent had certified an application by a Company in accordance with the requirements of Import and Export Policy, certifying the F.O.B. value of exports at Rs.4,44,77,996/- instead of the correct figure of Rs.4,14,69,925/-. It was held that the Respondent had not exercised due care and skill which he should have done while discharging his professional duties and should have indicated the correct figure. He was held guilty under this clause.

(B.L. Khanna in Re:- Page 372 of Vol. VII(1) of Disciplinary Cases – Council's decision dated 8th, 9th & 10th April, 1987 - Judgement dated 5th September, 2000).

The Respondent was entrusted with the work of incorporation of a Company. He was also entrusted with the work of filing the return for registration of the charge in Form No.8 with Registrar of Companies. After making enquiries, he made available a certificate of incorporation issued by the Registrar of Companies. But on enquiry from the Office of the Registrar of Companies, it was learnt that the name of the said Company, was not borne on the Register of Companies and Form No. 8 was not traceable in the Registrars office. He was, inter alia, held guilty under this clause.

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

The Respondent failed to appear before the ITO in response to the notice under Section 143(2) and 142(1) of the Income Tax Act for A.Y. 1988-89 on behalf of the client despite adjournments granted/postponements of dates of hearing made by the Department, resulting in the assessment being made ex parte under Section 144 of Income Tax Act, 1961. The Respondent failed to appear before the CIT (Appeals) before whom an appeal against the said ex parte order of ITO had been filed, resulting in the dismissal of the appeal. The Respondent confirmed to the Complainant by informing her that stay of demand applied for had

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been granted whereas the fact was that the Complainant was served with a demand notice for payment, failing which recovery proceedings would be initiated. An appeal to be filed before the Tribunal against the order of CIT (Appeals) was got signed from the complainant. Later on, it was found and admitted by the Respondent that no such appeal was filed. Even the amount paid as appeal fee was not refunded. Respondent had not done the needful in spite of repeated requests for collecting income-tax records for the subsequent years and an explanation of the basis of the return filed by him for the assessment year 1988-89. In spite of receiving amount from the Complainant, the Respondent did not pay the income tax to the Income Tax Department, for the assessment year 1989-90. The Complainant who received the notice for payment from the Income Tax Department, handed over the notice to the Respondent, but despite his repeated assurances, no receipts had been shown or whether the amounts were deposited with the Income Tax Department and even if paid, the dates were not intimated. False assurances, gross negligence and lapses on the part of the Respondent had resulted in the attachment of the Complainant's property and bank account, a heavy demand of additional tax, which might be further increased due to the levy of penalties so heavy as to beyond her capacity to pay even after liquidating her total assets. Thus, the Respondent had been grossly negligent in the conduct of his professional duties. Held that the Respondent was guilty of professional misconduct within the meaning of Sections 21 and 22 of the Chartered Accountants Act, 1949 read with Clause (7) of Part I of the Second Schedule.

(Smt. Sushma Shourie vs. Mahesh Taneja – Page 39 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered on 21st December 2001 and published in the March, 2002 issue of Institute's Journal at pages 1126 to 1128)

The Respondent had failed to report various violations of the Companies Act, 1956 (Sections 58 A, 205, 210(4), 301, 372) in his report on the audit of the accounts of the Company. Held that the Respondent was guilty of professional misconduct under Clause (7) of Part I of the Second Schedule.

(Registrar of Companies, Bangalore, Karnataka vs. S.R. Bhandary – Page 351 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered dated 17th December, 2003)

Where a Chartered Accountant had issued a false Certificate,

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certifying existence of assets created by a company, on the basis of which a Financial Corporation released a sum of Rs.4.65 lakhs to the said Company. The Respondent, it was alleged, had certified that the Company had invested Rs.5,04,424/- whereas on inspection by officers of the Corporation, it was found that the investment by the Company was only to the extent of Rs.58,169/-. Held that the Respondent was guilty of professional misconduct under Clause (5), (6), (7) and (8) of Part I of the Second Schedule.

(Deputy General Manager, Rajasthan Financial Corporation, Pali vs. C.K. Vyas – Page 321 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered dated 29th November, 2003)

The Respondent had been making glaring manipulations in the Balance Sheet and P & L account of the Company such as, (i) He has signed the balance Sheet for the year ended on 31-3-1993 without the same being authenticated by the Directors of the Company under Section 215 of the Companies Act, 1956. (ii) the Balance Sheet as at 29.11.1993 and 30.11.1993 prepared and certified by the Respondent shows glaring inconsistencies unmatched by the books of account (iii) As per the Balance Sheet ended on 31.3.1993 and 29.11.1993 Term Loans amounting to Rs. 50,000/- which although were not paid off by the Company but in the subsequent Balance Sheet this figure was not shown by the Respondent. Held that the Respondent was inter alia guilty of professional misconduct under Clauses (7) and (8) of Part I of the Second Schedule.

(Promila Jain vs. Hardesh Kant – Page 416 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered dated 6th May, 2004)

Where the chartered accountant failed to take the normal and reasonable care for carrying out the audit and accounts of a trust and particularly failed to carry out the verification of fixed deposit receipts (FDRs). Held that he was guilty of professional misconduct under clauses (7) & (8) of part I of Second Schedule of the said Act.

(M.D. Loya in Re. - Page 751 of Volume VIII (1) of Disciplinary Cases- Judgement dated 13th August, 2004)

A Chartered Accountant was appointed by a Institution to carry out the audit of their funds for the year 1980-81 and 1981-82. During his tenure, the respondent did not bring to the notice of the Institution any lacuna or discrepancy in the system of accounting and certified the accounts of the Institution as correct.

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Subsequently it was revealed that there was a loss of funds to the tune of approximately Rs.3.5 Lacs by way of encashment of FDRs before maturity which was not reflected in the cash book. Held that he was guilty of professional misconduct under clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Secretary, Institution of Military Engineers, Pune vs. M.J. Pethe- Page 646 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 12th August, 2004)

A Chartered Accountant issued certificate for consumption of raw materials and production for the year 1985-86 & 1986-87 in respect of Five Units without verifying the records thoroughly. It resulted in issuance of certificates containing incorrect facts of consumption of raw material as well as production figures of the final products. Held that he was guilty of professional misconduct within the meaning of Clauses (7) & (8) of part I of Second Schedule of Chartered Accountants Act, 1949.

(JDI, Aurangabad vs. E.H. Lakkadghat - Page 609 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 10th August, 2004)

A Chartered Accountant issued certificate for consumption of raw materials and production for the years 1986-87 in respect of 4 units without taking reasonable care and caution in verifying and checking the relevant records before issuance of the said certificates. It was resulted in issuance of certificates where there was no co-relation between cost of raw material and value of finished products. Held that he was guilty of professional misconduct within the meaning of Clauses (7) & (8) of part I of Second Schedule read with section 21 and 22 of Chartered Accountants Act, 1949.

(JDI, Aurangabad vs. Ramesh R. Kapadia - Page 671 of Vol. VIII – 1 – 21(6) To be published in Volume of Disciplinary Cases- Judgement dated 12th August, 2004)

Where a Chartered Accountant issued certificates of consumption which did not reflect the correct factual position of the consumption of raw materials by the concerned units. Also the same certificates have been issued without examining and scrutinising thoroughly/properly the requisite records. Held that the respondent was guilty of professional misconduct under clauses (2) and (7) of part I of second schedule read with section 21 & 22 of the Chartered Accountants Act, 1949.

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(JDI, Bombay vs. B.K. Kurhade - Page 585 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 12th August, 2004)

Where a Chartered Accountant issued false certificates to several parties for past exports for monetary consideration, without verifying any supporting records or documents. On the strength of these false certificates, certain unscrupulous importers were able to obtain import license, effect imports and clear these free of duty, perpetuating a fraud on Government revenue and depriving the Government of its legitimate revenue to the tune of several crores of rupees. On his statements to the Department he confessed the above fact and disclosed that he had issued these certificates on the instance of another Chartered Accountant. In his statement recorded under section 108 of the Custom Act, 1962, the other Chartered Accountant had also confessed his role in this affairs as well as the fact that he also got a share in this deal of issuing false certificates. Held that the respondent was guilty of professional misconduct within the meaning of clause (7) of part I of the second schedule of the Chartered Accountants Act, 1949.

(Additional Collector of Customs, Mumbai vs. P.V. Mehta - Page 786 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 13th August, 2004)

Where a chartered accountant failed to bring attention to the heavy cash transaction entered into by the assessee in his audit report submitted in Form 3CD in terms of section 44AB of the Income Tax Act, 1961 for the Assessment year 1988-89. Held that the respondent was guilty of professional misconduct within the meaning of Clauses (5) to (8) of part I of the second schedule to the Chartered Accountants Act, 1949 in terms of section 21 read with section 22 of the said Act.

(V.C.Agarwal in Re. - Page 768 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 13th August, 2004)

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

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

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

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

- (a) professional misconduct under Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
- (b) professional misconduct under Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(Bhushan Khot of M/s. Bhushan Khot & Co. vs. Mahesh M. Bhatt - Page 424 of Vol. X – 2A – 21(4) as decided by 252nd Council on 7th July, 2005).

The Complainant's firm was the statutory auditor of a company and was re-appointed in Annual General Meeting for the subsequent year. A Chartered Accountant accepted the statutory audit of a Company while the Complainant's firm was already re-appointed in AGM, without first communicating with the previous auditor i.e. the Complainant, in writing. Also, the compliance of provisions of Section 224 and 225 of the Companies Act, 1956 was not ascertained before accepting the auditorship of the company.

Also, he accepted the position as auditor previously held by the complainant by under cutting thereby resulting in contravention of clause (12) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 (now deleted vide CA Amendment Act, 2006). Further, he was also negligent in conduct of professional duties.

The Council held him guilty of:

- (a) professional misconduct falling within the meaning of Clauses (8), (9) and (12) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

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

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

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

(R.C.Dutta Vs. Kailash C.Mishra - Page 143 of Vol. IX – 1 – 21(6) Council's decision dated 5th January, 2005, 247th Meeting of the Council and Judgement of High Court dated 1st March, 2007).

A Chartered Accountant was held guilty by the Council under Clause (7) of Part I of the Second Schedule when there were some serious irregularities and discrepancies found in the books of account and balance sheet. The High Court also confirmed the decision of the Council.

(Hony. Secretary Delhi Prashasan Adhikari Cooperative Group Housing Society Ltd.Delhi. vs. Rajesh Rastogi of M/s Kaul Associates, Delhi – Page 160 of Vol. IX – 1 – 21(6) Council's decision dated 3rd February, 2003 (231st Meeting of the Council) and Judgement of High Court dated 26th March, 2007).

A Chartered Accountant issued certificates certifying the utilization of funds by the Company for the amount granted and disbursed by a bank without verifying the records properly before issuing the aforesaid certificates. Also, the said certificate did not reflect the end use of the funds. He was grossly negligent in issuing the said certificate(s). The auditor knowingly certified the end use of money received by the auditee incorrectly and improperly which is undoubtedly an un-pardonable act on the part of the Respondent and thus was held guilty by the Council under Clauses (5), (6), (7)

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and (8) of Part I of the Second Schedule which was accepted by the High Court.

(Thampy Mathews, Dy. General Manager, IIBI Vs. R.K. Tayal, Delhi – Page 254 Vol. IX – 1 – 21(6) Decision of the Council on 25th June, 2004, 243rd Meeting of the Council and Judgement of High Court dated 23rd July, 2007).

A Chartered Accountant wrote the books of account of the Complainant Association apart from conducting the audit. While preparing and auditing the accounts, he did not comply with the decision of the Complainant Association taken in its Annual General Body Meeting, thereby being grossly negligent in his conduct. He neither ensured nor qualified his report regarding non-provision of various liabilities in the accounts such as salaries and wages, electricity charges, water charges etc., which again shows that he was grossly negligent in the discharge of his duties as Chartered Accountant and Auditor. None of the figures in the Balance Sheet and Income & Expenditure Account of the Complainant-Association for the year 1998-99 certified by him tallied with the balances in the unauthenticated Cash Book and Ledger. He further did not prove the accuracy of the accounts prepared and audited by him nor furnished details of various items appearing in the statements certified by him. The Council held him guilty under Clauses (6), (7), (8) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and also guilty of "Other Misconduct" under Section 22 read with Section 21 of the Chartered Accountants Act, 1949.

The High Court also accepted the decision of the Council.

(Hon. General Secretary, Rohit House Occupants Welfare Association, New Delhi vs. K.K. Gupta, New Delhi – Page 299 of Vol. IX-1-21(6) Decision of the Council dated 22nd July, 2004, 244th Meeting of the Council and Judgement of High Court dated 25th September, 2007).

Where a Chartered Accountant firm failed to complete the audit of a Bank without any justification and being a grossly negligent. Held that, Respondent firm was guilty of professional misconduct within the meaning of clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(R.K. Goswami, Administrator, Delhi Nagrik Sehkari Bank Ltd. vs. M/s. Dayal Singh & Co. – Pg.288 of Vol. IX (1) of the Disciplinary Cases- Judgement of Hon'ble High Court dated 7th August, 2008.)

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

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

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

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

On the other hand he should say that -

“As we have been unable to verify the existence and value of the investments of the Company, we are unable to state whether the Balance Sheet shows a true and fair view.....etc.”

