

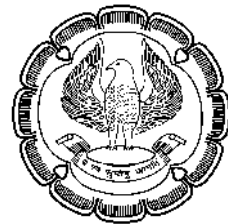
FINAL COURSE

SUPPLEMENTARY STUDY PAPER-2007

ADVANCED AUDITING

Covers Chapter of Professional Ethics in place of chapter 17 of Study Material of Advanced Auditing (Old Course) as amended by The Chartered Accountants (Amendment) Act, 2006

Relevant for students appearing in Final Examination
to be held in November, 2007 and thereafter



BOARD OF STUDIES
THE INSTITUTE OF CHARTERED ACCOUNTANT OF INDIA

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PROFESSIONAL ETHICS

Introduction

1.1 The International Federation of Accountants (IFAC), in its guidelines on Professional Ethics for the Accountancy Profession, has stated:

"Persons who pursue a vocation in which they offer their knowledge and skills in the service of the affairs of others have responsibilities and obligations to those who rely on their work. An essential pre-requisite for any group of such persons is the acceptance and observance of professional, ethical standards regulating their relationship with clients, employers, employees, fellow members of the group and the public generally."

Objectives

1.2 The Code recognizes that the objectives of the accountancy profession are to work to the highest standards of professionalism, to attain the highest levels of performance and generally to meet the public interest requirement. IFAC in its Code of Ethics for Professional Accountants has also stated as under:

1.2.1 The Public Interest - A distinguishing mark of a profession is acceptance of its responsibility to the public. The accountancy profession's public consists of clients, credit grantors, governments, employers, employees, investors, the business and financial community, and others who rely on the objectivity and integrity of professional accountants to maintain the orderly functioning of commerce. This reliance imposes a public interest responsibility on the accountancy profession. The public interest is defined as the collective well-being of the community of people and institutions the professional accountant serves

These objectives require four basic needs to be met:

Credibility - In the whole of society there is a need for credibility in information and information systems.

Professionalism - There is a need for individuals who can be clearly identified by clients, employers and other interested parties as professional persons in the accountancy field

Quality of Services - There is a need for assurance that all services obtained from a professional accountant are carried out to the highest standards of performance

Confidence - Users of the services of professional accountants should be able to feel confident that there exists a framework of professional ethics which governs the provision of those services

Fundamental Principles

1.3 In order to achieve the objectives of the Accountancy profession, professional accountants have to observe a number of prerequisites or fundamental principles. The fundamental principles are:

Integrity - A professional accountant should be straightforward and honest in performing professional services.

Objectivity - A professional accountant should be fair and should not allow prejudice or bias, conflict of interest or influence of others to override objectivity.

Professional competence - A professional accountant should perform professional services with due care, competence and diligence and has a continuing duty to maintain professional knowledge and skill at a level required to ensure that a client or employer receives the advantage of competent professional service based on up-to-date developments in practice, legislation and techniques

Due Professional Care - It does not require ultimate expert but does extend to every aspect of the audit including the evaluation of audit risk, the formulation of audit objective, the establishment of audit scope, the selection of audit tests and the evaluation of test result. It requires an individual to exercise the Skill of a level commonly possessed by practitioners of that specialty

Confidentiality - A professional accountant should respect the confidentiality of information acquired during the course of performing professional services and should not use or disclose any such information without proper and specific authority or unless there is a legal or professional right or duty to disclose

Professional Behaviour - A professional accountant should act in a manner consistent with the good reputation of the profession and refrain from any conduct which might bring discredit to the profession. The obligation to refrain from any conduct which might bring discredit to the profession requires IFAC member bodies to consider, when developing ethical requirements, the responsibilities of a professional accountant to clients, third parties, other members of the accountancy profession, staff, employers and the general public

Technical Standards - A professional accountant should carry out professional services in accordance with the relevant technical and professional standards. Professional accountants have a duty to carry out with care and skill, the instructions of the client or employer in-so-far as they are compatible with the requirements of integrity, objectivity and in the case of professional accountants in public practice, independence. In addition they should conform with the technical and professional standards promulgated by:

- ◆ IFAC (e.g. International Standards on Auditing);
- ◆ International Accounting Standards Board;
- ◆ The Member's professional body or other regulatory body; and
- ◆ Relevant legislation.

The Chartered Accountants Act, 1949

1.4 The Chartered Accountants Act, 1949 (No. 38 of 1949) came into force on the 1st day of July, 1949. Later in the year 1959, certain amendments were made therein through the Chartered Accountants (Amendment) Act, 1959 (No.15 of 1959). After about 47 years extensive changes have been made in the Act through the Chartered Accountants (Amendment) Act, 2006 (No.9 of 2006) which have been notified by the Central Government in the Gazette of India (Extra Ordinary) dated 23rd March, 2006.

The entire Act is divided in nine chapters [Including chapter VIII A inserted by Chartered Accountants(Amendment) Act, 2006]

The Complete enumeration of Contents is given below:

Chapter I - Preliminary

1. Short title, Extent and Commencement
2. Interpretation

This Chapter contains preliminary aspects of the Act like applicability of the Act, definition of various terms like, Chartered Accountant, Council, holder of a restricted certificate, Registered Accountant etc

Chapter II - The Institute of Chartered Accountants of India

3. Incorporation of the Institute
4. Entry of names in the Register
5. Fellows and Associates
6. Certificate of Practice
7. Members to be known as Chartered Accountants
8. Disabilities

This chapter deals with various things like who shall be entitled to have his name entered in the register of members of the institute, who shall be deemed to have become an associate member of the Institute, who shall be entered in the Register as a fellow of the Institute. This Chapter also deals with issues relating to certificate of practice and disabilities of a person for having his name entered in the Register.

Chapter III - Council of the Institute

9. Constitution of the Council of the Institute
10. Re-election or re-nomination to Council [Substituted by Chartered Accountants (Amendment) Act, 2006]
- 10A. Settlement of dispute regarding election [Inserted by Chartered Accountants (Amendment) Act, 2006]
- 10B. Establishment of Tribunal [Inserted by Chartered Accountants (Amendment) Act, 2006]
11. Nomination in default of election or nomination

12. Presidents and Vice-President
13. Resignation of Membership and casual Vacancies
14. Duration and dissolution of the Council
15. Function of the Council
- 15A. Imparting education by Universities and Other bodies [Inserted by Chartered Accountants (Amendment) Act, 2006]
16. Officers and employees, salary, allowances etc.[substituted by Chartered Accountants (Amendment) Act, 2006]
17. Committees of the Council
18. Finances of the Council

This Chapter deals with various issues like composition of Council of the Institute, manner of conducting election to the Council, mode of tendering resignation from the membership of the Council mode of filling a casual vacancy, various duties of the Council.. This Chapter also deals with the permission accorded to any University established by law or any body affiliated to the Institute to impart education on the subjects covered by the academic courses of the Institute etc.

Chapter IV - Register of Members

19. Register of Members
20. Removal from the Register

This chapter deals with the matter relating to register of members and removal from the register the name of any member. The Council has to maintain a Register of Members of the Institute. This Register shall include name, date of birth, domicile, residential and professional address, qualification etc. Also the Council may remove from the Register the name of any member in certain circumstances like in case of death of the member or if the member does not pay the prescribed fees, or when a member has become subject to any of the disabilities mentioned in section 8 etc.

Chapter V - Misconduct

21. Disciplinary Directorate [Substituted by Chartered Accountant (Amendment) Act, 2006]
- 21A. Board of Discipline [Inserted by Chartered Accountants (Amendment) Act, 2006]
- 21B. Disciplinary Committee [Inserted by Chartered Accountant (Amendment) Act, 2006]
- 21C. Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court [Inserted by Chartered Accountants (Amendment) Act, 2006]
- 21D. Transitional provisions [Inserted by Chartered Accountants (Amendment) Act, 2006]
22. Professional or other misconduct defined [Substituted by Chartered Accountants (Amendment) Act, 2006]

- 22A. Constitution of Appellate Authority [Substituted by Chartered Accountants (Amendment) Act, 2006]
- 22B. Term of office of Chairperson and members of Authority [Inserted by Chartered Accountants (Amendment) Act, 2006].
- 22C. Allowances and conditions of service of Chairperson and Members of Authority (Inserted by CA (Amendment) Act, 2006)
- 22D. Producer to be regulated by Authority [Inserted by Chartered Accountants (Amendment) Act, 2006]
- 22E. Officers and other staff of Authority [Inserted by Chartered Accountants (Amendment) Act, 2006]
- 22F. Resignation and removal of Chairperson and Members [Inserted by Chartered Accountants (Amendment) Act, 2006]
- 22G. Appeal to Authority [Inserted by Chartered Accountants (Amendment) Act, 2006]

In this chapter professional and other misconduct has been defined. As per section 22 of the Act, the expression " professional or other misconduct " shall be deemed to include any act or omission provided in any of the Schedules. In this chapter, Section 21, 22 and 22A have been substituted by new sections 21, 22 and 22A. Other sections (Section 21A, 21B, 21C, 21D, 22B, 22C, 22D, 22E, 22F and 22G) have been inserted by Chartered Accountants (Amendment) Act, 2006. These Sections along with the Schedules deal with the new Disciplinary Mechanism

Chapter VI - Regional Councils

23. Constitution and Functions of Regional Councils

The Councils may constitute such Regional Councils for the purpose of advising and assisting it on matters concerning its functions. The Regional councils shall exercise prescribed functions.

Chapter VII - Penalties

- 24. Penalty for falsely claiming to be a member etc.
- 24A. Penalty for using name of the Council, awarding degree of Chartered Accountancy etc.
- 25. Companies not to engage in accountancy
- 26. Unqualified persons not to sign documents
- 27. Maintenance of branch offices
- 28. Sanction to prosecute

This chapter lists penalties in version cases like, if a person who is not a member of the institute and he represents himself as a member of the Institute or he uses the designation Chartered Accountant, he shall be punishable with fine which may extend to one thousand rupees (on first conviction) and with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with fine which may extend to five thousand

rupees or with both (on subsequent conviction). Other provisions regarding penalties that are included in this chapter provide that a Company (Incorporated in or outside India) shall not practice as Chartered Accountant, a person other than a member of the Institute shall not sign any document on behalf of a Chartered Accountant in practice or a firm of such Chartered Accountants in his or its professional capacity etc

Chapter VII A Quality Review Board

[Inserted by Chartered Accountants (Amendment) Act, 2006]

28A. Establishment of Quality Review Board

28B. Functions of Board

28C. Procedure of Board

28D. Terms and conditions of services of Chairperson and Members of Board and its expenditure

After Chapter VII, the Chapter VIIA has been inserted by the Chartered Accountants (Amendment) Act, 2006. It empowers the Central Government to constitute a Quality Review Board outside the framework of the Institute. It will perform the functions like, to make recommendations to the council with regard to the quality of services provided by the members of the Institute, to review the quality of services provided by the members of the Institute including audit services and to guide the members of the institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

Chapter VIII – Miscellaneous

29. Reciprocity

30. Power to make regulations

30A. Powers of the Central Government to direct regulation to be made or to make or amend regulations

30B. Rules, Regulations and notification to be laid before Parliament [Substituted by Chartered Accountants (Amendment) Act, 2006]

30C. Power of Central Government to issue directions [Inserted by Chartered Accountants (Amendment) Act, 2006]

30D. Protection of action taken in good faith [Inserted by Chartered Accountants (Amendment) Act, 2006]

30E. Members etc to be public servants [Inserted by Chartered Accountants (Amendment) Act, 2006]

31. Construction of References

32. Act not to affect right of accountants to practice as such in Acceding States.

This Chapter contains miscellaneous provisions. It empowers the Council to prescribe the conditions subject to which foreign qualifications relating to accountancy shall be recognized for the purpose of entry in the Register. It also empowers the Council to make regulations for

the purpose of carrying out the objects of this Act. It also empowers the Central Government to direct the Council to make any regulations or to amend or revoke any regulations already made. Section 30C, 30D, and 30E have been inserted by Chartered Accountants (Amendment) Act, 2006. Section 30C empowers the Central Government to issue directions in the event of non-compliance by the Council of any provisions of the Act. Section 30D protests Central Government, Council, Authority Disciplinary Committee, Tribunal, Board, Board of Discipline, Disciplinary Directorate or any officer thereof, for anything which is in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made there under. Section 30E says that The Chairperson, Presiding officer, Members and other officers and employees of the Authority, Disciplinary Committee, Tribunal, Board, Board of Discipline or the Disciplinary Directorate shall be deemed to be public servants within the meaning of Section 21, of the Indian Penal Code.

Schedules

1.5 There are two schedules:

1.5.1 The First Schedule - The First Schedule has four parts [Including part IV inserted by Chartered Accountants (Amendment) Act, 2006]. Part I of first Schedule deals with the professional misconduct in relation to Chartered Accountant in practice. Part II deals with the professional misconduct in relation to members of the Institute in service. Part III deals with the professional misconduct in relation to members of the Institute generally. Part IV deals with other misconduct in relation to members of the institute generally.