Standard on Auditing (SA) 700, “The Auditor’s Report on Financial Statements” establishes standards on the form and content of the auditor’s report issued as a result of an audit performed by an auditor of the financial statements of an entity. It requires that the auditor’s report should contain a clear written expression of opinion on the financial statements taken as a whole. As per SA 700;

(1) An unqualified opinion should be expressed when the auditor concludes that the financial statements give a true and fair view in accordance with the financial reporting framework used for the preparation and presentation of the financial statements. An unqualified opinion indicates, implicitly, that any changes in the accounting principles or in the method of their application, and the effects thereof, have been properly determined and disclosed in the financial statements. An unqualified opinion also indicates that:

(a) the financial statements have been prepared using the

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generally accepted accounting principles, which have been consistently applied;

- (b) the financial statements comply with relevant statutory requirements and regulations; and
- (c) there is adequate disclosure of all material matters relevant to the proper presentation of the financial information, subject to statutory requirements, where applicable.

(2) An auditor's report is considered to be modified when it includes:

- (a) Matters That Do Not Affect the Auditor's Opinion (emphasis of matter) and
- (b) Matters That Do Affect the Auditor's Opinion (qualified opinion, disclaimer of opinion, adverse opinion)

Uniformity in the form and content of each type of modified report will enhance the user's understanding of such reports. Accordingly, this SA includes suggested wordings to express an unqualified opinion as well as examples of modifying phrases for use when issuing modified reports.

(3) In certain circumstances, an auditor's report may be modified by adding an emphasis of matter paragraph to highlight a matter affecting the financial statements which is included in a note to the financial statements that more extensively discusses the matter. The addition of such an emphasis of matter paragraph does not affect the auditor's opinion. The paragraph would preferably be included preceding the opinion paragraph and would ordinarily refer to the fact that the auditor's opinion is not qualified in this respect.

(4) An auditor may not be able to express an unqualified opinion when either of the following circumstances exists and, in the auditor's judgment, the effect of the matter is or may be material to the financial statements: (a) there is a limitation on the scope of the auditor's work, which could lead to a qualified opinion or a disclaimer of opinion; or (b) there is a disagreement with management regarding the acceptability of the accounting policies selected, the method of their application or the adequacy of financial statement disclosures, which could lead to a qualified opinion or an adverse opinion

- A qualified opinion should be expressed when the auditor concludes that an unqualified opinion cannot be expressed but that the effect of any disagreement with management is not so material and pervasive as to require an adverse

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opinion, or limitation on scope is not so material and pervasive as to require a disclaimer of opinion. A qualified opinion should be expressed as being 'subject to' or 'except for' the effects of the matter to which the qualification relates.

- An adverse opinion should be expressed when the effect of a disagreement is so material and pervasive to the financial statements that the auditor concludes that a qualification of the report is not adequate to disclose the misleading or incomplete nature of the financial statements.
- A disclaimer of opinion should be expressed when the possible effect of a limitation on scope is so material and pervasive that the auditor has not been able to obtain sufficient appropriate audit evidence and is, accordingly, unable to express an opinion on the financial statements.

(5) Whenever the auditor expresses an opinion that is other than unqualified, a clear description of all the substantive reasons should be included in the report and, unless impracticable, a quantification of the possible effect(s), individually and in aggregate, on the financial statements should be mentioned in the auditor's report. In circumstances where it is not practicable to quantify the effect of modifications made in the audit report accurately, the auditor may do so on the basis of estimates made by the management after carrying out such audit tests as are possible and clearly indicate the fact that the figures are based on management estimates. Ordinarily, this information would be set out in a separate paragraph preceding the opinion or disclaimer of opinion and may include a reference to a more extensive discussion, if any, in a note to the financial statements.

For detailed consideration of the subject, including illustrative formats of auditor's report in different circumstances, the members may refer to Standard on Auditing (SA) 700, "The Auditor's Report on Financial Statements".

The decisions of the Courts on this clause are briefly presented below:-

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

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misconduct under the latter part of Clause (8). As a general rule, a statutory auditor would be guilty under this Clause, if he performed his work so recklessly as to give his report without looking into the books of account of a Company, on the basis of the work of the internal auditor whose opinion turned out to be false.

(J.C. Chandiok in Re:- Page 367 of Vol. IV of the Disciplinary Cases and pages 681-683 of June, 1964 issue of the Institute's Journal - Judgement delivered on 31st January, 1964).

Where a Chartered Accountant issued a certificate of circulation of a periodical without going into the most elementary details of how the circulation of a periodical was being maintained i.e. by not looking into the financial records, bank statements or bank pass books, by not examining evidence of actual payment of printers bills and by not caring to ascertain how many copies were sold and paid for. - Held he was guilty under Clause (8).

(Registrar of Newspapers for India vs. K. Rajinder Singh - Page 920 of Vol. IV of the Disciplinary Cases and pages 77-82 of July, 1971 issue of the Institute's Journal - Judgement delivered on 7th May, 1971).

A Chartered Accountant, without examination of stock register and other relevant matters issued a wrong consumption certificate on the basis of which licence of higher value, for which the unit was not entitled, was issued by Controller of Imports & Exports. The examination done by the Chartered Accountant was so restricted that he could not have obtained the information necessary to warrant the expression of an opinion regarding consumption of raw material and components. - Held the Chartered Accountant was guilty of professional misconduct under Clause (8).

(T.S. Vaidyanatha Iyer in Re:- Page 153 of Vol. V of the Disciplinary cases and pages 211-212 of April, 1977, issue of the Institute's Newsletter - Judgement delivered on 27th January, 1977).

Clean certification of circulation was issued by a Chartered Accountant without any qualification and thereby expressing the opinion that he had conducted the audit in the manner prescribed by the ABC regulations undertaken by him. The interpolation of entries in the books and the absence of documents to support the receipt of monies from the agent should have raised the suspicion and he should have asked for further information in that regard. The Chartered Accountant was required to verify the stocks and whether the agent had accounted for all the sale proceedings. He

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was wrong in accepting the entries in the books without asking for further information. - The Chartered Accountant was required not merely to verify the arithmetical accuracy of the accounts but he ought to have enquired into its substantial accuracy with all the skill, care and caution. If the Chartered Accountant had conscientiously audited the accounts and in accordance with the instruction of the ABC regulations, he could have probed into the matter to the bottom to find out whether the purported sale with agents was genuine or it was only a make believe arrangement. Held the Chartered Accountant was guilty of misconduct under Clause(8).

(Audit Bureau of Circulations Ltd. vs. S. Narayanan - Page 181 of Vol.V of the Disciplinary Cases and Pages 2-5 of July, 1977 issue of the Institute's Newsletter - Judgement delivered on 14th April, 1977)

Where the Complainant had sanctioned an additional loan to a Company on the basis of a proforma balance sheet duly certified by a Chartered Accountant while the audited balance sheet of the Company for the same period duly certified by the statutory auditors revealed a completely different picture. Held that the Chartered Accountant was guilty under clauses (7) & (8).

(Assam Financial Corporation vs. S.K. Beria - Page 17 of Vol.VII (1) of Disciplinary Cases - Judgement dated 10th July, 1992)

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Company under Section 215 of the Companies Act, 1956. (ii) the Balance Sheet as at 29.11.1993 and 30.11.1993 prepared and certified by the Respondent shows glaring inconsistencies unmatched by the books of account (iii) As per the Balance Sheet ended on 31.3.1993 and 29.11.1993 Term Loans amounting to Rs.50,000/- which although were not paid off by the Company but in the subsequent Balance Sheet this figure was not shown by the Respondent. Held that the Respondent was inter alia guilty of professional misconduct under Clauses (7) and (8) of Part I of the Second Schedule.

(Promila Jain vs. Hardesh Kant – Page 416 of Vol. VIII – 1 – 21(6) of Disciplinary Cases – Judgement delivered dated 6th May, 2004)

Where the chartered accountant failed to take the normal and reasonable care for carrying out the audit and accounts of a trust and particularly failed to carry out the verification of fixed deposit receipts (FDRs). Held that he was guilty of professional misconduct under clauses (7) & (8) of part I of Second Schedule of the said Act.

(M.D. Loya in Re. - Page 751 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 13th August, 2004)

A Chartered Accountant issued certificate for consumption of raw materials and production for the year 1985-86 & 1986-87 in respect of Five Units without verifying the records thoroughly. It resulted in issuance of certificates containing incorrect facts of consumption of raw material as well as production figures of the final products. Held that he was guilty of professional misconduct within the meaning of Clauses (7) & (8) of part I of Second Schedule of Chartered Accountants Act, 1949.

(JDI, Aurangabad vs. E.H. Lakkadghat - Page 609 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 10th August, 2004)

A Chartered Accountant issued certificate for consumption of raw materials and production for the years 1986-87 in respect of 4 units without taking reasonable care and caution in verifying and checking the relevant records before issuance of the said certificates. It was resulted in issuance of certificates where there was no co-relation between cost of raw material and value of finished products. Held that he was guilty of professional misconduct within the meaning of Clauses (7) & (8) of part I of Second Schedule read with section 21 and 22 of Chartered Accountants Act, 1949.

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(JDI, Aurangabad vs. Ramesh R. Kapadia - Page 671 of Vol. VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 12th August, 2004)

Where a chartered accountant failed to bring attention to the heavy cash transaction entered into by the assessee in his audit report submitted in Form 3CD in terms of section 44AB of the Income Tax Act, 1961 for the Assessment year 1988-89. Held that the respondent was guilty of professional misconduct within the meaning of Clauses (5), (6), (7) and (8) of part I of the second schedule to the Chartered Accountants Act, 1949 in terms of section 21 read with section 22 of the said Act.

(V.C. Agarwal in Re. - Page 768 of Vol. VIII–1–21(6) of Disciplinary Cases- Judgement dated 13th August, 2004)

Where a Chartered Accountant issued false certificates to several parties for past exports for monetary consideration without verifying any supporting records or documents. On the strength of these false certificates, certain unscrupulous importers were able to obtain import license, effect imports and clear these free of duty, perpetuating a fraud on Government revenue and depriving the Government of its legitimate revenue to the tune of several Crores of Rupees. On his statements to the Department he confessed the above fact and disclosed that he had issued these certificates for monetary consideration and without verification of supporting documents on record. Held that the respondent was guilty of professional misconduct within the meaning of clauses (2), (7) & (8) of Part I of the second schedule of the Chartered Accountants Act, 1949 in terms of section 21 & 22 of the said Act.

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

A Chartered Accountant issued certificates certifying the utilization of funds by the Company for the amount granted and disbursed by a bank without verifying the records properly before issuing the aforesaid certificates. Also, the said certificate did not reflect the end use of the funds. He was grossly negligent in issuing the said certificate(s). The auditor knowingly certified the end use of money received by the auditee incorrectly and improperly which is undoubtedly an un-pardonable act on the part of the Respondent and thus was held guilty by the Council under Clauses (5), (6), (7) and (8) of Part I of the Second Schedule which was accepted by the High Court.

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(Thampy Mathews, Dy. General Manager, IIBI Vs. R.K. Tayal, Delhi - Page 254 of Vol. IX – 1 – 21(6) Decision of the Council on 25th June, 2004, 243rd Meeting of the Council and Judgement of High Court dated 23rd July, 2007).

A Chartered Accountant wrote the books of account of the Complainant Association apart from conducting the audit. While preparing and auditing the accounts, he did not comply with the decision of the Complainant Association taken in its Annual General Body Meeting, thereby being grossly negligent in his conduct. He neither ensured nor qualified his report regarding non-provision of various liabilities in the accounts such as salaries and wages, electricity charges, water charges etc., which again shows that he was grossly negligent in the discharge of his duties as Chartered Accountant and Auditor. None of the figures in the Balance Sheet and Income & Expenditure Account of the Complainant-Association for the year 1998-99 certified by him tallied with the balances in the unauthenticated Cash Book and Ledger. He further did not prove the accuracy of the accounts prepared and audited by him nor furnished details of various items appearing in the statements certified by him. The Council held him guilty under Clauses (6), (7), (8) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and also guilty of "Other Misconduct" under Section 22 read with Section 21 of the Chartered Accountants Act, 1949.

The High Court also confirmed the decision of the Council.

(Hon. General Secretary, Rohit House Occupants Welfare Association, New Delhi vs. K.K. Gupta, New Delhi– Page 299 of Vol. IX – 1 – 21(6) Decision of the Council dated 22nd July, 2004, 244th Meeting of the Council and Judgement of High Court dated 25th September, 2007)

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

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

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time to time by way of Quality Control and Engagement Standards, Statements, General Clarifications, Guidance Notes and Technical Guides, Practice Manuals, Studies and Other Papers.

As per announcements of the Council regarding status of various documents issued by the Institute, the 'Standards on Auditing' have been issued with a view to securing compliance by members on matters which, in the opinion of the Council, are critical for the proper discharge of their functions. 'Standards on Auditing' therefore are mandatory. Accordingly, while discharging their attest function, it will be the duty of the members of the Institute to ensure that the 'Standards' relating to auditing matters are followed in the audit of financial information covered by their audit reports. If, for any reason, a member has not been able to perform an audit in accordance with such 'Standards', his report should draw attention to the material departures therefrom.

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

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

(2) The Standards on Auditing (SAs) are formulated in the context of an audit of financial statements by an independent auditor. They are to be adapted as necessary in the circumstances when applied to audits of other historical financial information. In conducting an audit, the overall objective of the auditor is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to report on the financial statements in accordance with the auditor's findings. However, owing to the inherent limitations of an audit, there is an unavoidable risk that some material misstatements of the financial statements will not be detected, even though the audit is properly planned and performed in accordance with the SAs. In all cases, when this overall objective has not been or cannot be achieved, the SAs

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require the auditor to modify the auditor's opinion accordingly or withdraw from the engagement as may be appropriate, depending upon the facts and circumstances of each case. The auditor applies each Standard on Auditing (SA) relevant to the audit. An SA is relevant when the SA is in effect and the circumstances addressed by the SA exist.

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

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

(5) Technical Guides are ordinarily aimed at imparting broad knowledge about a particular aspect or of an industry to the professional accountants. Practice Manuals are aimed at providing additional guidance to professional accountants in performing audit and other related assignments. Studies and other papers are aimed at promoting discussion or debate or creating awareness on issues relating to quality control, auditing, assurance and related service, affecting the profession. Such publications do not establish any basic principles or essential procedures to be followed in audit, review, other

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assurance or related services engagements, and accordingly, have no authority of the Council attached to them.

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

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

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

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

The decisions of the Court on this clause are briefly summarised below:-

Where a Chartered Accountant did not conduct sample checking of the bank accounts in relation to the accounts of the Company and did not carry out vouching with respect to the transactions reflected in the accounts of the Company and depended upon his assistant who was a Chartered Accountant and experienced clerk who were entrusted with the auditing work. - Held he was guilty under Clauses (7) (8) and (9).

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

Where the form of the certificate prescribed by the Audit Bureau of Circulations Ltd., did not permit any alteration or explanation being given in the certificate itself, the Chartered Accountant had recorded, in a separate report the true state of affairs which he had found. Except making a report which explained the correct position he had no authority to indicate in the certificate itself the true position. But the separate report which he had sent along with the Income Certificate to the newspaper concerned had not been forwarded by the newspaper to the Bureau. It was only later on that the ABC introduced a change in the procedure of audit by permitting a report being sent along with the Incoming Certificate in the various columns were subject to his separate report. Held he was guilty under Clauses (7) and (9).

(Audit Bureau of Circulations Ltd. vs. M.L. Nanda - Page 736 of Vol. IV of the Disciplinary Cases and page 628 of May, 1968 issue of the Institute's Journal - Judgement delivered on 26th February, 1968).

Where a Chartered Accountant failed to verify the actual disbursement of the amount by examining the various items of purchases and insisting for the bills to be produced in respect of the various items before issuing his certificate as mere payment would not constitute utilisation of the amount for the purpose for which it was meant. - Held he was guilty under Clauses (7), (8) and (9).

(Punjab State Govt. vs. K.N. Chandla - Page 946 of Vol. IV of the Disciplinary Cases and pages 140-142 of August, 1972 issue of the Institute's Journal - Judgement delivered on 15th June, 1972).

Where a Chartered Accountant had issued publishers certificates of circulations in disregard of the Complainants Rules which he had undertaken to comply with -Held he was guilty under clauses (5), (6) & (9) of Part I of the Second Schedule.

(Audit Bureau of Circulations vs. V.I. Oommen - Page 51 of Vol. VII (1) of disciplinary cases - judgement dated 6th October, 1995)

A Chartered Accountant had checked the cash book totals but not the bank column totals, had verified all the transactions in the bank columns but not the contra-entries, had taken the casting only of personal ledger and that too not of all accounts, had resorted to

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test check when there was no system of internal check, had not seen the pay-in-slips, had not checked the bank reconciliation statements for all the months. - Held he was guilty of professional misconduct under Clauses (7), (8) and (9).

(Air Commodore Dilbagh Singh vs. E.S. Venkataraman - page 100 of Vol. V of the Disciplinary Cases and page 224 of September, 76 issue of Institute's Journal - Judgement delivered on 5th July, 1976)

A Chartered Accountant wrote the books of account of the Complainant Association apart from conducting the audit. While preparing and auditing the accounts, he did not comply with the decision of the Complainant Association taken in its Annual General Body Meeting, thereby being grossly negligent in his conduct. He neither ensured nor qualified his report regarding non-provision of various liabilities in the accounts such as salaries and wages, electricity charges, water charges etc., which again shows that he was grossly negligent in the discharge of his duties as Chartered Accountant and Auditor. None of the figures in the Balance Sheet and Income & Expenditure Account of the Complainant-Association for the year 1998-99 certified by him tallied with the balances in the unauthenticated Cash Book and Ledger. He further did not prove the accuracy of the accounts prepared and audited by him nor furnished details of various items appearing in the statements certified by him. The Council held him guilty under Clauses (6), (7), (8) & (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and also guilty of "Other Misconduct" under Section 22 read with Section 21 of the Chartered Accountants Act, 1949.

The High Court also accepted the decision of the Council.

(Hon. General Secretary, Rohit House Occupants Welfare Association, New Delhi vs. K.K. Gupta, New Delhi – Page 299 of Vol. IX – 1 – 21(6) Decision of the Council dated 22nd July, 2004, 244th Meeting of the Council and Judgement of High Court dated 25th September, 2007).

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

In the course of his engagement as a professional accountant, a

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

- (i) An advance received by a Chartered Accountant against services to be rendered does not fall under Clause (10) of Part I of the Second Schedule.
- (ii) Moneys received for expenses to be incurred, for example, payment of prescribed statutory fees, purchase of stamp paper etc., which are intended to be spent within a reasonably short time need not be put in a separate bank account. For this purpose, the expression reasonably short time, would depend upon the circumstances of each case.
- (iii) Moneys received for expenses to be incurred which are not intended to be spent within a reasonably short time as aforesaid, should be put in a separate bank account immediately.
- (iv) Moneys received by a Chartered Accountant, in his capacity as trustee, executor, liquidator, etc. must be put in a separate bank account immediately.

The decisions of the Court on this clause are briefly mentioned below.

What constitutes clients' money

The expression "moneys of his client" has to be understood as moneys placed in the hands of a Chartered Accountant in connection with the discharge of his duties qua Chartered Accountant and for the purposes connected therewith.

(National Insurance Co. Ltd. vs. B. Mukherjee - Page 288 of Vol.III of the Disciplinary Cases and pages 150-155 of the September, 1957 issue of the Institute's Journal-Judgement delivered on 4th July, 1957).

Failure to keep moneys of client in a separate banking account

Where a Chartered Accountant appointed as liquidator of a

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Company had wrongfully and without the knowledge and consent of the complainants disposed of a machine which was duly charged in their favour. The Council had found the Respondent guilty under Clauses (7) and (10)- Held by the High Court that they were not applicable. Clause (7) was gross negligence in the conduct of professional duties. The liquidator in this case was not an auditor of the Company in liquidation and was not therefore practising his professional duties. Similarly clause (10) was failure to keep moneys of his client in a separate banking account. The Company in liquidation was not a client of the complainants either within the meaning of clause (10). Referring to the Respondents failure to keep moneys in a separate banking account, the High Court considered the evidence of the Respondent which did not give a clear picture in order to come to a final and definite conclusion. Setting aside the order of the Council, the Court reprimanded the Respondent.

(Sunderdas Thakersey & Bros. vs. P.K. Mukherji - Page 452 of Vol. IV of the Disciplinary Cases and pages 150-155 of September, 1965 issue of the Institute's Journal -Judgement delivered on 22nd April, 1965).

A Chartered Accountant was found guilty of professional misconduct under Clauses (7) & (10) of Part I of the Second Schedule to the Act for having failed to account satisfactorily for the various amounts entrusted to him by the client and for failure to keep them in a separate bank account. A refund voucher issued in the name of the client by the Income Tax Department was credited by him to his account in the Bank.

(N.S. Chenoy vs. K.V. Subba Rao - Page 958 of Vol. IV of Disciplinary Cases and pages 207-214 of October, 1973 issued of the Institute's Journal - Judgement delivered on 6th April, 1973)

A Chartered Accountant was found guilty of not keeping the clients money in a separate account and not using it for the purpose for which it was given.

(Maj. R.S. Murgai (Rtd.) vs. (1) S.K. Gadh & (2) V.K. Bajaj, decided on 10-8-1981 - Page 222 of Vol. VI(1) of the Disciplinary cases).

A Chartered Accountant received large sums of money from his client for making investments and depositing income-tax on behalf of the client. He neither made investments nor deposited the income-tax nor deposited the money in a separate Bank account. The Council held him guilty under this clause and also for other misconduct which was accepted by High Court.

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(S. Seshadri vs. R. Srinivasan - Page 167 of Vol. VII(1) of Disciplinary Cases Council's decision dated 7th to 9th June, 1990 and High Court Judgement dated 20th January, 1998)

The Respondent was entrusted with the work of incorporation of a Company for which he was given a sum of Rs. 13,000/- and he was also entrusted the work of filing the returns for registration of the charges in Form 8. On enquiry from the Registrar of Companies, it was learnt that the particular name of the Company was not borne on the Register of Companies and Form 8 was not traceable in the Registrars office. He was held guilty for failure to keep the clients monies in a separate banking account and to utilise the same for the purpose for which the same was intended.

(Deepak Pahwa vs. A.K. Gupta – Page 331 of in Vol. VII(1) of Disciplinary Cases – Council's decision dated 6th December, 1995 - Judgement dated 4th September, 2000)

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

(Tara Pada Banerjee, Dy. General Manager, Bank of Baroda Vs. B.K. Sarker - Page 15 of Vol. IX – 1 – 21(6), Council's decision dated 1st September, 2004 (245th Meeting Of The Council) and High Court Judgement dated 5th May, 2006)

Where a Chartered Accountant illegally withheld the books, vouchers, the records and funds of the complainant and also raised a loan of Rs. 17,500/- secretly from the Bank for personal purpose. Also that, in the audit of a Bank branch, he did not verify the securities for debts. Held that, he was guilty of professional misconduct within the meaning of clause (7) and (10) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(A.N.Kapur -vs.- R.N. Budhiraja; Page- 374 of Vol. IX (1) of the Disciplinary Cases- Judgement of Hon'ble High Court dated 7th January, 2007; Council's decision dated 11th and 12th April, 2008).

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PART-II OF SECOND SCHEDULE

Professional Misconduct in relation to Members of the Institute generally.

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

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

This clause requires every member of the Institute to act within the framework of the Chartered Accountants Act and the Regulations and guidelines made by the Council thereunder. The Council so far has issued guidelines under this clause, as appearing in Chapter 6. Any violation either of these guidelines or the Act or the Regulations by a member would be covered as a professional misconduct under this part.

The Regulations under which cases of contravention have generally come to the notice of the Council are the following:

Regulation 43	Engagement of Articled Assistant
Regulation 46	Registration of Articled Assistant
Regulation 47	Premium from Articled Assistant
Regulation 48	Stipend to Articled Assistant
Regulation 56	Termination or assignment of Articles
Regulation 65	Articled Assistant not to engage in any other occupation
Regulation 67	Complaint against the employer (From Articled Assistant)
Regulations 68 to 80	Audit Assistant
Regulation 190	Register of offices and firms
Regulation 190A	Chartered Accountants not to engage in any other business or occupation
Regulation 191	Part time employments a Chartered Accountant may accept
Regulation 192	Restriction on fees

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The decisions of the Court under this clause are mentioned below.

Where a Chartered Accountant entered into an improper arrangement to permit his articled clerk to serve his articles under another Chartered Accountant in another place without disclosing those facts to the Institute and got the Articles registered knowing that the declaration of the attest or in the Deed was false. -Held he was guilty of misconduct.

(Lawrence Tellis vs. Dr. S.G. Mandre - Page 1 of Vol. I of the Disciplinary Cases and pages 25-28 of January, 1952 issue of Bulletin - Judgement delivered on 10th October, 1951).

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

(M. Rajamany in Re:- Page 51 of Vol. I of the Disciplinary Cases and pages 40-43 of June, 1952 issue of Bulletin - Judgement delivered on 4th April, 1952).

A Chartered Accountant certified in Form K-2 that an audit clerk was in service with him while he was also employed elsewhere with another employer between 11 A.M and 5 P.M. and attended the office of the Chartered Accountant thereafter until 8 P.M. The Chartered accountant suspended the audit clerk when the Institute brought this fact to the notice of the Chartered Accountant. - Held he was guilty of misconduct for making a misstatement to the Institute in regard to the discharge of his professional duties.

(J.K. Ghosh in Re:- Page 193 of Vol. I of the Disciplinary Cases - Judgement delivered on 3rd December, 1955).

Where a Chartered Accountant, who was entitled to take three articled clerks, had already taken three such clerks, represented to a person that he had still a vacancy and induced him to enter into articles. A formal deed was executed and the premium was paid. He subsequently cancelled the articles of the third articled clerk for irregular attendance without reference to the Institute. - Held that he had contravened the provisions of Regulation 58 and was guilty of grave misconduct.

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(J.K. Ghosh in Re:- Page 106 of Vol.II of the Disciplinary Cases and pages 278-280 of January, 1956 issue of the Institute's Journal - Judgement delivered on 6th December, 1955).

Where a Chartered Accountant agreed to take a person as an articled clerk in a vacancy shortly to arise and received the premium for the purpose and made him believe, when he executed the deed of articles that he was taking him in that vacancy, while, in fact, the vacancy had been filled up by the Chartered Accountant earlier by taking another audit clerk. The audit clerk came to know from the Institute that the deed of articles was not registered as that was forwarded with a request for entertaining an extra articled clerk. Held that the Chartered Accountant was guilty of serious misconduct for having contravened Regulation 58.