1.5.2 The Second Schedule - The Second Schedule has three parts [Including Part III inserted by Chartered Accountants (Amendment) Act, 2006], Part I of Second Schedule deals with the professional misconduct in relation to Chartered Accountants in practice. Part II deals with the professional misconduct in relation to member of the Institute generally. Part III deals with the other misconduct in relation to members of the Institute generally.

Members who are deemed to be in practice

1.6 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. 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 service involving the auditing or verification of financial transactions, books, accounts or records, or the preparation, verification or certification of financial accounting and related statements or holds himself out to the public as an accountant; or

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

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

The definition of the expression “Management Consultancy and other Services” is given below:

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

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

* 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”.

- (xv) Valuation of shares and business and advice regarding amalgamation, merger and acquisition.
- (xvi) Business Policy, corporate planning, organisation development, growth and diversification.
- (xvii) Organisation structure and behaviour, development of human resources including design and conduct of training programmes, work study, job-description, job evaluation and evaluation of work loads.
- (xviii) Systems analysis and design, and computer related services including selection of hardware and development of software in all areas of services which can otherwise be rendered by a Chartered Accountant in practice and also to carry out any other professional services relating to EDP.
- (xix) Acting as advisor or consultant to an issue, including such matters as:
 - (a) Drafting of prospectus and memorandum containing salient features of prospectus. Drafting and filing of listing agreement and completing formalities with Stock Exchanges, Registrar of Companies and SEBI.
 - (b) Preparation of publicity budget, advice regarding arrangements for selection of (i) ad-media, (ii) centres for holding conferences of brokers, investors, etc., (iii) bankers to issue, (iv) collection centres, (v) brokers to issue, (vi) underwriters and the underwriting arrangement, distribution of publicity and issue material including application form, prospectus and brochure and deciding on the quantum of issue material (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).
 - (c) Advice regarding selection of various agencies connected with issue, namely Registrars to Issue, printers and advertising agencies.
 - (d) Advice on the post issue activities, e.g., follow up steps which include listing of instruments and despatch of certificates and refunds, with the various agencies connected with the work.

Explanation - For removal of doubts, it is hereby clarified that the activities of broking, underwriting and portfolio management are not permitted.
- (xx) Investment counselling in respect of securities [as defined in the Securities Contracts (Regulation) Act, 1956 and other financial instruments.] (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).
- (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.*

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.

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

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

Significance of the certificate of Practice

1.7 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. The Council of the institute is of view that

- (i) 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.
- (ii) 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." 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

* Pursuant to power under Section 2(2) of the Chartered Accountants Act, 1949, the Council at its 245th Meeting held from 31 August 2004 to 2nd September 2004 has decided to include " Insurance Financial Advisory Services under the Insurance Regulatory and Development Authority Act ,1999 including Insurance Brokerage within the definition of 'Management Consultancy & Other Services.'

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 Regulation 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 provision 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 practice 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 member of the Institute but he 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 provision of the Act and the Regulations in so far as they were applicable to member of the Institute.

Therefore 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

1.7.1 A Member in practice is prohibited from using a Designation other than Chartered Accountant

- (i) The member of the Institute are now permitted to use the word 'CA' as prefix before their name irrespective of the fact that are in practice or not
- (ii) Under Section 7 of the Chartered Accountants Act, 1949 a member in practice cannot use any designation other than that of a Chartered Accountant, nor can he use any other description, whether in addition thereto or in substitution therefore, but a member who is not in practice and does not use the designation of a Chartered Accountant may use any other description. Nevertheless a member in practice may use any other letters or description indicating membership of Accountancy Bodies which have been approved by the Council 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

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

- (iii) 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 letterheads, 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.

Disabilities for Purpose of Membership

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

- (i) If he has not attained the age of twenty one years at the time of his application for the entry of his name in the Register; or
- (ii) If he is of unsound mind and stands so adjudged by a competent court; or
- (iii) If he is an undischarged insolvent; or
- (iv) If he, being a discharged insolvent, has not obtained from the court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part; or
- (v) If he has been convicted by a competent Court whether within or without India, of an offence involving moral turpitude and punishable with transportation or imprisonment or of an offence, not of a technical nature, committed by him in his professional capacity unless in respect of the offence committed he has either been granted a pardon or, on an application made by him in this behalf, the Central Government has, by an order in writing, removed the disability; or
- (vi) If he has been removed from membership of the Institute on being found on inquiry to have been guilty of professional or other misconduct;

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

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 (Section 20).

Disciplinary Procedure

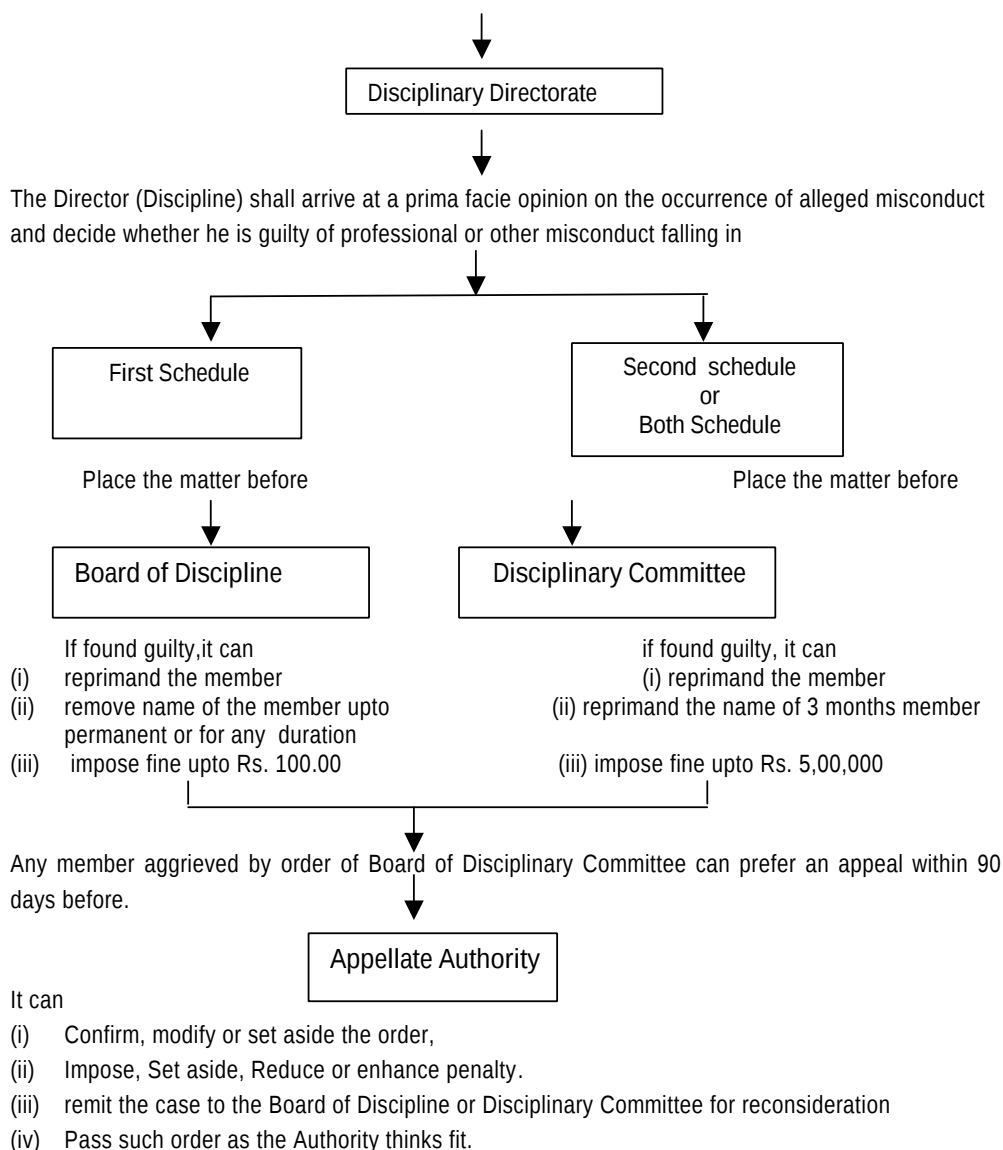
1.9 Amended provisions of the Chartered Accountant, Act, 1949 regarding

- (i) Disciplinary Directorate,
- (ii) Board of Discipline,

- (iii) Disciplinary Committee,
- (iv) Appellate Authority and procedure in enquiries for disciplinary matters relating to misconduct of the members of the Institute as per amendment Act No. 9 of 2006 assented by the president of India on 22nd march 2006 and published in Gazette of India on 23rd March 2006 are as hereunder;

Flow Chart of Discipline Procedure Mechanism

Complaint against member of ICAI of allege misconduct alongwith prescribed fee.



1.9.1 Section 21 Disciplinary Directorate –

- (1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.
- (2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct.
- (3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.
- (4) In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.
- (5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or, as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage..

1.9.2 Section 21A. Board of Discipline -

- (1) The Council shall constitute a Board of Discipline consisting of -
 - (a) a person with experience in law and having knowledge of disciplinary matters and the profession, to be its presiding officer;
 - (b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be the nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy;
 - (c) the Director (Discipline) shall function as the Secretary of the Board.
- (2) The Board of Discipline shall follow summary disposal procedure in dealing with all cases before it.
- (3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:
 - (a) reprimand the member;
 - (b) remove the name of the member from the Register up to a period of three months;
 - (c) impose such fine as it may think fit, which may extend to rupees one lakh.

- (4) The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case and the Board of Discipline may, if it 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.

1.9.3 Section 21B. Disciplinary Committee -

- (1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:

Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.

- (2) The Disciplinary Committee, while considering the cases placed before it shall follow such procedure as may be specified.
- (3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:
- (a) reprimand the member;
 - (b) remove the name of the member from the Register permanently or for such period, as it thinks fit;
 - (c) impose such fine as it may think fit, which may extend to rupees five lakh.
- (4) The allowances payable to the members nominated by the Central Government shall be such as may be specified.

1.9.4 Section 21C. Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court - For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) the discovery and production of any document; and
- (c) receiving evidence on affidavit.

Explanation : for the purposes of sections 21, 21A, 21B, 21C and 22, "member of the Institute" includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry

1.9.5 Section 21 D. Transitional provisions - All complaints pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to the commencement of the Chartered Accountants (Amendment) Act, 2006, shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Chartered Accountants (Amendment) Act, 2006.'

1.9.6 Section 22A. Constitution of Appellate Authority -

- (1) The Central Government shall, by notification, constitute an Appellate Authority consisting of -
 - (a) a person who is or has been a judge of a High Court, to be its Chairperson;
 - (b) two members to be appointed from amongst the persons who have been members of the Council for at least one full term and who is not a sitting member of the Council;
 - (c) two members to be nominated by the Central Government from amongst persons having knowledge and practical experience in the field of law, economics, business, finance or accountancy.
- (2) The Chairperson and other members shall be part-time members.

1.9.7 Section 22B. Term of office of Chairperson and members of Authority -

- (1) A person appointed the Chairperson shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.
- (2) A person appointed as a member shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier.

1.9.8 Section 22C. Allowances and conditions of service of Chairperson and members of Authority- The allowances payable to, and other terms and conditions of service of, the Chairperson and members are the manner of meeting expenditure of the Authority by the Council and such other authorities shall be such as may be specified.

1.9.9 Section 22D. Procedure to be regulated by Authority -

- (1) The office of the Authority shall be at Delhi.
- (2) The Authority shall regulate its own procedure.
- (3) All orders and decisions of the Authority shall be authenticated by an officer duly authorised by the Chairperson in this behalf.

1.9.10 Section 22E. Officers and other staff of Authority -

- (1) The Council shall make available to the Authority such officers and other staff members as may be necessary for the efficient performance of the functions of the Authority.
- (2) The salaries and allowances and conditions of service of the officers and other staff members of the Authority shall be such as may be prescribed.

1.9.11 Section 22F. Resignation and removal of Chairperson and members -

- (1) The Chairperson or a member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or a member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is earlier.

- (2) The Chairperson or a member shall not be removed from his office except by an order of the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by such person as the Central Government may appoint for this purpose in which the Chairperson or a member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

1.9.12 Section 22G. Appeal to Authority-

- (1) Any member of the Institute aggrieved by any order of The Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days of the date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority, if so authorised by the Council, within ninety days:

Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

- (2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (3) of section 21A and sub-section (3) of section 21B and may -
 - (a) confirm, modify or set aside the order;
 - (b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
 - (c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or
 - (d) pass such other order as the Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order."

Professional Misconduct

1.10 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 inquire into the conduct of any member of the Institute under any other circumstances.’.

1.10.1 Other Misconduct - 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”. Other misconduct has been defined in part IV of the First Schedule and part III of the Second Schedule [Newly inserted parts by Chartered Accountants (Amendment) Act, 2006]. As per part IV of the First Schedule to the Chartered Accountants Act, A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he-

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

As per Part III of the Second Schedule to the Chartered Accountants Act, A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months

This provision empowers the Council to inquire into any misconduct of a member even it does not arise out of his professional work. This is considered necessary because a chartered accountant is expected to maintain the highest standards of integrity even in his personal affairs and any deviation from these standards, even in his non-professional work, would expose him to disciplinary action. For example, a member who is found to have forged the will of a relative, would be liable to disciplinary action even though the forgery may not have been done in the course of his professional duty.