(A.K. Basu vs. P.K. Mukherji - Page 9 of Vol.III of the Disciplinary Cases and pages 40-43 of July, 1956 issue of the Institute's Journal Judgement delivered on 16th April, 1956).

Where a Chartered Accountant (i) issued false certificates to two articled clerks stating that he had refunded the entire premium, while a part of it was claimed as a set off against food and halting allowances given to them while they were working in out- stations, (ii) violated Regulation 62 by not refunding the premium within the time specified in the Regulation, and (iii) the refund of premium in installments in one case was not as specified in the certificate. - Held he was guilty of dishonest behaviour both as regards his clients and articled clerks.

(M.N. Bhargava in Re:- Page 512 of Vol.III of the Disciplinary Cases and pages 671-673 of June, 1958 issue of the Institute's Journal - Judgement delivered on 1st May, 1958).

Where a Chartered Accountant after signing the Articles of Agreement, failed to forward the Articles for registration as required by Regulation 64 and the statement of particulars in the prescribed Form as required by Regulation 64 inspite of repeated enquiries from the articled clerk and even failed to take notice of communications addressed to him in that behalf and having two other articled clerks along with the present one whose articles were not sent for registration took up a fourth articled Clerk without being entitled to do so. - Held he was guilty for breach of Regulation 46.

(Mohan Sehwanji vs. Sunderlal Fatehpuria - Page 704 of Vol.IV of the Disciplinary Cases and page 629 of May, 1968 issue of the Institute's Journal - Judgement delivered on 23rd February, 1968).

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A Chartered Accountant was found guilty of professional misconduct in terms of Clause (i) of Part II of the Second Schedule to the Act for contravention of Section 6 of the Act for having issued a certificate in respect of a consumption statement of a concern as a Chartered Accountant in practice on a date when he had not even applied for a certificate of practice to the Institute.

(N.K. Ray Chowdhury in Re:- Page I of Vol.V of the Disciplinary Cases and pages 545-546 of April 1974 issue of the Institute's Journal - Judgement delivered on 30th November, 1973).

A Chartered Accountant issued a confidential and private circular to clients where, in addition to describing himself as Chartered Accountant he also described himself as Investment Consultant and Public Accountant. By this circular he introduced himself to the public and private limited Companies which were accepting fixed deposits and loans through him. - Held he was guilty of professional misconduct under Clause (i) of Part II of the Second Schedule.

(B.M. Lala in Re:- Page 95 of Vol.V of the Disciplinary Cases and page 224 of September, 1976 issue of the Institute's Journal - Judgement delivered on 5th July, 1976).

A Chartered Accountant took loan from a firm in which the articled clerk and his father were both interested, against the provisions of the Chartered Accountants Regulations, 1988 which prohibit taking of loan or deposit etc. from the articled clerk. - Held the Chartered Accountant was guilty of professional misconduct under the Clause.

(M.K. Tripathi in Re:- Published at page 36 of Vol.VI(1) of Disciplinary Cases and in the May, 1980 issue of the Institute's Journal at page 1014 - Judgement delivered on 26th October, 1979).

A Chartered Accountant did not pay stipend to his articled clerk, in accordance with Regulation 48 of the Chartered Accountants Regulations, 1988 while to another articled clerk he was paying stipend every month. The stipend was paid only after the articled clerk left him after working for a few months and a complaint was lodged with the Institute. The plea of the Chartered Accountant that he had an agreement with the articled clerk to pay stipend on annual basis was found to be misconceived as the same should be against the provisions of Regulation, 48.

(Radhey Mohan in Re:- Published at page 47 of Vol.VI(1) of

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Disciplinary Cases and in the March, 1980 issue of the Institute's Journal at pages 849-852 - Judgement delivered on 9th November, 1979).

A Chartered Accountant failed to pay the stipend to his articled clerk in accordance with Regulation 48 which requires that the payment should be made every month. The payment was made long after the matter was brought to the notice of the Institute. The Chartered Accountant pleaded that Regulation 48 did not prescribe the periodicity of payment but only the rate at which stipend had to be paid and further the payment was not made in view of a letter written by an Advocate who introduced the articled clerk to the effect that the payment should not be made directly to the articled clerk but to his father whenever he desired. To other articled clerks, the payments were made in lump sum. - Held the Chartered Accountant had contravened Regulation 48 by not making payments of stipend on a month to month basis.

(B.B. Rohatgi in Re:- Published at page 69 of Vol.VI(1) of Disciplinary Cases and in July 1980 issue of the Institute's Journal at pages 51-55 and 59 - Judgement delivered on 17th April, 1980)

Three articled clerks of a Chartered Accountant informed the Institute that the Chartered Accountant had failed to make the payments of stipend to them every month in accordance with Regulation 48 - Held the Chartered Accountant was guilty of professional misconduct under the Clause as he contravened Regulation 48 by not making the payment every month. The Court rejected the two contentions put forward by the Chartered Accountant, viz., (1) that the declaration filed by the articled clerks could not be regarded as information in order to justify the commencement of disciplinary proceedings (2) that under Regulation 48 the payments had to be made at a monthly rate and not that the payments had to be made every month. The third contention that the payments could not be made every month or regularly because of financial stringency was also rejected particularly in view of the fact that the Chartered Accountant during the relevant period had purchased a plot of land and constructed a house at the cost of more than 1 lakh of rupees and he had in his employment throughout the relevant period a Chartered Accountant at a salary of Rs. 500/- per month.

(R.C. Gupta in Re:- Published at page 94 of Vol.VI(1) of Disciplinary Cases and pages 241-242 of the September, 1980

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issue of the Institute's Journal - Judgement delivered on 21st July, 1980)

The Chartered Accountant received Rs.2000/- by way of Security from the Complainants father as a consideration for taking him as an articled clerk. Held that he was guilty under the provision.

(Virender Kumar vs. K.B. Madan - Published at page 108 of Vol.VI(1) of Disciplinary Cases - decided on 26th August, 1980)

The Respondents, inter alia, did not disclose the particulars of their full time salaried employment at the time of furnishing particulars in the prescribed form for registration of the articled clerk. They also violated the Regulation 29(11) [New Regulation 43(8)] by training the articled clerks, which they were not eligible to, since their main occupation was not practice of the profession of chartered accountancy. They were held guilty under this clause.

(N.K. Malhotra in Re:- Page 427 of Vol. VII(1) of Disciplinary Cases – Council's decision dated 10th to 12th June, 1993 - Judgement dated 5th September, 2000 and A.P. Gupta in Re:- Page 331 of Vol. VII(1) of Disciplinary Cases – Council's decision dated 15th to 17th December, 1999 - Judgement dated 5th September, 2000).

Failure to pay stipend

A Chartered Accountant did not pay stipend to the articled clerk per month in accordance with Regulation 32B of the Chartered Accountant Regulations, 1964 in view of the letter written by the articled clerk to the effect that the stipend be not paid to him every month. This letter was purported to have written at the time of commencement of training- Held the letter taken from the articled clerk would not be relied upon as it was ante-dated and it was not written on the date it purported to be. The Chartered Accountant was guilty of professional misconduct under the clause. It was observed that it was very reprehensible that a practising Chartered Accountant should have tried to fabricate evidence in support of the defence.

(V.K. Mittal in Re:- Published at 57 of Vol.VI(1) of Disciplinary Cases and in the May, 1980 issue of the Institute's Journal at pages 1015-1017 - Judgement delivered on 13th February, 1980).

A Chartered Accountant did not pay stipend to the articled clerk in accordance with Regulation 32B of the Chartered Accountants Regulations, 1964 for the period during which the Article Clerk worked with him. Also the Article Clerk was asked to work in

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excess of the prescribed working hours in violation of Regulation 45 of the Chartered Accountants Regulations, 1964. Held that he was guilty of professional misconduct under Clause (i) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

(U.V. Benadikar vs. N.G. Kulkarni - Page 473 of Vol VIII – 1 – 21(6) of Disciplinary Cases- Judgement dated 6th August, 2004)

In the following cases also, the Chartered Accountants were held guilty for failure to pay the monthly stipend.

C.R. Lakhia in Re:- Page 146 of Vol.VI(1) of Disciplinary cases - Judgement dated 11th March, 1980 of High Court and judgement dated 10th December, 1980 of Supreme Court

S.C. Bhatia in Re:- Page 289 of Vol.VI(1) of Disciplinary cases - decided on 3rd May, 1982

U.S. Lekhi in Re:- Page 304 of Vol.VI(1) of Disciplinary cases - decided on 26th July, 1982

M.C. Jain in Re:- Page 306 of Vol.VI(1) of Disciplinary cases - Judgement dated 22nd September, 1982.

K.L. Singhee in Re:- Page 324 of Vol.VI(1) of Disciplinary cases - Judgement dated 8th October, 1982

B.Mohanty in Re:- Page 375 of Vol.VI(1) of Disciplinary cases - decided on April 4, 1984

G.V. Ramanaiah in Re:- Page 384 of Vol.VI(1) of Disciplinary cases - decided on 23rd October, 1984

R.L.P. Sinha in Re:- Page 406 of Vol.VI(1) of Disciplinary cases - Judgement dated 23rd September, 1985

M.L. Surana in Re:- Page 415 of Vol.VI(1) of Disciplinary cases - decided on 1st October, 1985

D.K. Bohara in Re:- Page 420 of Vol.VI(1) of Disciplinary cases - decided on 1st October, 1985

G.S. Punjawat in Re:- Page 427 of Vol.VI(1) of Disciplinary cases - decided on 1st October, 1985

B.P. Waghela in Re:- Page 445 of Vol.VI(1) of Disciplinary cases - Judgement dated 20th April, 1989

Sharat Sekhri in Re:- Page 506 of Vol.VI(1) of the Disciplinary cases - Judgement dated 7th November, 1989

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H.S. Venkata Rao in Re:- Page 663 of Vol.VI(1) of Disciplinary cases - Judgement dated 5th March, 1991

Dinesh Kumar in Re:- Page 1 of Vol. VII(1) of Disciplinary cases - Judgement dated 1st May, 1992

P. Vishwanadham in Re:- Page 38 of Vol. VII(1) of Disciplinary cases - Judgement dated 28th August, 1992

K.C. Koshal in Re:- Page 195 of Vol. VII(1) of Disciplinary cases - Judgement dated 16th November, 1998

J.K. Batra in Re:- Page 309 of Vol. VII(1) of Disciplinary cases - Judgement dated 20th July, 2000 and published in June 2001 issue of the Institute's Journal at Page 66

P.D. Aggarwal in Re:- Page 320 of Vol. VII(1) of Disciplinary cases - Judgement dated 20th July, 2000 and published in June 2001 issue of the Institute's Journal at Page 66

J.K. Gupta in Re:- Page 406 of Vol. VII(1) of Disciplinary cases - Judgement dated 5th September, 2000

I.C. Gupta in Re:- Page 395 of Vol. VII(1) of Disciplinary cases - Judgement dated 5th September, 2000.

P.B. Kapoor in Re:- Page 414 of Vol. VII(1) of Disciplinary cases - Judgement dated 5th September, 2000

P.L.Tapdiya in Re:- Page 508 of Volume VIII (1) of Disciplinary Cases- Judgement dated 6th August, 2004

Yogesh J. Patel vs. Arvind I. Patel - Page 521 of Volume VIII (1) of Disciplinary Cases- Judgement dated 6th August, 2004

Where a Chartered Accountant accepted a position as auditor of three companies, previously held by the complainant, without communicating with him. Also that, audit fees amounting to Rs.35,500 remained due to the complainant from these companies and he was unjustly removed from these audits with the sole aim of depriving the complainant of the outstanding fees. Held that, he was guilty of professional misconduct within the meaning of clause (8) and (9) of Part I of the First Schedule and notification No.1-CA (7)/46/99 dated 28-10-99 issued under Clause (1), Part I of the Second Schedule to the Chartered Accountants Act, 1949.

(D.G. Chandak -vs.- S.D. Chauhan of M/s. S.D. Chauhan & Co., Mumbai; Pg- 492 of Vol. X (2A) of the Disciplinary Cases- Order of the Council dated 10th and 11th April, 2007).

Where a Chartered Accountant did not ensure the payment of

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undisputed audit fees before acceptance of the audits as required under notification no. 1-CA (7)/46/49 dated 28th Oct. 1999. Held that, Respondent was guilty of professional misconduct within the meaning of clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

(Prakash Chand Surana of M/s Prakash Surana & Associates –vs.- Pratap Singh Surana & Co.; Pg- 356 of Vol. IX (1) of the Disciplinary Cases - Council's decision dated 11th, 12th April, 2008).

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

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

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

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

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;*

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The following cases decided on the erstwhile clause (1) of part (III) of the First Schedule has been shifted to clause (3) part (II) of the Second Schedule due to the Amendment Act, 2006:-

In Disciplinary cases falling under this part, the Council/High Courts had decided as follows:

Recommendation knowing it to be false

A Chartered Accountant in an application for permission to study submitted by his 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 except Mondays & Tuesdays when he had tutorials from 2.00 P.M. to 5.00 P.M. About the Articled Assistant attending the classes even during office hours, the Chartered Accountant pleaded ignorance. The explanation of the Chartered Accountant was not accepted particularly when the Articled Assistant used to take leave often and come late to the office. -Held the Chartered Accountant was guilty of professional misconduct. Articled training is mutual obligation which requires an abiding interest by the employer in the Articled Assistant which needs constant watchfulness and vigilance. In the present case these expectations have been belied.