Other misconduct would also relate to conviction by a competent court for an offence involving moral turpitude punishable with cause transportation or imprisonment to an offence not of a technical nature committed by the member in his professional capacity [See section 8(v) of the Act].

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

- (i) Where a chartered accountant retains the books of account and documents of the client and fails to return these to the client on request without a reasonable cause.
- (ii) Where a chartered accountant makes a material misrepresentation.
- (iii) Where a chartered accountant uses the services of his articled or audit clerk for purposes other than professional practice.
- (iv) Conviction by a competent court of law for any offence under Section 8 (v) of the Chartered Accountants Act 1949.
- (v) Misappropriation by office-bearer of a Regional Council of the Institute, of a large amount and utilisation thereof for his personal use.

- (vi) Non-replying within a reasonable time and without a good cause to the letter of the public authorities.
- (vii) Where certain assessment records of income tax department belonging to the client of Chartered Accountant were found in the almirah of the bed-room of the chartered accountant.
- (viii) Where a chartered accountant had adopted coercive methods on a bank for having a loan sanctioned to him.

Penalty for Falsely claiming to be a Member Etc.

1.11 Section 24 of the Act provides - any person who

- (i) not being a member of the Institute;
 - (a) represents that he is a member of the Institute; or
 - (b) uses the designation Chartered Accountant;
- (ii) being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practices as a Chartered Accountant, 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),

Maintenance of Branch offices

1.12 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, exemption has been given to members practicing in hill areas subject to certain conditions. The conditions are: .

1. Such members/firm 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 letterheads, 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.

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

The above rule applies having additional office is situated at a place beyond 50 Kms. from the municipal limits in which the office is situated.

However, a member can be incharge of two offices if they are located in one and the same Accommodation. In this context the Council's decisions are as follows:

- (1) Definition of Office: "A place where a name-board is fixed or where such place is mentioned in the letter-head or any other documents as a place of business."
- (2) With regard to the use of the name-board, there will be no bar to the putting up of a name-board in the place of residence of a member with the designation of Chartered Accountant, provided it is a name-plate or a name-board of an individual member and not of the firm.
- (3) The requirement of Section 27 in regard as to a member being in-charge of an office of a Chartered Accountant 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, establishes such active association. The expression 'member' in the context of above, shall mean, where more than one member is designated as in-charge of an office, then, any one of them and when there is only one member and he leaves the firm during his successor(s) in office.
- (4) In view of the Council's decision, however, the exemption may be granted under proviso to Section 27 ,(1) of the Chartered Accountants Act, 1949 to a member or a firm of Chartered Accountants in practice to have a second office without such second office being under the separate charge of a member of the Institute, provided (a) the second office is located in the same premises, in which the first office is located or (b) the second office is located in the same city, in which the first office is located or (c) the second office is located within a distance of 50 km. from the municipal limits of a city, in which the first office is located. A member having two offices of the type referred to above, shall have to declare, which of the two offices is his main office, which would constitute his professional address.

- (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.

Schedules to the Act

1.13 Acts or omissions which comprise professional misconduct within the meaning of Section 22 of the Chartered Accountants Act are defined in two Schedules viz. The First Schedule and the Second Schedule. The First Schedule is divided into four parts, Part I of the First Schedule deals with the misconduct of a member in practice which would have the effect generally of compromising his position as an independent person. Part II deals with misconduct of members in services. Part-III deals with the misconduct of members generally and part IV deals with other misconduct in relation to members of the institute generally. The Second Schedule is divided into three parts.

Part I deals with misconduct in relation to a member in practice, Part II deals with misconduct of members generally and part III deals with other misconduct in relation to members of the Institute generally. The implication of the different clauses in the schedules are discussed below:

1.13.1 The First Schedule - Where the Director (Discipline) is of the opinion that member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline.

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

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

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

The above clause is intended to safeguard the public against unqualified accountant practicing under the cover of qualified accountant. 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 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 retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualification as may be prescribed, for the purpose of rendering such professional services to time in or outside India;

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.

Previously this clause was allowing sharing or disbursing fees or profits of professional business among the partners who were virtually members of the Institute. Otherwise payment

was permissible to the legal representative of deceased partner's case only on a share in goodwill of firm. The Status of deceased case is unaltered but the amendment in Chartered Accountants Act, 1949 carried out by Act No. 9 of 2006 has changed scenario and permitted sharing of fees or profits among members 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.

This amendment has enabled members of the Institute to form multi-disciplinary firms and offer multi- professional services in a Competitive and commercial manner. The council or the qualifications for permitting such partnership. the concept of limited liability partnership like U.K. is under consideration of parliament and appropriate amendment in the companies Act, 1956 is proposed to incorporate provision of LLP.

Goodwill - When there are two or more partners and one of them dies, then dies, the widow of the deceased "partner can continue to receive a share 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 instalments provided the agreement of the sale of goodwill contains such a provision. These payments even if they are spread over the specified period should not be linked up with participation in the earnings of the firm. The widow of a partner, when the partnership agreement does not contain a-provision entitling her to share in profits, would not be entitled to such profits.

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

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

"resolved that the sale/transfer of goodwill in the case of a proprietary firm of chartered accountant to another eligible member of the Institute shall be permitted.

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

Provided such a sale is completed effected in all respects and the Institute's permission to practice in deceased's proprietary firm name is sought within a year of the death of such proprietor concerned. In respect of these cases, the name of the proprietary firm

concerned would be kept in abeyance (i.e. not removed on receipt of information about the death of the proprietor as is being done at present) only upto a period of one year from the death of proprietor concerned as aforesaid.

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

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

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

Provided such a sale/transfer is completed/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.

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.

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

(Vadilal V.Shah vs. J.B. Sanghavi- page 239 of Vol. V of the Disciplinary Cases decided on 15th & 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. Pithewala - Page 300 of Vol. V of the Disciplinary Cases-decided on 14th & 17th September, 1974)

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.

Sharing of fees & profits, receipts from others are also restricted in the same manner as in clause (2), but by new amendment above mentioned proviso is inserted in clause (3) thereby permitting the members of the Institute to enter into profit sharing or similar arrangements, including receiving any share, commission or brokerage in the fees, with a member of any other professional body or with such other persons having such qualifications as may be prescribed by the council or the Government. With the enactment of amendments, in clause (2) & (3) , the professionals, viz, C.A., ICWA, CS etc. can form multidisciplinary firms (Subject to such specific notification to be issued by the Institute) and face global competition in much more stronger and effective manner. With growing preference among multinational and other Companies for "one -stop shop" or multidisciplinary firms, the pressure seems to be increasing on our profession to strengthen our collective competencies by establishing synergistic relationships.

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

A Chartered Accountants in practice can enter into partnership with:

- (i) A Chartered Accountant in practice, or
- (ii) A Member of any other professional body having prescribed Qualifications,

The Council of the Institute and the central Government has power to prescribe such professional bodies to whom members, partnership can be entered into. The resident members of the institute residing abroad but entitled to be registered as a member of Institute under section 4(1)(v) or whose qualification are recognized by C.G or the Council to enter into partnership can form partnership firms with any practicing chartered Accountant. This amendment has enabled the members of the Institute to form multi-disciplinary firms and offer multi-professional services in a competitive and commercial manner. The council or the Central Government will specify the qualifications for permitting such partnership. The amendment in the Companies Act, 1956 is also proposed and under consideration of Parliament to incorporate the provisions to form Limited Liability Partnership in this regard.

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

a Chartered Accountant, any professional business ;

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

“A man must stand erect, and not to 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 life. He must seek work not through any agency, but by the respect , that he is able to command for his professional talent and skill and by the confidence he is able to inspire by his reputation. As per amended clause (5) of the First Schedule to the Chartered Accountants (Amendment) Act [As amended by Chartered Accountants (Amendment) Act, 2006] securing any professional business through certain categories of non- members, to be prescribed, from time to time in the Regulation, is permitted.

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

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

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

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 adventure their professional practice with a view to gain publicity and thereby solicit clients or professional work. Such a restraint must be practiced so that members may maintain their independence of judgment 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 can not 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 tendered 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 service, which attracts and retains the clients. Consequent to amendment made by Chartered

Accountant (Amendment) Act , 2006 in clause 6 of part 1 of the First Schedule, Ban on Solicitation is relaxed in the following situation of client or professional work

If work or professional work occurs within the fraternity: or

If professional work is secured from responding to tenders, or enquiries issued by various users of professional services or organization.

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

(a) Advertisement and note 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 previous employer through the help of the employees are also not permitted. The exceptions to the above rule are:

(i) a member may advertise changes in partnerships of dissolution of a firm, or of any change in 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.

(ii) a member is also 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 partnership or salaried employment of an accountancy nature, provided it only contains the accountant's name, address or telephone number, fax number, 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 from the such bodies, which maintain such panel. It is however, not proper for the members to send printed or cyclostyled copies of the scales of fees in reply to such enquiries.

An advertisement for any part-time work undertaken by practicing Chartered Accountants would not be permissible because it would essentially be an offer of professional services and therefore would offend the rule.

(c) Publication of Name or Firm Name by Chartered Accountants in the Telephone or other Directories published by Telephone Authorities or Private Bodies – The Council has held that it would not be proper for a chartered accountant to have entries made in a Telephone Directory either by making a special request or by means of an

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

1. The entry should appear in the section / category of "Chartered Accountants".
 2. The member/firm should belong to the town/city in respect of which the directory is being published.
 3. The entry should be in normal type of letters. Entry in bolder type or abnormal type of letters or in a box is not permissible.
 4. The order of the entries should be alphabetical and logical.
 5. The entry should not appear in a manner giving the impression of publicity/advertisement. Entry should not be given in a manner which gives prominence to it as compared to other entries.
 6. The payment, if any, for the entry should not be unreasonable.
 7. The entries should not be restricted and should be open to all the chartered accountants/firms of chartered accountants in the particular city/town in respect whereof the directory is published.
 8. Subject to the above conditions, the members can also include their names in trade directories which are published and/or otherwise available such as electronic media e.g. internet, telephone services like 'Ask me Services'.
- (d) Issuing Hand Bills - A member is prohibited from distributing hand bills ostensibly for the guidance, of persons other than his regular clients in matters such as changes in tax laws.
- (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 qualification 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 invitation for opening or inauguration of office of the members, change in office premises and change in telephone members, provided that .such greeting cards or invitations etc. are sent only to clients, relatives and close friends of the members concerned.
- (g) Soliciting professional work by making roving inquiries - 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) 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 re appointed by the shareholders.

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

Website - The Council at its meeting held in January, 2001 approved the detailed guidelines for posting the particulars on Website by Chartered Accountants in practice and firm(s) of Chartered Accountants in practice. The guidelines 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 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)

(v) Partners

Partners Name	Year of Qualification	Other Qualification(s)	Tel. No. 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	Other	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 article ship).

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

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

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. No photographs of any sort are 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 there under, 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 or advertisement of professional attainments or services. 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 the ICAI from time to time, appropriate action will be initiated by the ICAI in terms of its disciplinary mechanism either suo motu 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 to the Websites of Government/Government Departments/Regulatory Authorities. Except that neither link to nor information about any other Website is permitted.
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 Committee on Ethical Standards and Unjustified Removal of Auditors (CESURA) of ICAI will decide in case there is any difficulty.
22. The address of the Website should be intimated to the ICAI within 30 days.
23. 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.

A number of non-Chartered Accountants' firms, corporate 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 Councils/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).

In a case, where a chartered accountant wrote to the Ministry of Commerce and Industry to enroll the name of his firm in the list of auditors maintained by Department-Held, he was guilty of the charge.

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

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

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

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

(MR 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 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 license 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, 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 professional colleague and not to a prospective client.

(M. L. Agarwal in Re. Page 1033 of Vol. IV(1) of the Disciplinary Cases – decided on 16th and 17th February, 1973)

An assistant of the chartered accountant under his authorization wrote letter to stranger association requesting for appointment as auditor- Held the Chartered accountant was guilty of professional misconduct under the clause.

(S.N. Mukherjee & Co. vs. P. K. Ghose- page 273 of vol. V of the Disciplinary Cases – Decided on 20th & 21st February, 1975)

A member was found guilty of professional misconduct under Clauses 6 and 7 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 the Council having regard to the ethical requirement about publicity by the members of the Institute as laid down in the “ Code of Conduct”

(K.K. Mehta vs. M..K. Kaul- Page 80 of Vol. V of the Disciplinary Cases and pages 189-191 of February 1976 issue of the Institute 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 the 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 can not 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 - Decided on 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.

(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, 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 wished
- (vi) the advertisement having been released by the Respondent himself
- (vii) the member had solicited professional work by advertisement and he was founded guilty in terms of his clause.

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

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. BB. Mukherjee - Page 1028 of Vol. IV of the Disciplinary Cases - decided on 15th and 16th September, 1969).

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

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

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. Vol. VII(2) of Disciplinary Cases to be published-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 Accountant's 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.Aggarwal in Re: VII(2) of Disciplinary Cases to be published-Council's. decision dated 16th to 18th July. 1992]

Where a Chartered Accountant had published an advertisement in newspapers box numbers 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.