“Confirm”-meaning of

The dictionary meaning of the word “confirm” is to strengthen to fix or to establish; to ratify; to assure; to admit to full communion. These shades of meaning make it amply clear that before the member concerned can “confirm” his belief must be founded on some reasonable material or conduct.

“Knowledge how attributed”

The existence or otherwise of knowledge as to a particular state of affairs is obviously a matter which is personal to a member concerned and the only way in which the existence of such knowledge can be proved or disproved is to examine the totality of all the surrounding circumstances to ascertain as to whether the belief stated to be the basis on which the member so certified was that of an honest man acting as such bona fide and with due diligence.

(M.A. Dave in Re.: page 255 of Vol. V of the Disciplinary Cases decided on 19th and 20th July, 1974).

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Making false statement to the Council

Where a Chartered Accountant who was employed as a manager of a firm of Registered Accountants, applied for admission as Fellow of the Institute stating that he was a partner, while he was not - Held, that the Chartered Accountant was guilty of misconduct as he had made the statement that he was a partner knowing it to be false.

(J.R. Chatrath in Re:- Page 96 of Vol.I of the Disciplinary Cases and pages 44-47 of June, 1952 issue of the Institute's Bulletin - Judgement delivered on 14th April, 1952).

A Chartered Accountant in practice while applying for renewal of his certificate of practice in Form No.6 for the years 1973, 1974 and 1975 cancelled item Nos. 2 and 3 from the form thus indicating that he was not engaged in any other business or occupation. The admitted fact was that the Chartered Accountant had entered into partnership with persons who were not members of the Institute for the purposes of carrying on business. He was operating Bank Accounts, receiving the money from customers and looking after the affairs of the partnership. - Held he was guilty of professional misconduct under the clauses as he had furnished particulars in Form No.6 while applying for renewal of certificate of practice, knowing them to be false.

(K.S.Dugar in Re: Page 1 of Vol. VI(2) of the Disciplinary Cases - decided on 2nd, 3rd and 4th April, 1980).

An Articled Assistant, while undergoing articles, was also in whole-time employment elsewhere without the permission of the Council. There was evidence that the member under whom he was undergoing articles was aware of this. The member was found guilty in terms of this Clause in so far as:

- (i) he allowed the Articled Assistant to work elsewhere without the permission of the Council and
- (ii) failed to disclose the facts in Bank Empanelment Form.

(N.K. Gupta in Re:- Page 1 of Vol. VIII.2 - 21(6) decided by the Council on 22nd, July, 1995)

A member had during the course of the hearing before Disciplinary Committee given a wrong statement duly verified and also a statement on oath knowing it to be false. He was found guilty in terms of this clause.

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(K.S. Dugar in Re:- Page 52 of Vol. VI(2) of Disciplinary Cases - Decided on 29th, 30th and 31st December, 1987)

The statement made by a member in Form No. 27 that 'x' was working in his firm as a Paid Assistant was found to be false and was found to have been made knowing it to be false. The member was held guilty in terms of this Clause.

(P.C. Sood vs. P.B. Kapoor - Page 95 of Vol. VI(2) of Disciplinary Cases - Decided on 11th, 12th and 13th February, 1988)

There was nothing wrong in a member being associated with a cultural or religious organisation but to use this association and facilities connected with it as a vehicle to gain professional work is not permissible. It is undesirable on the part of a member to pressurise for reappointment even in cases when he feels that he has been wrongly removed. A member had in his letter-head printed several places as branches though factually he had none and Form No. 27 filed by him had also not referred to the "offices". The member was found guilty in terms of this Clause.

(K. Bhattacharjee vs. B.K. Chakraborty - Page 482 of Vol. VII(2) - Council's decision dated 11th, 12th and 13th February, 1988)

Where a Chartered Accountant in his application for empanelment as auditor of branches of public sector banks submitted to the Institute included the name of another member as one of partners of his firm though in fact the said member was not a partner of the said firm on the date of the said application. Held that the Chartered Accountant had contravened clause (1) of Part III of the First Schedule in having submitted the application containing the particulars to the Council knowing them to be false.

(L.N. Gupta in Re:- Page 1 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 6th to 8th June, 1991).

Where a Chartered Accountant had submitted an application of his firm for empanelment as auditor of branches of Public Sector Banks and Statutory Central Audit and Branch Audit of Regional Rural Banks mentioning under the head "Details of disciplinary proceedings pending against any partner/proprietor" as "NIL", whereas a prima facie case against the member existed. Held that he had violated the provisions of clause (1) of Part III of the First Schedule by stating that no disciplinary proceedings were pending against him in the said application as he had deliberately furnished false information when he was fully aware that disciplinary proceedings were pending against him.

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(A.K. Mehra in Re:- Page 39 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 6th to 8th June, 1991).

Where a Chartered Accountant had while returning his Entry on Record for publication in the List of Members confirmed his status as in full time practice and did not disclose his engagement as salaried employee. At the time of furnishing particulars in the prescribed Form 27 for registration of his partnership firm, he didnot disclose his above engagement. Held that he was guilty under clause (1) of Part III of the First Schedule.

(R.K. Jain in Re:- Page 243 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 10th to 12th June, 1993).

A Chartered Accountant claimed to be in full-time practice while applying for empanelment as bank branch auditor while he was in part-time employment with a private limited Company. Since he had submitted the particulars to the Council knowing them to be false, the Council held him guilty under Clause (1) of Part III and decided that his name be removed from the Register of Members for a period of 15 days.

(R.K. Seth in Re:- Page 660 of Vol. VII(2) of Disciplinary Cases – Council's decision dated 16th to 18th January, 1997).

A Chartered Accountant had been in full-time employment in a Company besides holding Certificate of Practice without obtaining Institute's permission and in the bank empanelment form, he had given declaration to the effect that he was not devoting any time to any occupation/vocation/business etc. other than the profession of Chartered Accountants. He was held guilty for violation of Clause (11) of Part I and Clause (1) of Part III of the First Schedule. The Council ordered that his name be removed from the Register of Members for a period of six months.

(N.K. Gupta in Re:- Page 1 of Volume VIII(2) of Disciplinary Cases Council's decision dated 1st to 4th July, 1998).

The charges against the Respondent were that (i) while being in full-time service, he had falsely informed the Institute that he had left the service, (ii) had offered the Complainant the articleship which was not accepted by the Institute, since he was not entitled to train any Articled Assistant, in having not completed three years of continuous service, resulting in the Complainant spoiling about four months of articleship training, and (iii) he did not pay any stipend to the Complainant for training which was not recognised by the Institute. The Council held him guilty for violation of Clause

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(1) of Part III of the First Schedule and ordered that his name be removed from the Register of members for a period of three months.

(Sunil Patni vs. B.L. Gujar – Council's decision dated 1st to 4th July, 1998 - Page 11 of Volume VIII(2) of Disciplinary Cases).

Two members, while holding Certificate of Practice, had been in full time employment with an Insurance Company without obtaining the Institute's permission to be so engaged. They also did not disclose the particulars of their full time salaried employment at the time of furnishing particulars in the prescribed Form for registration of the Atitled Assistant. They were held guilty for violation of Clause (11) of Part I and Clause (1) of Part III of the First Schedule.

(C.M. Mehrotra in Re - Council's decision dated 11th to 13th October, 1999, Page 76 of Volume VIII(2) of Disciplinary Cases and A.P. Gupta in Re:- Council's decision dated 15th to 17th December, 1999, Page 134 of Volume VIII(2) of Disciplinary Cases).

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

(H.K. Gupta in Re:- Council's decision dated 15th to 17th December, 1999 - Page 110 of Volume VIII(2) of Disciplinary Cases).

Failure to comply with the requirements of the Council

Inspite of repeated reminders a Chartered Accountant failed to reply to the letters of the Institute asking him to confirm the date of leaving the services by the paid assistant. -Held the Chartered Accountant was guilty of professional misconduct under the Clause.

(A. Umanath Rao in Re:- Page 998 of Vol.IV of the Disciplinary Cases - decided on 11th and 12th January, 1965)

Where a Chartered Accountant had not disclosed to the Institute at any time about his engagement as a proprietor of a non-Chartered Accountants' firm while holding certificate of practice and had not

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furnished particulars of his engagement as a Director of a Company despite various letters of the Institute which remained unreplyed. Held that he was guilty under clause (11) of Part I and clauses (1) and (3) of Part III of the First Schedule.

(P.S. Rao in Re:- Page 110 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 9th to 11th April, 1992).

Where a Chartered Accountant had continued to train an Articled Assistant though his name was removed from the membership of the Institute and he had failed to send any reply to the Institute asking him to send his explanation as to how he was training as his Articled Assistant when he was not a member of the Institute. Held that he was guilty under clause (3) of Part III of the First Schedule.

(S.M. Vohra in Re:- Page 151 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 16th to 18th July, 1992).

A Chartered Accountant was a partner in a business firm without disclosing his interest and obtaining permission from the Council of the Institute. Held that he had violated inter alia the provisions of Clause (1) of Part III of First Schedule to the Chartered Accountant Act, 1949 for submitting particulars to the Council knowing them to be false.

(R.K. Gupta of M/s Gupta Rajendra & Co. vs. M.G. Baig – Page 158 of Vol.-VIII (2) of Disciplinary Cases decided by the Council on 1st to 3rd August, 2001)

Where a Chartered Accountant had given wrong information to the Institute to the effect that he was in full time practice while being in full time employment. Held that the Chartered Accountant had inter alia violated the provisions of Clause (1) of Part III of First Schedule.

(S.C. Srivastava in Re. – Page 194 of Volume VIII (2) of the Disciplinary Cases –Council's decision dated 1st to 3rd August, 2001)

In Form, 16-A for registration of service of various Articled Assistant under him, the Respondent did not disclose his engagement as Managing Director in two Companies. Thus, he furnished false information to the Council, thereby inter alia attracting provisions of Clause (1) of Part III of First Schedule.

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

A Chartered Accountant being in full time employment, did not

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mention anything in Form No. 27 when the firm in which he was partner applied for empanelment for bank branches audit. He showed himself as a partner in full time practice even while he was engaged with another business organization elsewhere. Held that he was guilty of professional misconduct under Clause (1) of Part III of the First Schedule of Chartered Accountants Act, 1949.

(Anil Kumar Agarwal in Re: - Pages 362 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 1st to 3rd August, 2001)

While applying for membership and Certificate of Practice, a Chartered Accountant did not report that he was a partner in his family business. Held that he was guilty of professional misconduct within the meaning of the Clause.

(Bajjnath Agarwalla vs. Gopinath Aggarwalla - Pages 426 of Volume VIII (2) of Disciplinary Cases – Council's decision dated 26th to 28th August, 2001)

Where a Chartered Accountant did not disclose the particulars of his full time salaried employment at the time of furnishing particulars in the form 16A under CA Regulations 1964 for registration of the Articled Assistant under him. Held that he was *inter alia* guilty of professional misconduct under the Clause.

(N.K. Malhotra in Re:- Page 443 of Vol. VIII(2) of Disciplinary Cases – Council's decision dated 26th to 28th August, 2001)

Where a Chartered Accountant while submitting form 16A for registration of Articled Assistant did not disclose that he was also in employment elsewhere along with holding Certificate of Practice. Held that he was *inter alia* guilty of professional misconduct under Clause (1) of Part III of the First Schedule of the Chartered Accountants Act, 1949.

(S.K. Ahuja in Re:- Page 496 of Vol. VIII (2) of Disciplinary Cases – Council's decision dated 6th to 8th December, 2001)

Where a Chartered Accountant furnished particulars in the various forms sent to the Institute knowing them to be false. In the said form, the Respondent had either mentioned "No" or left blank or deleted the column through which the information was elicited as to whether he is engaged in any other occupation or business. Held that the Respondent was *inter alia* guilty of professional misconduct under Clause (1) Of Part III of First Schedule to the Chartered Accountants Act, 1949 for furnishing particulars knowing them to be false.

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(Arvind Kumar in Re: – Page 553 of Vol. IXI – 2A – 21(4) of Disciplinary Cases – Council's decision dated 26th to 28th December 2002]

The Respondent, while in employment with a Company wrote a letter to the Institute that he had resigned from the Company, which was false and misleading. Held that the Respondent was inter alia guilty of professional misconduct under the Clause.

(Managing Director, A.P. Handicrafts Dev. Corpn. Ltd. vs. A. Bhimeswara Swamy – Page 590 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 7th to 8th & 24th to 25th April 2003)

The Respondent Firm was a partnership firm but it was representing itself as a proprietary firm before the Income Tax Department. The Respondent firm was avoiding payment of Income Tax as a partnership firm for the last 3 to 5 years. The Respondent firm had 3 active partners, who were giving wrong and misleading information to the Institute and the Income Tax Department. Held that he was guilty of professional misconduct under the Clause 1 of Part III to the First Schedule to the Chartered Accountants Act, 1949.

(Sushil Kumar vs. S.L. Gupta of M/s Jain Khandelwal & Co. – Page 708 of Vol. VIII – 2A – 21(4) of Disciplinary Cases – Council's decision dated 16th to 18th September, 2003)

Where a Chartered Accountant who was a partner in a C.A. firm besides being in employment was also holding Certificate of Practice without taking prior permission of the Institute. However, in the form for "Particulars of Offices & Firms" and Bank Empanelment Form, the Respondent did not disclosed about his employment. Held that the Chartered Accountant was inter alia guilty of professional misconduct within the meaning of Clause (1) of Part III of First Schedule to the Chartered Accountants Act, 1949.