[DM Kothari in Re: Vol. VII(2) of Disciplinary cases to be published - Council's decision dated 5th to 7th August, 1993].

Where a Chartered Accountant had issued undated and unsigned cyclostyled inland letter containing the name & address of his firm and also bearing his 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: Vol. VII(2) of Disciplinary Cases to be published - 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.,.

[Vijay Kumar Goel in Re: Vol. VII(2) of Disciplinary Cases to be published - 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 tantamount to solicitation of the audit and he had violated the provisions of the clause.

[M. V. Lonkar in Re: Vol. VII(2) of Disciplinary Cases to be published - 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, utilised 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 Vol. VII(2) of Disciplinary Cases to be published, Judgement dated 10th June, 1996].

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

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

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

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

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

The date of setting up the practice by a member or the date of establishment of the firm on the letterheads 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 Councillor any other functionary in addition to that of Chartered Accountant.

Members of the Institute in practice who are otherwise eligible may practice as advocates subject to the permission of the Bar Council but in such case, they should not use designation

'chartered accountant in respect of the matters involving the practice as an advocate. In respect of other matters they should use the designation 'chartered accountant' but they should not use the designation 'chartered accountant' and 'advocate' simultaneously.

It is not proper for 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 (g) 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 give where appropriate, directorship held and reasonable personal details and may state his outside interests. He should not, however, give the names of any of his clients or details of the service offered by his firm.

Publication of Name or Firm Name by Chartered Accountants in the Telephone or other Directories published by Telephone Authorities or Private Bodies. Detailed directions of the Council in this regard 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 member or that of his firm with the designation Chartered Accountant(s) appears in type not bolder than the substance of the advertisement.

- (a) Advertisements for recruiting staff in the members' own office.
- (b) Advertisements 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 relating to the articled/audit clerk or an employee or the member or the firm with whom he has 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, examinations 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 brings 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 publications of certificates are limited to what is necessary to enable the report or certificate to serve its proper purpose.

Member 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 specialized 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 his or his firm but must be an objective professional view of the topic under consideration.

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

A professional accountant in public practice holding training courses, seminars etc. for his staff may also invite the staff of other professional accountants and clients to attend the same. However, undue prominence should not be given to the name of the profession accountant in any booklet or document issued in connection 'herewith'.

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

With regard to the size of signboard for his office that member can put up, it is 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 has issued following Guidance Note for Members Holding Certificate of Practice on acceptance of directorships in companies:

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, specialization and knowledge in any particular field or add appellation or adjectives to their names. Attention of the members in this context is invited to the provisions of clauses (6) and (7) of Part I of the First Schedule to the Chartered Accountants Act.

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

It is advisable for a member that as soon as he is appointed as a director on the Board of a Company, he should specifically invite the attention of the management of the company to the aforesaid provisions and should request that before any such prospectus or public announcements or public communication mentioning the name of the member concerned, is issued, the material pertaining to the member concerned should, as far as practicable be got approved by him. The use of the expression 'Chartered Accountant' is permissible. However, the member must ensure that descriptions about his expertise, specialization and knowledge in any particular field or other appellation 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 issued the following guidelines for use of expressions such as 'Associates of 'Correspondents of... etc. on letter heads, visiting cards etc. of firms of Chartered Accountants:

The use of expressions / words 'in Association with 'Associates of 'Correspondents of.... etc., on the stationery letter heads, visiting cards and professional documents etc. of firms of Chartered Accountants is not permissible in view of the provisions of clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949 irrespective of whether the connection bearing name sought to be used was the name of an Indian firm or a foreign firm. The Council has not barred entering into such association and the restriction given under the above clause is to bar an advertisement appearing / derived from such associations.

For use of logos by Members on letter heads, visiting cards etc. the Council has decided that the logos unconnected with the first letter of the name of the firm or its partners or proprietors will not be permitted for use by members in practice / firms of chartered accountants on their letter heads, visiting cards etc. as the same amounts to advertisement or smacking of publicity. Accordingly, an announcement was published in October, 1995 issue of "The Chartered Accountant" at page 66.

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

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

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

Advertisement: 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 constructed as including a past member for the purpose of inquiry, as what was required membership at the time of the ^commission of the alleged misconduct.

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

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

(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: Vol. VII (2) of the Disciplinary Cases to be published - Council's decision dated 16th September 1991].

Where a Chartered Accountant had issued two insertions in a Journal published by a Chamber of Commerce 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: Vol. VII (2) of 'Disciplinary cases - to be published 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 practicing chartered accountant and giving impression that the letter had been addressed to more than one organization for the above purpose, it was held that the member had contravened the provisions of clauses (6) & (7).

[Yogash Gupta in Re: Vol. VII (2) of Disciplinary Cases to be published - Council's decision dated 23rd & 24th February, 1996]

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

[K. Bhartarcharjee vs. B.K. Chakraborty - Vol. VII of Disciplinary Cases to be published Judgement dated 10th June, 1996].

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 inquiry from the retiring auditor, the one proposed to be appointed or already appointed should primarily find out whether there is 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 looses, 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 client's 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 not having been paid often may be the root cause of an auditor being changed, but 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. It is no doubt true that the incoming auditor should in appropriate circumstances use his influence in favour of his predecessor to have the disputes as regards the fees settled. Also a number of members would not accept appointment in such circumstances unless and until they are satisfied that the predecessor has been fairly treated, but there is no rule to that effect and the decision in this regard must rest with the good sense of the member himself

The professional reasons for not accepting an audit could 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 under the Companies Act, 1956 or various other statutes; and
- (iii) Under-cutting of fees;
- (iv) Issuance of a qualified report.

In the first two cases, an auditor who accepts the audit would be guilty of professional misconduct. The Council has taken the view that the provision for audit fee made in accounts signed by both - the auditee and auditor shall be considered as 'undisputed' audit fees. In this connection, attention of members is invited to the notification No.1-CA(7)46/99 published in the Gazette of India dated 13th November, 1999 and also published at page 83 of January, 2000 issue of the Journal. It is appearing with the other notifications issued under Clause (ii) of Part II of the Second Schedule. 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 has qualified the report for good and valid reasons, it would be helping practice not to accept the audit. There is however no rule, written or unwritten, which would prevent an auditor from accepting the appointment offered to him in these circumstances. However, before accepting the auditor he should ascertain 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-emphasized.

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

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

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

The view taken by the Council has been confirmed in a decision by the Rajasthan High Court in J.S. Bhati v.s. The Council of the Institute of Chartered Accountants of India and another. The following observations of the Court are relevant in this context:

"Mere obtaining a certificate of posting in my opinion does not fulfil 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 that case required. The expression 'in ' communication with' when read in the light of the instructions contained in the booklet 'Code of Conduct' (now Code of Ethics) can 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 by the incoming auditor reached his hands. Certificate of posting of a letter cannot, in the circumstances, be taken as positive of its delivery to the addressee".

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

The Council is of the opinion that it would be a healthy practice if the practice of communication with the member who had done the work previously is followed 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 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 attended 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., Statement on Standard Auditing Practices (AAS) 1 on "Basic Principles Governing an Audit", an "audit" is the independent examination of financial information of any entity, whether profit oriented or not, and irrespective of its size or legal form, when such an examination is conducted with a view to expressing an opinion thereon.
4. The term "previous auditor" means the immediately preceding auditor who held same or similar assignment comprising same/similar scope of work. For example, a chartered accountant in practice appointed for an assignment of physical verification of inventory of raw materials, spares, stores and finished goods, before acceptance of appointment, must communicate with the previous auditor being a chartered accountant in practice who was holding the appointment of physical verification of inventory of raw materials, stores, finished goods and fixed assets. The mandatory communication with the previous auditor being a Chartered Accountant is required even in a case where the previous auditor happens to be an auditor for a year other than the immediately preceding year.
5. As explained in para 2.2 of the Institute's publication viz., 'Guidance Note on Audit Report 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, 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 if the previous auditor is a chartered accountant. For certification, it would be healthy practice to communicate. In case of assignments done by other professionals not being chartered accountants, it would also be a healthy practice to communicate.
7. Although the mandatory requirement of communication with previous auditor being chartered accountant applies, in uniform manner, to audits of both government and non-government entities, yet in the case of audit of government is made well in time to enable the 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:

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 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.

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

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

(S. B. Chidrawaar vs. O.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 acknowledgment 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 - Judgment 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-communication, with the previous auditor.

(K.K. Sud vs. K.N. Chandla - Page 306 of Vol. V of the Disciplinary Cases-decided on 26th & 28th October, 1978).

A member sent under Certificate of posting a letter to the previous auditor before accepting his appointment as the auditor of a society but there was no proof that the said letter was received by the previous auditor. He was found guilty in terms of this Clause 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 the Disciplinary Cases - Decided on 15th, 16th and 17th December, 1988)

The provision of Clause 7 requiring a communication with the previous auditor is absolute and applicable even in respect of a appointment by the Government agencies and even in case 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 the 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 vs. R.V. Agarwal - Page 155 of Vol. VI(2) of the 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 the 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 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. O.K. Karmakar - Page 348 of Vol. VI(2) of the 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 - Vol. VII(2) of the Disciplinary Cases to be published - 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 - Vol. VII(2) of the Disciplinary Cases to be published - 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 clause (8).

(U. K. Gupta vs. A.K. Jain - Vol. VII(2) of the Disciplinary Cases to be published - 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 clause (8).

(J. S. Bhairi vs. M.L. Aggarwal - Vol. VII(2) of the Disciplinary cases to be published - Judgement dated 30th October, 1991).

Where a Chartered Accountant had accepted the position as an auditor of a company previously held by the Complainant without first communicating with him in writing. Held that he was guilty under clause (8) of Part I of the First Schedule.

(S.K. Kansal vs. S.L. Gupta - Vol. VII(2) of the Disciplinary cases to be published - 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 clause (8).

(M/s M.R. Daga & Co. vs. R.K. Vora - Vol. VII(2) of the Disciplinary cases to be published - Council's decision dated 25th to 27th September, 1992).

Where a Chartered Accountant had accepted the position as an auditor of a company previously held by the Complainant without first communicating with the Complainant in writing. Held that he was guilty under clause (8) of Part I of the First Schedule.

(H.P. Kumbhani & Co. vs. -M.P. Shah - Vol. VII(2) of the Disciplinary cases to be published - Council's decision dated 5th to 7th August, 1993).

Where a Chartered Accountant had accepted the position as a statutory auditor of a company without first communicating in writing with the Complainants Firm which was the previous auditor. Held that he was guilty under clause (8.)

(H.P. Kumbhani & Co. vs. P.V. Dalai - Vol. VII(2) of Disciplinary cases to be published - Council's decision dated 24th to 26th November, 1993).

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

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, 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.
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 sections are summarized in the ensuing sub-paras.
 - 5.1 The first auditor can be appointed by the Board of Directors within one month of the date of registration of the Company. The auditor so appointed will hold office up to the conclusion of the first Annual General Meeting.
 - 5.2 If the Board of directors do not make such appointment, the company can make the appointment of first auditor at Annual 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 collection, the procedure discussed in paras 7.4 to 7.7 below will have to be followed before any resolution for removal of the first auditor is passed at the General Meeting. For the removal of the first auditor of a company approval of the Central Government as mentioned in para 5.14 below is not necessary.
- 5.4 Subsequent appointment of the auditor is to be made at each Annual General Meeting of the company.
- 5.5 Before making appointment or reappointment of an auditor, the company has to obtain a written certificate from the auditor proposed to be appointed that such appointment or reappointment will be in accordance with the limits in respect of maximum number of audits which he can accept under the provisions of Section 224 (I-B).
- 5.6 The auditor so appointed will hold big 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 someone-else in place of the retiring auditor. Where a notice has been given of an intended resolution to appoint some other auditor's in the place of a retiring auditor but such a resolution cannot be proceeded with in view of the fact that the person or persons proposed to be appointed has incurred an incapacity or disqualification or has died, the retiring auditor shall not be reappointed. For this purpose the procedure laid down in Section 225 is to be complied with.
- 5.10 Except in the circumstances mentioned in 5.8 and 5.9 above, a retiring auditor shall be reappointed if he is otherwise qualified for such reappointment.
- 5.11 If the company fails to appoint an auditor at the Annual General Meeting, such appointment will be made by the Central Government. The company has to give intimation to the Central Government within seven days about the fact that no such appointment has been made.
- 5.12 The Board of Directors, except for the situation covered by 5.13 below, can fill any casual vacancy in the office of the auditor. Until this appointment is made the remaining auditor, in case there are joint auditors, can function as auditor of the company.

- 5.13 If the casual vacancy is caused by the resignation of an auditor, such vacancy can only be filled by the company in any General Meeting. The auditor appointed to fill any casual vacancy shall hold office until the conclusion of the next Annual General Meeting.
- 5.14 The company can remove the auditor before the expiry of his term of office by a resolution passed at any General Meeting and after obtaining previous approval of the Central Government.
6. Section 224A of the Companies Act, lays down the procedure for appointment of auditor by a company in which 25% or more of the subscribed capital is held, whether singly or in combination, by the following institutions:
- (i) A Public financial institution
 - (ii) Any financial or other institution established under a State Act in which the State Government holds 51 % or more of the subscribed share capital.
 - (iii) Government company, Central Government or any State Government.
 - (iv) A nationalized Bank or an Insurance company carrying on general insurance business.