(Sudesh Pandit in Re: – Page 882 of Vol. IX – 2A – 21(4) of Disciplinary Cases – Council's decision dated 16th to 18th Sept. 2003)

The Complainant submitted an application for Empanelment of Auditors for the Audit of Branches of 27 Public Sector Banks and Statutory Central Audit and Bank Audit of Regional Rural Banks, wherein the Respondent wilfully and malafidely included Complainant's name as his paid employee, in his application for

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the above said audit. Consequently, Complainant's genuine application was rejected by the Institute on the ground that 'paid C.A.' applied as Sole Proprietor/Partner. The Council held the Respondent guilty of:

- (a) professional misconduct under Clause (1) of Part III of the First Schedule to the Chartered Accountants Act, 1949 and
- (b) professional misconduct within the meaning of "Other Misconduct" under Section 22 read with Sections 21 and 22 of the Chartered Accountants Act, 1949.

(Ashok Kumar Patni Vs. M. S. Singhatwadia - Page 563 of Vol. X – 2A – 21(4) as decided on 4th February, 2006 (257th Meeting of the Council))

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

The following case has been decided under clause (10) of part I of the second Schedule. However, also incorporated here since appearing to be relevant for this clause also.

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

(Tara Pada Banerjee, Dy. General Manager, Bank of Baroda Vs. B.K. Sarker - Page 15 of Vol. IX – 1 – 21(6), Council's decision dated 1st September, 2004 (245th Meeting of the Council) and High Court Judgement dated 5th May, 2006)

The foregoing clauses are intended to enforce discipline among the members.

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PART III OF SECOND SCHEDULE

Other Misconduct in relation to members of the Institute generally

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

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

CHAPTER 6

COUNCIL GUIDELINES

(A) GUIDELINES FOR ADVERTISEMENT

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (ICAI)

(Set up under the Chartered Accountants Act, 1949)

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

GUIDELINES FOR ADVERTISEMENT FOR THE MEMBERS IN PRACTICE

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

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

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

2. Definitions

For the purpose of these Guidelines:

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

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magazines and websites (in Push as well in Pull mode) in accordance with the Guidelines.

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

3. The write-up may include only the following information:

(A) For Members

- (i) Name Chartered Accountant
- (ii) Membership No. with Institute
- (iii) Age
- (iv) Date of becoming ACA
- (v) Date of becoming FCA
- (vi) Date from which COP held
- (vii) Recognized qualifications
- (viii) Languages known
- (ix) Telephone/Mobile/Fax No.
- (x) Professional Address
- (xi) Web
- (xii) E-mail
- (xiii) C A Logo
- (xiv) Passport size photograph
- (xv) Details of Employees (Nos. -)
 - (a) Chartered Accountants -
 - (b) Other Professionals –
 - (c) Articles/Audit Assistants
 - (d) Other Employees
- (xvi) Names of the employees and their particulars on the lines allowed for a member as stated above.
- (xvii) Services provided
 - (a)
 - (b)
 - (c)

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(B) For Firms

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

The write-up may have the Signature, Name of the Member/ Name of the Partner signing on behalf of the firm, Place and Date.

4. Other Conditions

- (i) The write-up should not be false or misleading and bring the profession into disrepute.
- (ii) The write-up should not claim superiority over any other Member(s)/Firm(s).

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

(B) COUNCIL GENERAL GUIDELINES, 2008

**THE INSTITUTE OF CHARTERED ACCOUNTANTS
OF INDIA (ICAI)**

(Set up under The Chartered Accountants Act, 1949)

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

GUIDELINES FOR THE MEMBERS OF ICAI

*(Issued under the provisions of The Chartered
Accountants Act, 1949)*

Chapter I

Preliminary

1.0 Short title, commencement, etc.

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

1.1 Definitions

1.1.1 For the purpose of these Guidelines:

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

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

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1.2 Applicability of the Guidelines

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

Chapter II

Conduct of a Member being an employee

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

Chapter III

Appointment of a Member as Cost auditor

3.0 A member of the Institute shall not accept:-

- (i) The appointment as Cost auditor of a Company under Section 233B of the Companies Act, 1956 while he-
 - (a) is an auditor of the Company appointed under Section 224 of the Companies Act or
 - (b) is an officer or employee of the Company; or
 - (c) is a partner, of any employee or officer of the Company; or
 - (d) is a partner or is in the employment of the Company's auditor appointed under Section 224 of the Companies Act, 1956; or
 - (e) is indebted to the Company for an amount exceeding one thousand rupees, or has given any guarantee or provided any security in connection with the indebtedness of any third person to the Company for an amount exceeding one thousand rupees;

OR

- (ii) After his appointment as Cost Auditor, he becomes subject to any of the disabilities stated in items (i) (a) to (e) above and continues to function as a cost auditor thereafter.

3.1 A member of the Institute in practice shall not accept the appointment as auditor of a Company under Section 224 of the Companies Act, 1956, while he is an employee of the cost auditor of the Company appointed under Section 233B of the Companies Act, 1956.

Chapter IV

Opinion on financial statements when there is substantial interest

4.0 A member of the Institute shall not express his opinion on financial statements of any business or enterprise in which one or more persons who are his “relatives” within the meaning of Section 6 of the Companies Act, 1956 have, either by themselves or in conjunction with such member, a substantial interest in the said business or enterprise.

Explanation: For this purpose and for the purpose of compliance of Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, the expression “substantial interest” shall have the same meaning as is assigned thereto under Appendix (9) to the Chartered Accountants Regulations, 1988.

Chapter V

Maintenance of books of account

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

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

Chapter VI

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

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

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

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

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

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

6.1 Explanation:

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

- (a) in the case of a Chartered Accountant in practice or a proprietary firm of Chartered Accountant, 45 tax audit assignments, in a financial year, whether in respect of corporate or non-corporate assesses.
- (b) in the case of firm of Chartered Accountants in practice, 45 tax audit assignments per partner in the firm, in a financial year, whether in respect of corporate or non-corporate assesses.

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

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

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

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

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

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

Chapter VII

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

7.0 A member of the Institute in practice shall not accept the appointment as auditor of an entity in case the undisputed audit fee of another Chartered Accountant for carrying out the statutory audit under the Companies Act, 1956 or various other statutes has not been paid:

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

7.1 Explanation 1:

For this purpose, the provision for audit fee in accounts signed by both - the auditee and the auditor shall be considered as “undisputed” audit fee.

7.2 Explanation 2:

For this purpose, “sick unit” shall mean where the net worth is negative.

Chapter VIII

Specified number of audit assignments

8.0 A member of the Institute in practice shall not hold at any time appointment of more than the “specified number of audit assignments” of Companies under Section 224 and/or Section 228 of the Companies Act, 1956.

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

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

Provided further where any partner of a firm or firms of Chartered Accountants in practice accepts one or more audit of Companies in his individual capacity, or in the name of his proprietary firm, the total number of such assignments which may be accepted by all firms in

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relation to such Chartered Accountant and by him shall not exceed the “specified number of audit assignments” in the aggregate.

8.1 Explanation:

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

- (a) in the case of a Chartered Accountant in practice or a proprietary firm of Chartered Accountant, thirty audit assignments whether in respect of private Companies or other Companies.
- (b) in the case of Chartered Accountants in practice, thirty audit assignments per partner in the firm, whether in respect of private Companies or other Companies.

Provided that out of such “specified number of audit assignments, the number of audit assignments of public Companies each of which has a paid-up share capital of rupees twenty-five lakhs or more, shall not exceed ten.

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

- (a) the number of audit of such Companies, which he or any partner of his firm has accepted whether singly or in combination with any other Chartered Accountant in practice or firm of such Chartered Accountants, shall be taken into account.
- (b) the audit of the head office and branch offices of a Company by one Chartered Accountant or firm of such Chartered Accountants in practice shall be regarded as one audit assignment.
- (c) the audit of one or more branches of the same Company by one Chartered Accountant in practice or by firm of Chartered Accountants in practice in which he is a partner shall be construed as one audit assignment only.
- (d) the number of partners of a firm on the date of acceptance of audit assignment shall be taken into account.

8.3 A Chartered Accountant in practice, whether in full-time or part-time employment elsewhere, shall not be counted for the purpose of determination of “specified number of audit of Companies” by firms of Chartered Accountants.

8.4 A Chartered Accountant being a part time practicing partner of a

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firm shall not be taken into account for the purpose of reckoning the audit assignments of the firm.

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

S. No.	Name of the Company	Registration Number	Date of Appointment	Date of Acceptance	Date on which Form 23-B filed with Registrar of Companies
1	2	3	4	5	6

Chapter IX

Appointment as Statutory auditor

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

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

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

9.2 For the above purpose,

- (i) the term “other work(s)” or “service(s)” or “assignment(s)” shall include Management Consultancy and all other professional services permitted by the Council pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949 but shall not include:-
 - (a) audit under any other statute;

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- (b) certification work required to be done by the statutory auditors; and
- (c) any representation before an authority;
- (ii) the term “associate concern” means any corporate body or partnership firm which renders the Management Consultancy and all other professional services permitted by the Council wherein the proprietor and/or partner(s) of the statutory auditor firm and/or their “relative(s)” is/are Director/s or partner/s and/or jointly or severally hold “substantial interest” in the said corporate body or partnership;
- (iii) the terms “relative” and “substantial interest” shall have the same meaning as are assigned thereto under Appendix (9) to the Chartered Accountants Regulations, 1988.

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

Chapter X

Appointment of an auditor when he is indebted to a concern

10.0 A member of the Institute in practice or a partner of a firm in practice or a firm shall not accept appointment as auditor of a concern while indebted to the concern or given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding Rs. 10,000/-

Chapter XI

Directions in case of unjustified removal of auditors

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

Chapter XII

Minimum Audit Fee in respect of Audit

12.0 A member of the Institute in practice shall not, on behalf of the firm of chartered accountants in which he is a partner, accept or carry out any audit work involving receipt of audit fees (excluding reimbursement of expenses, if any) for such work of an amount less than what is specified hereunder:-

- (a) consisting of 5 or more partners but less than 10 partners with at least one partner holding a certificate of practice for five years or more; or
- (b) consisting of 10 or more partners with at least one partner holding a certificate of practice for five years or more

	Practising firm having 5 or more partners but	Practising firm having 10 or more partners less than 10 partners
(i) In cities with population of 3 million and above. (as per the last census)	Rs. 6000/- p.a	Rs. 12,000/- p.a
(ii) In cities/towns having population of less than 3 million. (as per the last census)	Rs. 3500/- p.a	Rs 8000/- p.a

Provided that such restriction shall not apply in respect of the following:-

- (i) audit of accounts of charitable institutions clubs, provident funds, etc. where the appointment is honorary i.e. without any fees;.
- (ii) statutory audit of branches of banks including regional rural banks;
- (iii) audit of newly formed concerns relating to two accounting years from the date of commencement of their operations;
- (iv) certification or audit under Income-tax Act or other attestation work carried out by the Statutory Auditor; and
- (v) Sales Tax Audit and VAT Audit.

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12.1 Explanation:

For the purpose of these Guidelines, the expression statutory auditor means and includes a chartered accountant appointed as an auditor under a Central/State or Provincial Act as well as an auditor appointed under any agreement.

The Council has clarified that for the above purpose the audit of Provident Fund Trust; Gratuity Fund etc. carried out by the statutory auditor are to be considered as separate and distinct audit so that the above restrictions are applicable to it.

Chapter XIII

Repeal and Saving

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

13.1 Notwithstanding such repeal:-

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

SCHEDULE

NOTIFICATIONS ISSUED BY THE COUNCIL UNDER ERSTWHILE CLAUSE (ii) OF PART II OF THE SECOND SCHEDULE TO THE CHARTERED ACCOUNTANTS ACT, 1949.

1. No.1-CA(7)/65, dated 6th November, 1965.
2. No.1-CA (37)/70, Published in Part III Section 4 of the Gazette of India dated 30th May, 1970.
3. No.1-CA (39)/70, Published in Part III Section 4 of the Gazette of India dated 24th October, 1970.

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4. No.1-CA (44)/71, Published in Part III Section 4 of the Gazette of India dated 20th March, 1971.
5. No. 1-CA (153)/86, Published in Part III Section 4 of the Gazette of India dated 30th August, 1986.
6. No.1-CA (7)/3/88, Published in Part III Section 4 of the Gazette of India dated 4th February, 1989.
7. No.1-CA (7)/9/89, Published in Part III Section 4 of the Gazette of India dated 19th August, 1989 (Since quashed by the Supreme Court vide Order dated 16th May, 2007).
8. No. 1-CA (7)/43/99, Published in Part III Section 4 of the Gazette of India dated 31st July, 1999.
9. No. 1-CA (7)/46/99, Published in Part III Section 4 of the Gazette of India dated 13th November, 1999.
10. No. 1-CA (7)/53/2001, Published in Part III Section 4 of the Gazette of India dated 12th May, 2001.
11. No.1-CA (7)/60/2002, Published in Part III Section 4 of the Gazette of India dated 23rd March, 2002.
12. No.1-CA (7)/63/2002, Published in Part III Section 4 of the Gazette of India dated 7th September, 2002.
13. No.1-CA (7)/67/2002, Published in Part III Section 4 of the Gazette of India dated 19th October, 2002.
14. No. 1 - CA (7)/75/2004, Published in Part III Section 4 of the Gazette of India dated 22nd May, 2004.