The procedure to be followed by such a company, in brief, is as under -

- 6.1 The appointment or reappointment of auditor at each Annual General Meeting shall be made by a special resolution.
- 6.2 If the company fails to make such appointment or reappointment of auditor, the Central Government will have to make the appointment of auditor as provided in Section 224(3).
- 6.3 The provisions relating to appointment of first auditor, filling of casual vacancy, removal of auditor etc. which are contained in Section 224 will apply to the company specified in Section 224A.
7. Section 225 of the Companies Act lays down the procedure for appointment of auditor other than the retiring auditor and for removal of existing auditor. The procedure for giving special notice as contained in Section 225(1) does not apply to the removal of the first auditor appointed by the Board of Directors, because separate provision as stated in para 5.3 above is made for this purpose. The procedure to be followed by the company, is as under.
- 7.1 If a member of the company wants that the retiring auditor should not be reappointed or that an auditor other than the retiring auditor should be appointed, he has to give a special notice to the company and specify the resolution which he proposes to move at the Annual General Meeting for this purpose.
- 7.2 Such special notice is 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 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.

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 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.

It is suggested that the incoming auditor should verify the following records of the company.

- 9.1 If the appointment of the auditor is being made for the first time after incorporation of the Company, the auditor should verify as to whether the Board of Directors have passed the resolution for his appointment within one month of the date of registration of the Company.
- 9.2 If the Board of Directors have not appointed the first auditor but the appointment is being made by a general meeting of the company, the auditor should verify as to whether a proper notice convening the general meeting has been issued by the Company and whether the resolution has been validly passed at the general meeting of the company.
- 9.3 If the appointment is being made to fill a casual vacancy, the incoming auditor should verify as to whether the Board of Directors have powers to fill the casual vacancy and whether the Board of Directors have passed the resolution filling the casual vacancy.

- 9.4 If the vacancy has arisen due to resignation of the auditor, the incoming auditor should see as to whether a proper resolution filling the vacancy has been passed at the General Meeting of the Company.
- 9.5 If the vacancy has arisen as a result of removal of the auditor before the expiry of his term of office, the incoming auditor should see that proper resolution has been passed at the General Meeting of the company and that the previous approval of the Central Government has been obtained by the company.
- 9.6 If the provisions of Section 224A apply to the company, the incoming auditor should verify as to whether a special resolution as required under the said Section has been duly passed.
- 9.7 Where the auditor other than the retiring auditor is proposed to be appointed, the incoming auditor should ascertain whether the provisions of Section 225 have been complied with. These provisions equally apply where an auditor who was jointly holding office with another auditor or auditors and any one or more of such joint auditors has not been reappointed.
- 9.8 For the purpose of ascertaining whether the company has complied with the provisions of Section 225 of the Companies Act the incoming auditor should verify the records of the Company in respect of the following matters:
- (i) Whether a member of the Company has given special notice of the resolution as required under Section, 225(1) at least 14 days before the date of the general meeting. A true copy of this notice should be obtained by the incoming auditor.
 - (ii) Whether this special notice has been sent to all the members of the Company as required under Section 190(2) at least 7 days before the date of the General Meeting.
 - (iii) Whether this special notice has been sent to the retiring auditor forthwith as required under Section 225(2)
 - (iv) Whether the representation received from the retiring auditor has been sent to the members of the Company, as required under Section 225(3).
 - (v) Whether the representation received from the retiring auditor has been considered at the general meeting and the resolution proposed by the special notice has been properly passed at the general meeting.
- 9.9 (A) As regards the mode of sending the notice of the resolution to the members of the company as provided in Sections 224 and 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 acknowledgment due, and has deposited with the Company the sum sufficient to defray the expenses for this purpose, the notice should be sent in such specified manner.
- (iii) When there are joint holders of shares in a company, the notice is to be sent to the joint holder whose name appears first in the register of members.
- (B) If it is not practicable to send the notice of the resolution to the members by post, such notice can be given either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the Articles of Association of the Company.
- (C) In order to ascertain whether notice of the resolution has been sent to the members, the incoming auditor should ascertain whether there is sufficient evidence with the Company to indicate that the notice has been sent by any of the modes stated in (A) or (B) above. The despatch register, postage register, postal certificate (if notice is sent under postal certificate) or such other satisfactory evidence available with the company should be verified.
- (D) As regards the mode of sending the notice of the resolution to the retiring auditor as provided in Sections 224 and 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 Accountant; 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 under Section 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 under Section 225(2) of the Act should be sent to the retiring auditors by Registered Post with A/D."

- (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 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 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.

- 10.1 Sometimes the annual general meeting is adjourned without conducting any business or after conducting business in respect of some of the items on the agenda. The items in respect of which the business is conducted may or may not include the item relating to appointment of auditors. Under Section 224(1) the retiring auditor holds office till the conclusion of the annual general meeting, Therefore, when the annual general meeting is adjourned in the circumstances stated above, the retiring auditor will continue to hold the office of auditor till the adjourned meeting is hold 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.
- 10.2 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 Committee on Ethical Standards and Unjustified Removal of Auditors (CESURA). This Committee 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 Committee are forwarded to the Council for its consideration. This Committee 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 this Committee 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 therefore if he considers that there are professional reasons. Therefore, if he considers that there are professional reasons connected with his resignation or not offering himself for reappointment which, in his opinion should be brought to the notice of the Board, 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 and consider the same before accepting the appointment.
2. Where an auditor, though willing for reappointment 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 Committee, 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.

A case of cancellation of bank audit was brought to the notice of Committee on Ethical Standards & Unjustified Removal of Auditors (CESURA) and the Council, in which a firm of Chartered Accountant was appointed as statutory branch auditor of two branches for the year ended 31st March by their Head office vide letter dated 16th March, of the 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 Bank's Divisional office due to non-receipt of acceptance letter. The CESURA 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.

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

Failure to communicate with the previous auditor

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. O.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).

Failure to ascertain the requirements of Companies Act, re: appointment of auditors.

Where a Board of Directors appointed a chartered accountant as auditor of a company, the company having failed to appoint one at its annual ordinary general meeting and he wrote to the previous auditor of his appointment and finished the audit on the same date-Held, the vacancy was not a casual vacancy and as the chartered accountant was under misapprehension as to the true legal position, he was warned.

(U.C. Majumdar vs. J.N. Saikia - Page 292 of Vol. I of the disciplinary Cases and page 93 of August, 1954 issue of the Institute's Journal-Judgement delivered on 20th May, 1954.

Where a chartered accountant applied in response to an advertisement in a newspaper for appointment as auditor and was appointed by the Directors and failed to communicate with the previous auditor and ascertain from the company whether the requirements of the Companies Act as regards the appointment of the auditors were duly complied with. Held the respondent was guilty on both the counts under clauses (8) and (9).

(B.N. Mohan vs. K.C.J. Satyawadi - Page 11 of Vol. 11 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 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. LR.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 this 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. of the Disciplinary 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 realized this defect only after acceptance.

It was held that the member had not taken care to see if he had been properly appointed as he had: ‘

- (i) accepted the appointment the very next day.
- (ii) satisfied himself on the basis of 'No objection certificate' from the previous auditor but without going through the Directors report, Minutes Book or any other documents.

It was observed that if he had taken care to go through this exercise before accepting the appointment, he could have satisfied himself whether or not the provision of Sections 224 and 225 had been complied with. The member was found guilty in terms of this Clause.

(Y.S. Mazumdar & Co. vs. H.S. Sardeshpande - Page 116 of Vol. VI (2) of the 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 his 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. A. Chandrasekhara Menon Page 357 of Vol. VI (2) of the Disciplinary Cases - Decided on 18th, 19th and 20th December, 1989)

A member who was appointed as auditor of a Company failed to first ascertaining 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 audit. 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 the Disciplinary Cases - Decided on 18th, 19th and 20th December, 1989)

A chartered accountant was found guilty of professional misconduct for having failed to comply with the requirements of Clause (8) of Part I of the First Schedule namely, sending a communication which he was required to send to the previous auditor before accepting the audit. He had only sent a letter under certificate of posting without obtaining any acknowledgement thereof. The Council held the member guilty under Section 21(4).

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 by the incoming Auditor 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.

(ML 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).

[P. P. Sangani in Re: Vol VII(2) of disciplinary cases to be published - Judgement dated 10th August, 1991

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

What distinguishes a profession from a business is that professional services 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 that are not ethical. It will have the effect of undermining his integrity and impairing his independence. Therefore, members are prohibited from charging or accepting any remuneration based on a percentage of the profits or on the happening of a particular contingency such as, the successful outcome of an appeal in revenue proceedings.

Professional services should not be offered or rendered under an arrangement whereby no fee will be charged unless a specified finding or result is obtained or where the fee is otherwise contingent upon the findings or results of such services. However, fees 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 -

192. Restriction on fees - No Chartered Accountant in practice shall charge or offer to charge, accept or offer to accept, in respect of any professional work, fees which are based on

a percentage of profits, or which are contingent upon the findings or results of such work, provided that:

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

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.111 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 accountant unless permitted by the Council so to engage ;

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

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 Regulation, 190A and 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 not to engage in any other business or occupation other than the profession of accountancy except with the permission granted in accordance with a resolution of the Council".

191. Part-time employment 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”.

Appendix 10-C.A. Regulations, 1988

The General and specific Resolutions passed by the Council under the power vested in it under Regulation 190A as included in Appendix 10 of C.A. Regulations, 1988 are also reproduced below for information.

General Resolution

(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 License 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. and M.L.C.
7. Honorary office leadership 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 provided they are otherwise eligible.

Specific Resolution - “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 cc concern.

3. Office of managing director or a whole-time director of a body corporate within the meaning of the Companies Act, 1956.
4. Interest in family business concerns (including such interest devolving on the members as a result of inheritance/succession / partition of the family business) or concerns in which interests have been acquired as a result of relationships and in the management of which no active part is taken.
5. Interest in agricultural and allied activities carried on with the help, if required, of hired labour.
6. Interest in an educational institution.
7. Part-time or full-time lectureship for courses other than those relating to the Institute's examinations conducted under the auspices of the Institute or the Regional councils or their branches.
8. Part-time or full-time tutorship under any educational institution other than the coaching organization of the Institute.
9. Editorship of journals other than professional journals.
10. Any other business or occupation for which the Executive Committee considers that permission may be granted.

However, it is open to the Council to refuse permission in individual cases though covered under any of the above categories. 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;
- (ii) a member shall be deemed to have a "substantial interest" in a concern:
 - (a) 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 profit) carrying not less than twenty percent 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:
 - (i) one or more relatives of the member;
 - (ii) one or more partners and/or their relative,
 - (iii) any concern in which any of the persons referred to above has a substantial interest;
 - (b) 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 or persons of such number and / or are more sections of such persons are entitled in the aggregate, at any time during the relevant years not less than twenty per cent 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 Accountant Act, 1949 read with Appendix 17 mean the year/period 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 and relatives hold substantial interest in such a company,

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 member in practice to be a Director, Promoter/Promoter-Director, Subscriber to the Memorandum and Articles of Association of any company including a board managed 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 irrespective of whether he and / or his relatives hold substantial interest in that company.
- (b) Promoter / Promoter Director - There is no bar for a member to be a promoter / signatory to the Memorandum and Articles of Association of any company. There 's also no bar for such a promoter / signatory to be a Director Simplicitor of that company irrespective of whether the object of the company include areas which fall within the scope of the profession of chartered accounts. 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 & 5 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 Court 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. 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 do affairs of the company and other more than 51% 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 the 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 engaging in business other than the profession of Chartered accountant's without the permission of the Council. Therefore, he was found guilty in terms of clauses (4) and (11).

(S.K. Kaul vs. S.C. Mangal - Page 132 of Vol. VI (2) of the Disciplinary Cases - Decided on 9th and 10th August, 1988)

A member 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 without prior permission of the Council was found guilty in terms of clauses (4) and (11).

(R.D. Bhatt vs. K.B. Parikh - Page 191 of Vol. VI (2) of the Disciplinary Cases - Decided on 15th, 16th and 17th December, 1988)

The Bombay high Court in WP No. 4906 of 1985 decided on 09.02.1989 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 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 Accountancy engaged in any business or occupation other than the profession of chartered accountant in the cases set out in the resolution (Appendix 10). Clauses (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. of 1985 dated 19.02.1989.

While dealing with the reasonableness of Clause (11), The Allahabad High Court in CWP No. 1823 of 1988 has decided on 10.07.1990 that it is always open to place reasonable restriction or to regulate any activity. Such restrictions are not new; they are to be found in many fields there it is provided that a person practicing 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 practicing 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 10.07. 1990)

Where a Chartered Accountant had not disclosed to the Institute at any time about his engagement as a proprietor of a non- Chartered Accountant's firm while holding certificate of practice and had not furnished particulars of his engagement as a Director of a company despite various letters of the Institute which remained unreplied. Held that he was guilty under clause (11) of Part I and clauses (1) and (3) of Part III of the First Schedule.