CHAPTER 7

SELF-REGULATORY MEASURES RECOMMENDED BY THE COUNCIL

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

The more important of these recommendations are as under:

7.2 Branch Audits

The branch audits of a Company should not be conducted by its statutory auditors consisting of ten or more members, but should be conducted by the local firms of auditors consisting of less than ten members. This should not be understood to mean any restriction on the right of the statutory auditors to have access over branch accounts conferred under the Companies Act, 1956. This restriction may not apply in the following cases:

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

7.3 Joint Audit

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

7.4 Ratio Between Qualified and Unqualified Staff

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

7.5 Disclosure of Interest by Auditors in other Firms

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

7.6 Ceiling on the Fees

To ensure that the professional independence of a member in full-time or part-time practice does not appear to be jeopardized he should, as far as possible, take care to see that the professional fees for audit and other services received by the firm in which he is a partner, by him and his partners individually and by firm or firms in which he or his partner are partners from one or more clients or Companies under the same management does not exceed 40% of the gross annual fees of the firm, firms and partners referred to above. Companies under the same management here would refer to the definition of this expression as provided in section 370(1-B) of the Companies Act, 1956.

Provided that no such ceiling on the gross annual professional fees of a member would be applicable where such fees do not exceed two lakhs of rupees in respect of a member or firm including fees received by the member or firm for other services rendered through the medium of a different firm or firms in which such member or firm may be a partner or proprietor.

Provided further that no such ceiling on the gross annual professional fees of a member would be applicable in the case of audit of government Companies, public undertakings, nationalised banks, public financial institutions or where appointments of auditors are made by the Government.

7.7 Recommended scale of fees chargeable for the work done by the members of the Institute.

The Council of the Institute of Chartered Accountants of India

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recommends from time to time scale of fees chargeable for the work done by the member of the Institute. Such scale of fees were last revised effective from April 1, 2000. Keeping in view the overall increase in the cost of living since then, the Council at its meeting held in January 2006, has revised the existing recommended fees as under (effective from 12th May 2006):

		Existing		Revised with effect from (12 th May 2006)	
		Between (Rs.)	And (Rs.)	Between (Rs.)	And (Rs.)
1.	For giving expert evidence in courts of law in the Union of India according to professional standing of the witness.	5,000	10,000	7,500	15,000
		[For each day or part there-of, spent in attendance and/ or travelling]		[For each day or part thereof, spent in attendance and/ or travelling]	
2.	Other work: (a) Statutory Audit, Tax Audit, Internal Audit, Accountancy and Secretarial Work:				
	Principal	600	1,200	900	1,800
	Qualified				
	Assistants	300	600	450	900
	Semi Qualified/				
	Other Assistants	100	200	150	300
		[Per Hour]	[Per Hour]	[Per Hour]	[Per Hour]
	(b) Taxation Work:				
	Principal	1,000	2,000	1,500	3,000
	Qualified				
	Assistants	500	1,000	750	1,500
	Semi-Qualified/				
	Other Assistants	200	400	300	600
		[Per Hour]	[Per Hour]	[Per Hour]	[Per Hour]

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	(c) Investigation, Management Services or Special Assignments:				
	Principal	1,500	3,000	2,250	4,500
	Qualified Assistants	750	1,500	1,125	2,250
	Semi-Qualified/ Other Assistants	250	500	375	750
		[Per Hour]	[Per Hour]	[Per Hour]	[Per Hour]

Note:

1. Office time spent in travelling would be chargeable. In case of outstation work, travelling and out-of-pocket expenses would also be chargeable.
2. The Council issues for general information the above revised recommended scale of fees which it considers reasonable under present conditions. It will be appreciated that the actual fees charged in individual cases will be a matter of agreement between the member and the client

APPENDICES

APPENDIX 'A'

(Please refer to page 107)

Same as Appendix No. (11) of the Institute's publication, viz., the Chartered Accountants Act, 1949

- (1) It was agreed that the Institute's previously recognised* under the Auditor's Certificates Rules, 1932, be recognised for the purposes of Section 7 for the use of letters, F.S.A.A., etc.
- (2) The Council decided that letters or description in respect of membership of bodies other than Accountancy Institutes can be used provided such use does not amount to the use of designation and in the case of Accountancy Institutes prior recognition of the Council in this behalf is necessary. It was also decided that in respect of Accountancy Institutes which are recognised and in respect of Institutes other than Accountancy Institutes the word London in brackets may be allowed to be added provided that in each case the respective Institutes had permitted such addition.

The Council also decided that the Institute of Cost and Works Accountants is not an Accountancy Institute within the meaning of Section 7 and therefore there was no bar to the use of these letters by the members of that Institute, if they happen to be our members.

* List of Institute and Societies recognised under the Auditors Certificates Rules, 1932:

- (1) The Institute of Chartered Accountants in England and Wales;
- (2) The Society of Incorporated Accountants and Auditors, London;
- (3) The Society of Accountants in Edinburgh;
- (4) The Institute of Accountants and Actuaries in Glasgow;
- (5) The Society of Accountants in Aberdeen; and
- (6) The Institute of Chartered Accountants in Ireland.

APPENDIX 'B'

(Please refer to page 133)

Announcement regarding withdrawal of Appendix no. (6) of the Institute's publication viz. the Chartered Accountants Act, 1949 as published at page 53 of February 1998 issue of the Journal.

Resolution passed by the Council of the Institute of Chartered Accountants of India (ICAI) following the decision taken at its 188th meeting held from 8th to 10th December, 1997 to treat persons (who were, on the basis of their UK Qualification, enrolled prior to 8th December, 1995 as members of ICAI under Section 4(1)(v) of the Chartered Accountant Act, 1949 and were also members of the ICAI as on 8th December 1995) at par with persons qualified from ICAI.

For the purpose of removal of doubts in regard to the decision taken by the Council at its 178th meeting held on 6th, 7th and 8th December, 1995, to withdraw the resolution passed by it in February, 1958 u/s 4(1)(v) of the Chartered Accountants Act, 1949 (then appearing as Appendix No. (6) to the Chartered Accountants Act, 1949), the Council has decided to pass the following Resolution:

RESOLVED THAT

1. Further to the resolution passed by the Council in its meeting held on 6th to 8th December, 1995 deciding to withdraw the resolution passed by it in February, 1958 u/s 4(1)(v) of the Chartered Accountants Act, 1949 (then appearing as Appendix No. (6) to the Chartered Accountants Act, 1949), it is clarified that effective from 8th December, 1995 no person who has undergone training in the United Kingdom and has passed the examination conducted by any of the following four Institutes, is entitled to have his name entered in the Registrar of Members maintained by the Institute of Chartered Accountants of India:
 - (i) The Institute of Chartered Accountants in England and Wales;
 - (ii) The Institute of Chartered Accountants of Scotland;
 - (iii) The Institute of Chartered Accountants in Ireland;

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- (iv) The Society of Incorporated Accountants and Auditors, London

In other words, effective from 8th December, 1995 no fresh enrolment of persons with any UK qualification as aforesaid is permissible.

2. Effective from 8th December, 1995 any person whose name has been entered prior to 8th December, 1995, in the Register of Members maintained by the Institute of Chartered Accountants of India u/s 4(1)(v) of the Chartered Accountants Act, 1949 on the basis of his having undergone training in the United Kingdom and having passed the examination conducted by any of the aforementioned four Institutes and was also a member of the Institute of Chartered Accountants of India as on 8th December, 1995 shall be treated at par with persons having passed such examinations and completed such training prescribed for members of the Institute of Chartered Accountants of India as per section 4(1)(ii) of the Chartered Accountants Act, 1949. Accordingly, such persons are not required to satisfy any of the four conditions listed under the then Appendix No.(6) to the Chartered Accountants Act, 1949, namely:
 - (i) That such persons be required to reside in India to practise the profession of Accountancy or to serve as an assistant in a Chartered Accountants office in India; and
 - (ii) That such persons be not eligible for membership of the Council or the Regional Councils or to the right of voting in elections under the Chartered Accountants Act, 1949; and
 - (iii) That the membership of the Institute will cease if and when the persons concerned cease to reside or practise in India; and
 - (iv) That the Board of Trade in the United Kingdom accords the right to the members of this Institute (ICAI) to practise the profession of Accountancy in the United Kingdom in respect of the audit of public companies as defined in the (UK) Companies Act, 1948.
3. In view of the above, persons covered under (2) above, shall be, effective from 8th December, 1995, deemed to be at par with the persons who have passed such examinations and

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have completed such training prescribed for the members of Institute of Chartered Accountants of India for all practical purposes and would be so governed by the provisions in force of Chartered Accountants Act, 1949 and Regulations framed thereunder, from time to time - be it restoration of membership, restoration of certificate of practice, removal of names, cancellation of certificate of practice, admission as a follow, opening of a branch office, payment of fees, allotment of firm name etc.

APPENDIX 'C'

(Please refer to page 134)

Announcement regarding withdrawal of Appendix no. (5) of the Institute's publication viz. the Chartered Accountants Act, 1949 as published at page 93 to 96 of May 1998 issue of the Journal.

The Council at its 189th Meeting Held on January 16 and 17, 1998, is reproduced for the information of Members, Students and Others concerned.

(A) Resolution passed by the Council of the Institute of Chartered Accountants of India (ICAI) at its 189th Meeting held on January 16 and 17, 1998, to treat persons (who were, on the basis of their qualification of certain Institutions/ Organisations listed under the then Appendix No. (5) to the Chartered Accountants Act, 1949, enrolled upto December 7, 1997, as Member of the ICAI under Section 4(1)(v) of the Chartered Accountants Act, 1949 and were also Members of the ICAI as on December 8, 1997) at par with persons qualified from ICAI.

Following the decision taken by the Council at its 188th meeting held on December 8, 9 and 10, 1997, to withdraw the recognition of qualification of certain institutes/bodies listed under Appendix No. (5) to the Chartered Accountants Act, 1949, the Council at its 189th meeting held on January 16 and 17, 1998 has passed the following Resolution relating to treatment to be meted out to persons who were enrolled upto December 7, 1997 as members of the Institute of Chartered Accountants of India on the basis of their qualification of any one of the institutions, organisations, etc. mentioned in the then Appendix No. (5) to the Chartered Accountants Act, 1949 under Section 4(1) (v) and were also members of the ICAI as on December 8, 1997:

"RESOLVED THAT -

1. Further to the resolution passed by the Council at its 188th meeting held on December 8,9 and 10, 1997, deciding to withdraw the resolution passed by it in September, 1966 under Section 4(1)(v) of the Chartered Accountants Act, 1949, (then appearing as Appendix No. (5) to the Chartered Accountants Act, 1949), it is clarified that effective from December 8, 1997, no person who has undergone training

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and has passed the examination conducted by any of the following five institutions, organisations, etc. is entitled to have his name entered in the Register of Members maintained by the Institute of Chartered Accountants of India:

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

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

2. Effective from December 8, 1997, any person whose name has been entered prior to December 8, 1997, in the Register of Members maintained by the Institute of Chartered Accountants of India under Section 4(1)(v) of the Chartered Accountants Act, 1949, on the basis of his having undergone training and having passed the examination conducted by any of the aforementioned five institutions, organisations, etc. and was also a member of the Institute of Chartered Accountants of India as on December 8, 1997 shall be treated at par with persons having passed such examinations and completed such training prescribed for members of the Institute of Chartered Accountants of India as per Section 4(1) (ii) of the Chartered Accountants Act, 1949. Accordingly, such persons are not required to satisfy any of the three conditions listed under the then Appendix No. (5) to the Chartered Accountants Act, 1949, namely:
 - (i) That such persons be required to reside in India to practice the profession of Accountancy or to serve as an assistant in a Chartered Accountants office in India; and
 - (ii) That such person shall not be eligible for membership of the Council or the Regional Councils nor have a right to vote in elections under the Chartered Accountants Act, 1949 and the Regulations framed thereunder; and

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(iii) that the membership of the Institute will cease if and when the person concerned cease to reside or practice in India.

3. In view of the above, persons covered under (2) above, shall be, effective from December 8, 1997, deemed to be at par with the persons who have passed such examinations and have completed such training prescribed for the members of the Institute of Chartered Accountants of India for all practical purposes and would be so governed by the provisions in force of the Chartered Accountants Act, 1949 and Regulations framed thereunder, from time to time - be it restoration of membership, restoration of certificate of practice, removal of names, cancellation of certificate of practice, admission a fellow, opening of a branch office, payment of fees, allotment of firm name, etc."

(B) Recognition, by the Council of the Institute of Chartered Accountants of India, of training undergone in Institutions/ Organisations mentioned in the then Appendix No. (5) to the Chartered Accountants Act, 1949

The Council of the Institute at its 188th meeting held on December 8,9, and 10, 1997, considered the matter of recognition of training undergone, under the bye-laws/ regulations of one or more of the Institutions/Organisations specified in the then existing Appendix No.(5) to the Chartered Accountants Act, 1949, by persons who had left India before December 8, 1997 for the purpose of pursuing the Chartered Accountancy Course in the respective countries and are willing to return to India to pursue the same. With a view to mitigating the possible hardship of such persons, the Council passed the following Resolution:-

"RESOLVED THAT -

By virtue of powers vested under Regulation 205 of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India hereby orders that the period of training undergone in the respective countries under the bye-laws/regulations of one or more of the following Institutes, namely-

1. The Institute of Chartered Accountants of Ceylon.
2. The Public Accountants and Auditors' Board of South Africa
3. The Institute of Chartered Accountants of Pakistan.
4. The Registered Accountants of Burma, and

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5. The Institute of Chartered Accountants in Australia.

be recognised only in the case of persons who had left India before December, 8, 1997 for the sole purpose of pursuing the Chartered Accountancy Course in any of the aforementioned countries provided:

- (a) such persons return to India, register with the Institute on or before March 31, 1999 after fulfilling the requirements of the Chartered Accountants Regulations, 1988 for admission to articleship and producing satisfactory proof that they had completed training - wholly or partly - in the respective country and undergo practical training
 - (i) for a minimum additional period of 12 months in entirety in the case of those who have already completed the prescribed period of training not being less than three years in the respective country; or
 - (ii) for a minimum period of 12 months in entirety in the case of those who are not covered under (i) above but have completed 24 months of training or more in the respective country; or
 - (iii) for the balance period of training in entirety as required under the Chartered Accountants regulations, 1988 in the case of those who have completed less than 24 months of training in the respective country; and
- (b) appear in and qualify both the Intermediate and Final examinations of the Institute in their entirety under the Chartered Accountants Regulations, 1988 irrespective of whether they had passed the corresponding examinations, wholly or partly, under the bye-laws/regulations of the aforementioned Institutions, organisations, etc."

It may be noted that the effect and application of the aforementioned Order/Resolution passed by the Council at (B) above shall cease to operate effective from April 1, 1999.

APPENDIX 'D'

(Please refer to page 159)

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

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

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

LETTER-HEADS

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

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Committees or as a member of the Council/Regional Council/Managing Committee, at his cost.

VISITING CARDS

1. The visiting cards will be printed for both the elected and nominated Council members. The visiting cards be also printed for members of Regional Councils and Managing Committees of the branches. The visiting cards will be used only for official work of the Institute. The Head office of the Institute will print the visiting cards for President, Vice-President and Members of Council including Chairman / Vice – Chairman of the Committees of the Council. The offices of Regional Councils and Branches will print the visiting cards for respective Regional Councils and Branches. The members themselves will not print the visiting cards.
2. In the visiting card, the designation viz., President/ Vice-President/Member, Council/Chairman/Vice – Chairman of the respective Committee(s) of the Council/Chairman of the Regional Council/Chairman of the Branch / Vice-Chairman of the Regional Council/Vice-Chairman of the Branch/Secretary of the Regional Council/Secretary of the Branch/Treasurer of the Regional Council/Treasurer of the Branch/Member of the Regional Council/Member of the Managing Committee of Branch of Regional Council will be used. There will not be any mention of any other designation. Besides the above, Council members who hold the office of Chairman/Vice Chairman of any of the Committees of the Council may mention such position in their visiting cards specifying the name of the Committee concerned and the relevant period for which they are holding such position. If a member of the Council holds Chairmanship/Vice-Chairmanship of more than one Committee of the Council, he may have separate cards printed as above for each such Committees.
3. The full term of the Council/Regional Council/Branch will be mentioned for example 2007 to 2010. In case of the President/Vice-President/ Chairman/Vice – Chairman of Committees of the Council/ Chairman, Regional Council and Branch/Vice-Chairman, Regional Council and Branch/ Secretary, Regional Council and Branch/Treasurer, Regional Council and Branch, the year of Presidentship/Vice-Presidentship/Chairmanship/Vice Chairmanship/Secretaryship/

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Treasurership will be mentioned, for example, 2008-2009. The President, Vice-President, Chairman/Vice Chairman of Committees of the Council/ Chairmen of Regional Councils and Branches, Vice-Chairmen of Regional Councils and Branches, Secretary of Regional Councils and Branches and Treasurer of Regional Councils and Branches will use their cards for the year in which they are elected. Cards with the designation/ description viz., former/past President, membership of national/ international bodies even at personal cost will not be permitted.

4. The address of the Institute in the case of Council members including Chairman/Vice Chairman of Committees of the Council, that of the concerned Regional Council in the case of Regional Council members and that of the concerned Branch in the case of Members of the Managing Committee of the Branch will be printed. The Telephone No., Fax No. & E-mail address of the Institute, Member's name, his E-mail identity and Mobile No. in the case of Council Member, those of concerned Regional Council in the case of the Regional Council Member and those of the concerned Branch in the case of Member of Managing Committee of the Branch will be given in the front of the visiting card. However, members of the Council including Chairman/Vice-Chairman of the Committees of the Council, members of the Regional Councils and of Managing Committees of Branches may print either their residential address or office address including telephone/fax no. without mentioning the firm's name on the back of the visiting cards.
5. The visiting cards will be returned to the offices of the Institute as soon as the term of the President and Vice-President, the Membership of the Council/ Chairmanship/ViceChairmanship of respective Committees of the Council/ Chairmanship/Vice Chairmanship/Secretaryship/Treasurership/Membership of the Regional Council/Managing Committee of the Branch expires.
6. The number of cards permissible to be printed for the Council member will be initially 500 and thereafter as and when requisition is made. The number of visiting cards permissible to be printed for Chairman, Vice-Chairman, Secretary, Treasurer and Member of Regional Councils and Branches will be 250 and 100 per year, respectively. The Council further decided not to permit any visiting cards to the office-bearers of study circle/chapters. For President and Vice- President, the number of cards to be printed will be left to be decided by them.

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

APPENDIX 'E'

(Please refer to page 197)

Ethical Standards Board (ESB)

A. Mission Statement:

“To work towards evolving a dynamic and contemporary Code of Ethics and ethical behaviour for members while retaining the long cherished ideals of ‘excellence, independence, integrity’ as also to protect the dignity and interests of the members”.

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

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

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

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

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obligatory on the incoming auditor, before accepting appointment to obtain a copy of such communication from the Board of Directors and consider the same before accepting the appointment.

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

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

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

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

- (i) On receipt of a complaint from an auditor regarding his unjustified removal or non re-appointment due to alleged qualifications/queries, the Board may ask for the Statement of Reasons from the Complainant which as per complaint lead to his non re-appointment/removal.
- (ii) The Statement of reasons will be sent to the Incoming Auditor and Auditee for their Comments/ Observations. The Complainant and the Incoming Auditor will submit their Statement of Reasons, Observations/Comments thereof and other Submissions duly verified and in case of any wrong Submission, the members shall be liable for misconduct.
- (iii) The Incoming Auditor will be advised to consider the Statement of Reasons submitted by the Complainant while

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conducting the audit. The Incoming Auditor will be asked to submit a copy of his Audit Report for consideration of the Board. The Board, thereafter, shall examine the Statement of Reasons sent by the Complainant, the Observations/ Comments of Incoming Auditor and Auditee and the Audit Report of the Incoming Auditor to ensure that the issues raised by the Complainant have been adequately addressed to by the Incoming Auditor.

- (iv) It is clarified that this procedure is without prejudice to right of any person and legality of his appointment.
- (v) In case of any negligence by the Incoming Auditor the matter will be referred to the Disciplinary Directorate of the Institute to treat the same as 'Information'.
- (vi) It may be mentioned that so far as payment of undisputed fee of the Outgoing Auditor is concerned, the present position shall be maintained.
- (vii) The Board shall have the right to issue interim order, in appropriate cases.

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

A member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he does not follow the direction given, by the Council or an appropriate Committee or on behalf of any of them, to the incoming auditors not to accept the appointment as auditors, in the case of unjustified removal of the earlier auditors. Attention of the members is invited to the Council guidelines in chapter 6 of the book, and published at page 686 of October 2008 issue of the Institute's Journal, 'The Chartered Accountant'.

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

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Board after considering the facts and circumstances of the case, the comments of the bank and the firm's observations thereon, decided that the appointment should not have been cancelled by the bank. The concerned bank was informed accordingly.

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

The Institute of Chartered Accountants of India,
ICAI Bhavan
I.P. Marg, New Delhi – 110 002

FORM OF COMPLAINT/STATEMENT OF REASONS*

Before the Ethical Standards Board (ESB)

1. Name of the Complainant:

Complainant's Membership No. -
Address -
Phone No. -
Fax -
E-mail address -
Website -

2. Name of the Incoming Auditor

Membership No. -
Address -
Phone No. -
Fax -
E-mail address -
Website -

3. Name & address of the Entity

Address -
Phone No. -
Fax -
E-mail address -
Website -

4. Particulars of complaint/Statement of Reasons leading to removal/
non-reappointment. (Please attach separate sheet for details)

* To be filed alongwith a D.D of Rs. 1.000/- in favour of the Secretary, ICAI

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5. Particulars of evidence, oral and documentary, if any, to substantiate the complaint. (Please see the list at Annexure for suggested documents to be attached)
6. Relief sought from the Committee including the interim order.
7. Reasons/justifications for Interim Order.
8. Any legal prosecutions initiated and their status including all the relevant documents.

Signature [Partner/Proprietor/Member]

M. No.

VERIFICATION

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

Verified today, theday of 20 at

Signature [Partner/Proprietor/Member]

M. No.

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

Certified true copies of the following documents:

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

APPENDIX 'F'

(Please refer to pages 212, 240 & 242)

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

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

(A) Permission granted generally

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

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

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(B) Permission to be granted specifically:

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

1. Full-time or part-time employment in business concerns provided that the member and/or his relatives do not hold substantial interest in such concerns.
2. Full-time or part-time employment in non-business concerns.
3. Office of a Managing Director or a whole time Director of a body corporate within the meaning of the Companies Act, 1956, provided that the member and/or any of his relatives do not hold substantial interest in such concern.
4. Interest in family business concern or concern in which interest has been acquired as a result of relationship and in the management of which no active part is taken.
5. Interest in an educational institution.
6. Part-time or full-time lecturership for courses other than those relating to the Institute's examination conducted under the auspices of the Institute or the Regional Councils or their branches.
7. Part-time or full-time tutorship under any educational institution other than the Coaching Organisation of the Institute.
8. Editorship of journals other than professional journals.
9. Any other business or occupation for which the Executive Committee considers that permission may be granted.

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

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

- (I) the expression "relative", in relation to a member means the husband, wife, brother or sister or any lineal ascendant or descendant of that member; and
- (II) a member shall be deemed to have a "substantial interest" in a concern -
 - (i) in a case where the concern is a Company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in

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profits) carrying not less than twenty per cent of voting power at any time, during the relevant years are owned beneficially by such member or by any one or more of the following persons or partly by such member and partly by one or more of the following persons:

- (a) One or more relatives of the member;
- (b) Any concerns in which any of the persons referred to above has a substantial interest;
- (ii) in the case of any other concern, if such member is entitled or the other persons referred to above or such member and one or more of the other persons referred to above are entitled in the aggregate, at any time during the relevant years to not less than twenty percent of the profits of such concern.

Explanation:

- (a) The relevant years in the context of Clause (4) of Part I of the First Schedule to the Chartered Accountants Act, 1949 read with Appendix (17) mean the year/period to which the report/certificate relates and the year/period during which the said report/certificate is signed.
- (b) The relevant years in the context of Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 read with Appendix (10) mean the year/period in which not less than 20% of voting power/20% share of profits were owned beneficially.

Attention of the members is also invited to para 3 of the above Resolution relating to the holding of office of a Managing Director or a whole time Director in a Company. In such cases, a member can accept the office of a managing director or a whole-time Director only after obtaining the specific and prior approval of the Council. Attention of the members is also invited to the provisions of Section 2(26) of the Companies Act, 1956 under which even where a person is not designated as a managing director or a whole-time director, he can be deemed to be a managing director or a whole-time director if he is entrusted with the whole or substantially the whole of the management of the affairs of the Company.

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

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

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

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

- (i) any member engaged in any other business or occupation, in terms of general or specific permission granted shall not be entitled to perform any attest function. However, a member engaging in any of the following area(s), in terms of the specific or general permission so granted, shall be entitled to perform attest function:
 - (a) Authorship of books and articles
 - (b) Holding of Life Insurance Agency Licence for the limited purpose of getting renewal commission.
 - (c) Attending classes and appearing for any examination.
 - (d) Holding of public elective offices such as M.P., M.L.A. & M.L.C.
 - (e) Honorary office-bearership of charitable, educational or other non-commercial organisations.
 - (f) Acting as Notary Public, Justice of the Peace, Special Executive Magistrate and the like.
 - (g) Part-time tutorship under the Coaching Organisation of the Institute.
 - (h) Valuation of papers, acting as paper-setter, head-examiner or a moderator for any examination.
 - (i) Editorship of professional journals – (not in employment)
 - (j) Acting as surveyor and Loss Assessor under the Insurance Act, 1938 - (not in employment).

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- (k) Acting as Recovery consultant in the Banking Sector - (not in employment).
 - (l) Any coaching assignment organized by the Institute, its Regional Councils and Branches of Regional Councils.
 - (m) Engagement as Lecturer in an University, affiliated college, educational institution, coaching organisation, private tutorship, provided the direct teaching hours devoted to such activities taken together do not exceed 25 hours a week.
 - (n) Owning agricultural land and carrying out agricultural activity.
 - (o) Engagement in any other business or occupation permitted by the Executive Committee from time to time.
- (ii) A member who is not entitled to perform attest function shall not be entitled to train articled assistants.
 - (iii) The decision (of the Council) taken at its 223rd meeting held in February, 2002 prescribing the criteria for individual cases of articleship shall continue to be in operation, mutatis mutandis.

The Council in this connection clarified that the Attest function for the purpose of this Resolution would cover services pertaining to audit, review, certification, agreed upon procedures, and compilation, as defined in the Framework of Statements on Standard Auditing Practices and Guidance Notes on Related Services published in the July, 2001 issue of the Institute's Journal."

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