[P.S. Rao in Re: Vol. VII (2) of the Disciplinary Cases to be published - Council's decision dated 9th to 11th April, 1992].

Where a chartered accountant was Karta of the HUF was engaged in the business of a firm without permission of the Council. Held that he was guilty of professional misconduct under Clause(11)

[V. Krishnamoorthy vs. T. T. Krishnaswami, Vol. VII (2) of the Disciplinary Cases to be published Council's decision dated 27th to 29th September, 1992].

Where a Chartered Accountant had hold a salaried employment as Assistant Manager (Finance & Accounts in addition to the practice of chartered accountancy without obtaining permission of the Institute as required is guilty held under Clause (11) of Part I of First Schedule.

[Anil Kumar in Re: Vol. VII (2) of Disciplinary Cases to be published - Council's decision dated 16th to 18 January, 1994]

Where a Chartered Accountant while practicing as a chartered accountant had engaged himself in other occupation as an LIC agent in another name. Held that he was held guilty Clause (11) of schedule.

[C.I.T. (Admn.) vs. H.M. Giriya - Vol. VII (2) of the Disciplinary Cases to be published Council's decision dated 13th to 15th June, 1996]

Where a chartered Accountant had offered to help the Complainant in disposing of odd lot share holding, sold them at much lower rate than he had sent of the Complainant notes etc. and the said chartered accountant was personally involved in the share transfer and broker's business besides his profession activities. Held that he was guilty under Clause (11) of Part I.

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 his partner to sign any balance sheet, profit and loss account or financial statements 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 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 means the financial statements and reports as ultimately finalized 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 provisions of this clause:

- (i) Issue of audit queries during the course of audit.
- (ii) Asking for information or issue of questionnaire.

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

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 statutory 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 - Professional misconduct in relation to members of the Institute in service

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

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

A member of the Institute in service is deemed to be guilty of professional misconduct, if he is an employee of any company, firm or person and during that course whatever emoluments he receives, if he either pays or allows to pay or agree to pay any part or share thereof whether directly or indirectly. However, this clause dose not restricts such sharing or commitments among relatives, dependents, friends etc., if there is no relationship in procuring or retaining the job and payment is not a consideration for job procurement or retainership.

The clear verdict of this clause is that job must be procured and retained with own professional capabilities and not by any financial deal impairing professional dignity.

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.

This clause restricts to accept or agrees to accept any part of fears, 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. The

objective is that when a member is in employment, he must maintain high level of ethics and should not accept any other amount from anyone for which he is not entitled from employer under contractual agreement of service.

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

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

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

Every member of the Institute whether in practice or not, shall be deemed to be guilty of professional misconduct, if he is associate member (ACA) of the Institute, acts (including such disclosure of exhibition by way of letter, visiting card etc.) as fellow member (FCA) of the institute.

The distinction between this clause and section 24 of the Chartered Accountants Act, 1949 should be very clear as the section prohibits any person who,

- (i) not being a member of Institute;
 - (a) represents that he is a member of the Institute; or
 - (b) uses the designation of Chartered Accountant;
- (ii) being a member of Institute but does not have certificate of practice while represents himself as Chartered Accountant in practice, he shall be punished;
 - (a) by fine upto Rs.1000/- for first conviction ,and
 - (b) by fine upto Rs. 5000/- and /or imprisonment upto 6 months on subsequent conviction.

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, who was suspended for six months from practice by an order of the High Court, failed to return the certificate of practice, when directed to do so by the Institute, the Council treated it as information and proceeded against him under clause (3) - Held, that no misconduct has been established against the chartered accountant. In a case where misconduct is . Alleged against a person, it must be established beyond all doubt.

(A.C. Kaher in Re: Page 54 of Vol. IV of the Disciplinary Cases and pages 352 - 354 of March, 1960 issue of the Institutes Journal - Judgement delivered on 7th October, 1959).

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 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.

(Laxmi Narayan Gupta in Re: Vol. VII (2) of the Disciplinary Cases to be published - 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.

(A.K. Mehra in Re: Vol. VII (2) of the Disciplinary Cases to be published Council's decision dated 6th to 8th June, 1991).

Clause (11) of Part I and clauses (1) and (3) of part III 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 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: Vol. VII (2) of the Disciplinary Cases to be published - 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: Vol. VII(2) of the Disciplinary cases to be published - Council's decision dated 16th to 18th July, 1992).

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 firm. Held that he was guilty under clause (1) of Part III of the First Schedule.

(R.K. Jain in Re: Vol. VII(2) of the Disciplinary Cases to be published - Council's decision dated 10th to 12th June, 1993.

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.

Any member of the Institute, in the course of procurement of professional work from another Chartered Accountant or from any other source provides or renders any information which he knows to be false through any documents, or acts (like tenders, enquiries, response to advertisement, CV type write ups etc.), he would be deemed to guilty of professional misconduct under clause (3), Part-III of Schedule-I.

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

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

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

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

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

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

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

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

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

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 a person 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.

If disclosure is required as a part of performance of professional duty by a practicing member in relation to a client, the fact that such performance is required by the client would itself amount to the client consenting to such disclosure. Thus, a member in practice submitting information to, say, exchange control authorities, while performing his professional duties cannot be considered to have made disclosure without the aforesaid consent. But, in all cases, the request or the initiative that the members do 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 proprietary 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 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 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 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.

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, 1972 (Section 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 circumstance 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

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. These recommendations are generally in line with similar recommendations made by the Institute of chartered accountants in England and Wales for the guidance of its members.
2. The recommendations below are based on the following premises:
 - (a) No duty is cast on a member, whether by Section 44 of Criminal Procedure Code, 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 in such course. The proceedings before the Income tax authorities are judicial proceedings and the assessee is authorized to be represented by a chartered accountant. The privilege given and the restrictions imposed by Section 126 apply as between the client and the member as the member is the client's attorney. Nothing in Section 126 shall protect from disclosure any fact observed by a barrister, pleader, attorney or Vakil in the course of his employment of 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 behaviours is not reflected in current matters.
5. If the fraud relates to accounts etc., examined by the member and reported upon, on the basis of which the tax assessment in the past has been made, or is currently to be made,

the client should be advised to make a complete disclosure. If the client should refuse, he should be informed that the member would be entitled to dissociate himself from the case, and that, further, he would inform the authorities that the accounts prepared by him and/or reported upon by him are unreliable, on account of certain information since obtained. He should then make such a report to the authorities. But the information subsequently obtained should not as such be communicated to the authorities, unless the client consents in writing.

6. Normally, if disclosure is consented to by the client it should be made immediately. But if the suppression is trivial, the disclosure may be made when the current return is submitted. But if there is any possibility that the collection of tax would be prejudiced, on account of the client disposing of his property or removing his person from the jurisdiction of the Income-tax authorities the postponement of disclosure would be improper.
7. If the suppression etc. relates to accounts or returns currently being prepared, the member should advise the client to make full disclosure in the accounts and/or return, and should the client refuse, he should make full reservation in his report, and should not associate himself with the return.
8. If the employment of the member is dispensed with before the accounts are completed or are reported on, or the return is submitted, no further duty regarding disclosure etc. rests on the member.
9. The suppression may relate to accounts, which are not prepared and/or reported upon by the member, e.g. personal income, 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, nondisclosure 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) 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). Here also the protection offered by Section 126 of the Evidence Act, is a matter for expert legal advice.

The decision of the Court on this clause is 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 July, 1967 issue of the institute's Journal - Judgement delivered on 12/16th January, 1967.)

Where a Chartered accountant had disclosed information acquired by him in the course of his professional engagement to persons other than his clients without the consent of his client and without requirement in any law. It was held that he was guilty of professional misconduct under clause (1) of Part I of Second Schedule to the Chartered Accountants Act.

(Bank of India vs. Ved Prakesh - Page 458 of Vol. VI (1) of the Disciplinary Cases- Judgement dated 13th July, 1989)

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

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 all either chartered accountant in practice, It must be pointed out that when they do so they are undertaking joint responsibility and in respect of any default or failure, they would be jointly and severally liable.

Where the joint auditors are appointed, the work is normally divided among themselves in terms of identifiable units or areas, or with reference to the items of liabilities, or income or expenditure or to the period of time etc. Such division should be adequately documented and communicated to the auditee.

In the course of his work, where a joint auditor comes across matters requiring discussion with or application of judgement by the joint auditors, he must communicate to the other joint auditors before submission of the report.

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 on 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.

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 statement on standard Auditing Practices (SAP) 12 in this connection.

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

This clause provides that a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he permits his name or the name of his firm to be used in connection with the 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 a guidance note entitled "Guidance Note on Accountants Report on Profit Forecasts and/or Financial Forecasts" wherein they have considered the implications of the above clause. After consideration of the various factors Council has taken the view that the above clause does not preclude a Chartered Accountant from associating his name with forecasts. He 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. It is also clear that the words "vouch for the accuracy of the forecast" do not refer to the arithmetical accuracy. The Council recognizes that all forecasts are estimates based on certain assumptions duly evaluated on a consideration of various relevant factors and, as such, are not capable of being ascertained

with accuracy. This is a special feature incidental to all forecasting processes and is distinct from audits and other statements reported upon by Chartered Accountants.

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;

Now, the words "unless he discloses the interest also in his report" has been deleted from this clause there by making mandatory not to express opinion on financial statement of any business or enterprise in which he, his firm or a partner in his firm has a substantial interest.

1. Where the member, his firm or his partner or his relative has substantial interest in the business or enterprise.

The independence of mind is a fundamental concept of audit and/or expression of opinion on the financial statements in any form and, therefore, must always be maintained. Nothing can substitute for the essential and fundamental requirements of independence. Therefore, the Council's views are clarified in the following circumstances.

- (i) An enterprise/concern of which a member is either an owner or a partner. The holding of interest in the business or enterprise by a member himself whether as sole-proprietor or partner in a firm, in the opinion of the Council, would affect his independence of mind in the performance of professional duties in conducting the audit and/or expressing an opinion on financial statements of such enterprise. Therefore, a member should not audit financial statements of such business or enterprise.
- (ii) Where the partner or relative of a member has substantial interest: The holding of substantial interest by the partner or relative of the member in the business or enterprise of which the audit is to be carried out and opinion is to be expressed on the financial statement, may also affect the independence of mind of the member, in the opinion of Council, in the performance of professional duties. Therefore, the member may, for the same reasons as not to compromise his independence, not 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. 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.

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.

The Council has clarified that the members are not permitted to write 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 dated / instrument, the member should satisfy whether his appointment is valid according to the instrument constituting the entity and rules made hereunder. In case the appointment is to be authorized by the regulatory authorities such as in the case of cooperative societies, trusts etc. then the member must satisfy whether such regulatory authorities have authorized 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 of Board of Governors. Even in case of partnership or sole proprietary, the member must ensure that a letter of appointment/ engagement is given by a financial statement before he accepts the assignment.

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

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 SAP-13 as follows. "Information is material, if its misstatements (i.e. omission or erroneous statement) could influence the economic decisions of users taken on the basis of the financial information."

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

The word "financial statements" used in this clause would cover both reports and certificate usually given after an examination of the accounts or of financial statements 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 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 investment 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 or June, 1952 issue of the Institute's bulletin-Judgement delivered on 3rd. October 1952).

Where a Chartered Accountant failed to examine how debts become bad and were written off-Held he was guilty under Clause (5).

(A. Doraiswami/ Naidu-vs. P.M. Raghavendra Rao - Page 468, of Vol. IV of the Disciplinary Cases and Pages 463-465 of February, 1966 issue of the Institutes journal-judgement delivered on 27th October, 1965).

Where a Chartered Accountant had not disclosed the fact that a large amount of loan have been given out of the funds of an Employees Provident Fund to the Employer Company in contravention of the Rules of the Provident Fund and had failed to report on the default in clearing the cheques received in re-payment of the loan. Held by the High Court that he was not guilty of any non-disclosure to the individual subscribers of the Provident Fund because he owed no duty to disclose to them and he was well within his rights to have disclosed the irregularities to the trustees themselves and to the company which had appointed him.

Held by the Supreme Court on appeal that it was no defiance 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).

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 his report a material misstatement 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-

Where a Chartered Accountant prepared a balance sheet of a firm and subsequently prepared statement regarding the state of affairs of the firm without taking into account the balance sheet already prepared by him showing a lesser amount by way of opening stock and a lesser amount to the credit of the proprietor and subsequently when he was called upon by his client

to prepare a fresh balance sheet and profit and loss account for the same year so that it should tally with the statement of affairs prepared by him he did so without reference to the actual account books but on instruction 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 June, 1968 issue of the Institute's Journal- Judgement delivered on 19th February, 1968)

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 Travencore Companies Act, There was also a failure on his part to report on the non disclosure of the forfeiture and cancellation of share. Held the Respondent's 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 misstatement 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 misstatement by the company in not given the previous year' figures in the corresponding column of the balance sheet.

Held was guilty of professional misconduct under Clauses (6) and (7).

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. The expression negligence covers a wide field and extends from the frontiers of fraud to collateral 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 which came before it 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 watchdog but not a bloodhound. 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 reasonable cautious and careful.

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, don't require a reference to the Disciplinary Committee, the

Council would nevertheless bring the matter 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 of the Courts on this clause are briefly mentioned below:

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 March 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 has 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 bank's 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 bank 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 certified the circulation of a newspaper based on the statistic 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 on 17th April, 1956).

Where a certificate issued by a Chartered Accountant under Regulations 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 premium and also the claims in respect of two policies which has matured were not included in estimated liability in respect of outstanding claims shown in the Balance Sheet-Held he was guilty under Clauses (7) & (8).

(Controller of Insurance vs H. C. Das - page 240 of Vol. III of the Disciplinary Cases and pages 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 in Bombay was charged with failure to report to the Bombay office that some entries in the bank pass book has 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 duty without fear or favour, although it involved unpleasant consequence 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 October, 1957 issue of the Institute's Journal-Judgement delivered on 23rd August, 1957).

A certificate issued by a Chartered Accountant to a proprietor of a firm in respect of the turnover of betel nuts to enable the firm, which was not dealing in betel nuts, to obtain import license without checking the books and documents himself, but relying on his articled clerk for its correctness. Held he was guilty of gross negligence.

(Sunder Lal 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) & (8) of Part I of the 'Second Schedule. Held there being no proof of dishonesty or volume 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 admonition.

(Company Law Administration-vs-D.B. Kulkarni-page 185 of Vol. of the disciplinary Cases and pages 410-412 of April, 1960 issue of the Institutes Journal -Judgement- delivered on 1st April, 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 accounts of the bank. Held that no auditor could escape from personal liability by taking shelter under the misconduct of his own employees. There was nothing to indicate the status, qualifications or capacity of the assistants. Under the circumstances, the conduct of the Chartered Accountant in abdicating his functions to his subordinates amounted to gross negligence.

(Superintendent of Police Madras vs M. Rajamany page 232 of Vol. IV of the Disciplinary Cases and pages 27-29 of July, 1961 issue of the Institute's Journal - Judgement delivered on 5th May, .1961).

Where a Chartered Accountant failed to report on the overpayment of remuneration to the managing agents of a company, which contravened Sections 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 January, 1963 issue of the Institute's Journal- Judgement delivered on 30th November, 1962).

'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 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.Agrawl- page 616 of Vol. IV of the Disciplinary Cases and page 438 of February, 1968 issue of the Institute's Journal- Judgement delivered on 24th July, 1967).

Where a certificate issued by a Chartered Accountant to the Joint Chief Controller of Imports & Exports, Calcutta stating that a firm had exported a certain quantity of onions during a certain period contained false and inaccurate particulars in respect of three items of invoice value the particulars themselves related to exports not by this firm but by two other firms. Held he was guilty of the charge of gross negligence.

(The Chief Controller of Exports vs-G.P. Acharya- page 311 of Vol. IV of the Disciplinary Cases and pages 189-194 of September, 1963 issue of the Institute's Journal- Judgement delivered on 30th November, 1962).

Where a Chartered Accountant signed the accounts of an institution subject to separate notes. Held he was guilty of gross negligence. In the view of the High Court, the essential part was the separate notes. Any one going through his report would at least assume that those notes when 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 34 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, 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 TS. 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 May, 1963).

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 6th February, 1968).

Where a Chartered Accountant had not completed his work relating to the audit of the accounts a company and had not submitted his audit report in due time to enable the company

to comply with the statutory requirement in this regard. Held, he was guilty of professional misconduct under Clause (7).

(Qaroon trading & Finance Pvt. Ltd.- vs Luxmi Narain Saxena and Jitendera 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 failed to exercise sufficient care and diligence in 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. & Messers. Oriental Mercantile Distributors Private Ltd. 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).

In his audit report of a school, the auditor failed to point out wrong and misleading entries and a sum of Rs. 7,000/- on account of reserve fund did not find a place at all in the original statement sent to the school. The correction slip alleged to be sent by the Chartered Accountant was never received by the school. The Chartered Accountant had not proved that the correction slip was sent to the school. Held the Chartered Accountant was guilty of gross negligence in the conduct of professional duties and his conduct was quite unbecoming of a professional person entrusted with responsibility of dealing with the accounts.

(B.L. Shoulder vs-M.K. Deb -page 121 of Vol. V of the Disciplinary Cases and page 196-198 of March 7th, 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, license 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).

(IS. Vaidyanath 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 capitalization of a large sum of expenditure which was in the nature of revenue. He had merely adopted an adhoc basis in deciding upon capitalization 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 page 241-243 of May 1971 issue of the Institute's Newsletter - Judgement delivered on 13th, 18th February, 1977).

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 investment in the balance sheet was inflated and it did not exhibit the correct position and the profit and loss accounts 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.S. Waierker in Re: page 448 of Vol. III of the Disciplinary Cases and page 470-472 of January 1958 issue of the Institute's Newsletter—Judgement delivered on 9th December, 1957).

A Chartered Accountant was found guilty of professional misconduct under Clauses (5), (6), (7) and (9) of Part 1 of the Second Schedule on the following grounds:

- (1) That he failed to point out the contravention of Note (C) to Schedule VI of the Companies Act, that is, the requirement in the case of a subsidiary company that the number of shares held, by the holding company as well as by the ultimate holding company and its subsidiaries must be separately stated.
- (2) that he failed to point out the contravention of Part I 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 money value of the contract for the supply of service with the associates of managing agents as required under Schedule VI Part 1.

(Registrar of Companies, West Bengal vs V. V. Bapat-Page 8 of Vol. V of the disciplinary Cases and page 281 of December, 1974 issue of the Institute's Journal-Judgement delivered on 22nd January, 1974)

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 20, August, 1971).

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 books. 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).

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).

The chartered accountant failed to obtain sufficient information to warrant the expression of an opinion. Held, that he was guilty under this clause.

(Institute's Journal August, 1982 (i) S.B. Patak in Re: (2) CS. Hariharan in Re: decided on 16th March, 1982 page 151-152 Vol. VI of the Disciplinary Cases).

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 10-12-1980, Vol. VI of the Disciplinary Cases to be published. The Institute's Journal March, 1981 page 703-11).

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 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.

The Statement on Qualifications in Auditor's Report issued by the Institute requires that all the qualifications should be contained in the auditors' report. The notes to accounts normally represent explanatory statements given by the directors of the company and should not contain the opinion of the auditors. The practice has grown recently of having a large number of notes to accounts, some of which are subject matter of qualifications in the auditors report and some of which are merely clarificatory. It is necessary that the auditors should reproduce the notes of a qualificatory nature in their report to enable the reader to know the importance of these qualifications. The Statement clarifies the use of the word "reproduce" in the above context does not imply a verbatim reproduction. Where notes of a qualificatory nature appear in the accounts. The auditor should state all qualifications independently in his report in an adequate manner so that a reader can assess the significance of these qualifications. For this purpose, where a note is already given in detail by the management it is not necessary to reproduce verbatim such a note in the audit report and a brief self-explanatory statement may be sufficient.

The Statement further requires that the auditors should quantify, wherever possible the effect of the qualifications on the financial statements in a clear and unambiguous manner if the same is material.

It has been observed that in complying with this requirement, some auditors quantify the effect of individual qualifications on financial statements without stating the total effect of all the qualifications on the profit and or loss/ or state of affairs. The Council is of the view that quantification of the total effect of the qualifications on profit or loss/or state of affairs is useful to the readers of the audit reports. The Council has, therefore, decided to bring it to the attention of the members that they are expected to quantify not only the effect of the qualifications on individual items of financial statements but also their overall effect on profit or loss and/or state of affairs. Accordingly, the Council has decided to make certain amendments in the relevant paragraphs of the Statement (i.e. paragraph 3.10). The Council has also decided to add some examples in the Statement to provide guidance to the members on the manner of quantifying the total effect of the qualifications. Certain changes have also been made in paragraph 3.7 of the Statement.

The relevant extracts of the paragraphs of the statement which have been amended and examples which have been added pursuant to the above decision of the Council have been reproduced at page 90 of April, 2000 issue of 'The Chartered Accountant'.

In circumstances where it is not possible to quantify the effect of the qualifications 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.

Where non compliance with the provisions of the statute/guideline issued by regulatory authorities governing the enterprise has a bearing upon the accounts and transactions of the enterprise, the auditor in the normal course of his enquiry would become aware of the breaches of the statute and may have an obligation to report the same in his audit report.

While qualifying a report, it is important to appreciate:

- (i) As to which various items (the statements of fact and opinion) require a qualification;
- (ii) Whether the auditors are in active disagreement with some thing which has been done by the company or are merely unable to form an opinion in regard to items for which there is lack of adequate information;
- (iii) Whether the matters in question are so material as to affect the presentation of a true and fair view of the whole of the affairs of the company or are of such a nature as to affect only a particular item disclosed in the accounts; and
- (iv) Whether the matters constituting qualification involve a material contravention of any requirements of the Companies Act, 1956 which have a bearing on the accounts. Members may refer to the Institute's Publication "Statement on Qualification on Auditor's" Report in this regard.

The decisions of the Courts on this subject are briefly presented below:

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 lyer 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 February, 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 receipts of monies from the agent should have raised the suspicion and he should have asked for further information in that regard. The Chartered Accountant was required to verify the stocks and whether the agent had accounted for all the sale proceedings. He was wrong in accepting the entries in the books without asking for further information. The Chartered Accountant was required not merely to verify the arithmetical accuracy of the accounts but he ought to have enquired into its substantial accuracy with all the skill, care and caution. If the Chartered Accountant had conscientiously audited the accounts and in accordance with the instruction of the ABC regulations, he could have probed into the matter to the bottom to find out whether the purported sale with agents was genuine or it was only a make believe arrangement. Held the chartered accountant was guilty of misconduct under Clause (8). (Audit Bureau of Circulations Ltd. vs S. Narayanan- page 181 of Vol. V of the Disciplinary Cases and page 2-5 of July, 1977 issue of the Institute's Newsletter Judgement delivered on 14th April, 1977).

Where a Chartered Accountant relying on the work of the internal auditor of a company qualified his report that the books of account and the supporting vouchers had been examined

by the internal auditor of the company, the Council taking the view that the qualification amounted to an exception sufficiently material to negate the expression of an opinion, found him guilty, of misconduct under the latter part of Clause (8). As a general rule, a statutory auditor would be guilty under this clause, if he performed his work so recklessly as to give his report-without looking into the books of account of a company, on the basis of the work of the internal auditor whose opinion turned out to be false.

(J.C. Chandhok 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 page 77-82 of July, 19th issue of the Institute's Journal-Judgement delivered on 7th May, 1971).

Clause (9) "Falls 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 in general terms from the various pronouncements of the Institute is issued by way of statements and Guidance Notes and AASs to members.

Members are also advised to refer to the ISA's issued by the International Auditing Practices Committee of IFAC.

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 in circumstances when giving any reservations or qualifications in the auditor's 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 a 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 subject 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).

(M.R. Ramanathan vs A. Utnatlath Rao - page 705 of Vol. IV of the Disciplinary Cases and page 165 of September, 1968, issue of the Institute's Journal-Judgement delivered on 24th June, 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 utilization 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).

A Chartered Accountant had checked the cash book totals but not the bank column totals, had verified all the transactions in the bank columns but not the contra-entries, had taken the casting only of personal ledger and that too not of all accounts, had resorted to test check when there was no system of internal check, had not seen the pay-in-slips, had not checked the bank reconciliation statements for all the months. Held he was guilty of professional misconduct under Clauses (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, 1976, issue of the Instituted Journal-Judgement delivered on 5th July, 1976).

Where the form of the certificate prescribed by the Audit Bureau of circulation 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 alongwith, 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. v.s. 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).

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 member may be entrusted with moneys belonging to his client. If he should receive such funds, it would be his duty to deposit them in a separate banking account, and to utilize such funds only in accordance with the instructions of the client or for the purposes intended by the client. 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 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" 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 in this matters are briefly mentioned below:

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 v.s. K.V. Subba Rao - page 958 of Vol. IV of the Disciplinary Cases and pages 207-214 of October, 1973, issue of the Institute's Journal - Judgement delivered on 6th April, 1973).

A Chartered Accountant was found guilty of not keeping the client's money in a separate account and not using it for the purpose for which it was given.

(Mr. R.S. Murgai Re: v.s. (1) S.K. Gadh & (2) V.K. Bajaj Decided on 10th August, 1981 Vol. IV of : the Disciplinary Cases to be published.)

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

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

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

This clause is very important. It requires every member of the Institute to act within the framework of the Chartered Accountants Act and the Regulations made thereunder. Any violation either of the Act or the Regulations by a member would amount to misconduct.

The Regulations under which cases of contravention have generally come to the notice of the Council are the following:

Regulation 43	Engagement of Articled Clerks
Regulation 47	Premium from Articled Clerks
Regulation 48	Stipend to Articled Clerks
Regulation 46	Registration of Articled Clerks
Regulation 65	Articled Clerks not to engage in any other occupation
Regulation 56	Termination or assignment of Articles
Regulation 67	Complaint against the employer (from Articled Clerk)
Regulation 68 to 80	Audit Clerks
Regulation 125	Disciplinary action against member in connection with conduct of election
Regulation 190	Register of offices and firms
Regulation 190-A	Chartered Accountants not to engage in any other business or occupation
Regulation 191	Part time employment's a chartered Accountant may accept
Regulation 192	Restriction on fees

Appendix 10 to the Chartered Accountants Regulation, 1981

The decisions of the Court under this clause are mentioned below: ..

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 and page 88 of August, 1954, issue of the Institute's Journal-Judgement delivered on 3rd December, 1953).

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, that 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 v.s. P.K. Mukherjee - Page 9 of Vol. III of the Disciplinary Cases and pages 40-30 of July, 1956, issue of the Institute's Journal-Judgement delivered on 16th April, 1956).

Where a Chartered Accountant, who was entitled to take three articled clerks, had already taken three such clerks, represented to a person that he had still a vacancy and induced him to enter into articles. A formal deed was executed and the premium was paid. He subsequently cancelled the articles of the third articled clerk for irregular attendance without reference to the Institute. Held that he had contravened the provisions of Regulation 58 and was guilty of grave misconduct.

(J.K. Ghosh in Re: page 106 of Vol. II of the Disciplinary Cases and pages 278-280 of January, 1956 issue of the Institute's Journal-Judgment delivered on 6th December, 1955).

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 instalments 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-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 who 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 v.s. Sunderlal Fatehpuria - page 704 of Vol. IV of the Disciplinary Cases and page 629 of May, 1968, issue of the Institute's Journal judgement delivered on 23rd February, 1968).

A Chartered Accountant was found guilty of professional misconduct in terms of Clause (i) of Part 11 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 Chowdhery in Re: page 1 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 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 in the May, 1980, issue of the Institute's Journal at page 1014 tent 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 every month. The stipend was paid only after the articled clerk left him after working for a months and 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 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 in July, 1980, issue of the Institute's Journal at pages 50-55 and Judgement delivered on 17th April, 1980).

Three articled clerks of a Chartered Accountant informed 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 two contentions put forward by the Chartered Accountant, viz, (i) 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 pages 241 - 242 of the September, 1980, issue of the Institute's

Journal - judgement delivered on 21st July, 1980).

The Chartered Accountant received Rs. 2000/- by way of security from the complainant's father as a consideration for taking him as an articled clerk. Held that he was guilty under the provision.

(Virender Kumar v.s. K.B. Madan decided on 26th August, 1980, Disciplinary Cases Vol. VI to be published).

A Chartered Accountant was guilty of professional misconduct, as the stipend had been paid only after a complaint was lodged with the Institute.

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 clause is same as Clause I of part I of Schedule II subject to mutatis mutandis adjustment for employee in place of client.

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;

If a Chartered Accountant includes in any information, statement, return or form to be submitted to the Institute Council etc. any particular knowing him to be false, he will be held guilty of misconduct.

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

Defalcation and embezzlement of moneys received in professional capacity amounts to fraud (Covered in AAS-4) and such member will be deemed to be guilty of professional misconduct under this clause.

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

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

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

Refer Clause 1 of part IV of Schedule I.

Recommended Self-Regulatory Measures

1.14 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:

1.14.1 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.

1.14.2 Joint Audit - In the case of large companies the practice of associating a practicing 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.

1.14.3 Ratio Between Qualified and Unqualified Staff - In the Council's view, a practicing 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.

1.14.4 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.

1.14.5 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 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 in the case of audit of government companies, public undertakings nationalised banks.

1.15 Important Notification

1. He, on behalf of firm of Chartered Accountants 1-
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in which he is partner, accepts or carries out any
audit work involving receipt of audit fees of an amount
less than as mentioned below:
(With at least one partner holding C.P. for 5 years or more)

	Practicing firm having 5 or more partners but less than 10 partners	Practicing firm having 10 or more partners
(i) In cities with population of 3 million and above (as per the last census)	Rs. 6000/- p.a.	Rs. 12000/- p.a.
(ii) In cities/towns having population of less than 3 million (as per the last census)	Rs. 3500/-	Rs. 8000/- p.a.

Provided that such restrictions shall not apply in respect of the following:

- (i) Audit of Accounts of Charitable Institution, 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 operation;

- (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.

Guidelines Issued By the Institute

1.16 The Institute has issued certain guidelines on the applicability of the Code of Ethics. The important guidelines have been summarized below -

1.16.1 Advertisements & Notes in the Press - A member may advertise changes in partnerships or dissolution of a firm or change in address of practice and telephone numbers being limited to bare statement of facts and appropriateness of area of distribution of newspaper/ magazine etc.

A member may issue classified advertisement in the Journal/Newsletter of the Institute for sharing or seeking professional work.

1.16.2 Application for Empanelment for Allotment of Audit and Other Professional Work - Members may write to authorities such as government departments, banks, etc., for entering their name in the panel of auditors maintained by them.

1.16.3 Publication of Name/ Firm Name by Chartered Accountants in Telephone or Other Directories - Special entries in telephone directory made on request or additional payment shall not be permitted

Members shall be permitted to have their or their firm's names entered in Telephone/ Trade Directories brought out by government and non-government agencies in compliance with the following guidelines:

1. These entries 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.

1.16.4 Responding to Tenders, Advertisements and Circulars - Members are not permitted to respond to advertisement tenders, writing applications or quotations for rendering of professional service restricted to Chartered Accountants.

1.16.5 Advertisements-

- ◆ A member cannot distribute handbills carrying information, such as changes in tax laws, ostensibly for guidance of persons other than his regular clients.
- ◆ A member is not permitted to indicate in a book or article published by him, his association with any firm of Chartered Accountants.
- ◆ Members may use the designation "Chartered Accountant" as well as the name of the firm in greeting cards, invitation for marriages, religious ceremonies or for opening of offices, changes in address/telephones numbers, provided such cards/invitations are sent only to clients, relatives and friends of the members concerned.
- ◆ Members are prohibited from inserting advertisements for soliciting clients or professional work under box numbers in the newspapers.

1.16.6 Website -

- ◆ Members are allowed to set up websites subject to the following guidelines:
- ◆ Members shall be free to set up website in their personal or trade name or in their firm's name.
- ◆ The website should be run on a "pull" model and not a "push" model of technology, i.e. only a person who wishes to locate the Chartered Accountant(s) would have access to the information and the information is provided only on the basis of specific "pull" request.
- ◆ The website address can be mentioned on the professional stationery.
- ◆ Information may be posted about the firm such as Name, Address, Contact Nos. and E-mail ID(s), Year of establishment, Names and Qualifications of Partners and Employees and Job vacancies.
- ◆ The following information is to be given only on a specific 'pull' request: Nature of services rendered, Areas of experience of the Partners and Employees, No. of Articled Clerks and Nature of assignments handled.
- ◆ Names of clients and fee charged cannot be given.
- ◆ No photographs of any sort are permitted.
- ◆ Articles, professional information, updates and matters of professional interest can be posted.
- ◆ Bulletin boards and Chat Rooms can be provided.
- ◆ The members/firms can provide on line advice to their clients who specifically request for the advice, whether free of charge or on payment.

- ◆ No advertisement in the nature of banner or any other nature will be permitted on the website.
- ◆ The website may provide a link to the website of ICAI, its Regional Councils and Branches and also to the websites of Govt./Govt. Departments/Regulatory authorities; except that neither link to nor information about any other website is permitted.
- ◆ Accountant in Practice or firm of Chartered Accountants in Practice.
- ◆ The website should mention the date upto which it is updated.

The address of the website should be intimated to the ICAI within 30 days.

1.16.7 Advertisement of Professional Attainments -

- ◆ A Member is not permitted to state on his professional documents that he is an Income Tax Consultant, Cost Accountant, Management Consultant, or Cost Consultant.
- ◆ The date of setting up of practice or date of establishment should not be mentioned on letterheads and other professional documents.
- ◆ Members of the Institute in Practice, who are otherwise eligible, may practise as Advocates subject to the permission of the Bar Council but they should not be allowed to use both the designations, viz. Chartered Accountant and Advocate simultaneously.

1.16.8 Logos - Members in practice and/or firm of Chartered Accountants are prohibited from using logo / monogram of any kind on any display material or media.

Photo: Member are not Permitted to use own photograph on visiting cards.

1.16.9 Member being Director, Managing Director, etc. - Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949 reads as under- "A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he engages in any business or occupation other than the profession of chartered accountants unless permitted by the Council so to engage.

Provided that nothing contained herein shall disentitle a Chartered Accountant from being a director of a company unless he or any of his partners is interested in such company as an auditor.

The council of the Institute has recently considered the question of permitting members in practice to become Director, Managing Director, Full-time/Executive Director, etc., and related issues.

As regards the question of permitting a member in practice to be a Director, Promoter/ Promoter-Director, subscriber to 'the Memorandum and Articles of Association of any company including a board managed company, it was decided that:

(a) Director of a Company -

- (i) The expression "Director Simplicitor" shall be used in future for an ordinary/simple Director;

- (ii) A member in practice is permitted generally to be 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 irrespective of whether he and/or his relatives hold substantial interest in that company.

(b) Promoter/Promoter-Director - There is no bar for a member to be a promoter/signatory to the Memorandum and Articles of Association of any company. There is also no bar for such a promoter/ signatory to be a Director 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.

As regards the question relating to permitting a member to be a Managing Director, Whole time/ Executive Director, etc., as also rendering of services to a company as a professional accountant in addition to his being a Director/Managing Director, etc., necessary guidelines (presented below) had already been provided in this behalf.

As per Resolution passed by the Council under the then Regulation 166 of the Chartered Accountants Regulations 1964 (presently Regulation 190A of the Chartered Accountants Regulations 1988), and published as Appendix No. (10) to the Chartered Accountants Regulations, 1988, members of the Institute in practice may, inter alia, engage in the following category of business or occupation after obtaining the specific and prior approval of the Council :

“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 his relatives do not hold substantial interest in such a concern”.

The expression “relative”, in relation to a member means the husband, wife, brother or sister or any lineal ascendant or descendant of that member.

A member shall be deemed to have a “substantial interest” in a concern-

- (i) In a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than 20 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 members;
 - (b) Any concern 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 20 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 per cent of voting power / 20 per cent share of profits were owned beneficially.

THE CHARTERED ACCOUNTANTS (AMENDMENT) ACT, 2006

NO. 9 OF 2006

[22nd March, 2006.]

An Act further to amend the Chartered Accountants Act, 1949.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:-

1. Short title and commencement. : (1) This Act may be called the Chartered Accountants (Amendment) Act, 2006.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

2. Amendment of section 2 : In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), in section 2,-

(I) in sub-section (1), - (i) after clause (a), the following clauses shall be inserted, namely:- '(aa) "Authority" means the Appellate Authority constituted under section 22A; (aaa) "Board" means the Quality Review Board constituted under section 28A;';

(ii) after clause (e), the following clause shall be inserted, namely:- '(ea) "notification" means a notification published in the Official Gazette;'

(iii) after clause (h), the following clauses shall be inserted, namely:- '(ha) "specified" means specified by rules made by the Central Government under this Act; (hb) "Tribunal" means a Tribunal established under sub-section (1) of section 10B;

(II) in sub-section (2), in the Explanation, for the words "training of articled clerks", the words "training of articled assistants" shall be substituted.

3. Amendment of section 4 : In section 4 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely: -

"(3) Every person belonging to any of the classes mentioned in clauses (ii), (iii), (iv), (v) and (vi) of sub-section (1) shall have his name entered in the Register on application being made and granted in the prescribed manner and on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees three thousand:

Provided that the Council may, with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand."

4. Amendment of section 5 : In section 5 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:-

"(3) A member, being an associate who has been in continuous practice in India for at least five years, whether before or after the commencement of this Act, or whether partly before and partly after the commencement of this Act, and a member who has been an associate for a continuous period of not less than five years and who possesses such qualifications as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a chartered accountant shall, on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees five thousand and on application made and granted in the prescribed manner, be entered in the Register as a fellow of the Institute and shall be entitled to use the letters F. C. A. after his name to indicate that he is a fellow of the Institute of Chartered Accountants:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand, which shall not in any case exceed rupees ten thousand."

5. Amendment of section 6 : In section 6 of the principal Act,- (i) for sub-section (2), the following sub-section shall be substituted, namely:-

"(2) Every such member shall pay such annual fee for his certificate as may be determined, by notification, by the Council, which shall not exceed rupees three thousand, and such fee shall be payable on or before the 1st day of April in each year:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand.";

(ii) after sub-section (2), the following sub-section shall be inserted, namely:-

"(3) The certificate of practice obtained under sub-section (1) may be cancelled by the Council under such circumstances as may be prescribed."

6. Amendment of section 9 : In section 9 of the principal Act,- (i) for sub-section (2), the following sub-section shall be substituted, namely:-

"(2) The Council shall be composed of the following persons, namely:- (a) not more than thirty-two persons elected by the members of the Institute from amongst the fellows of the Institute chosen in such manner and from such regional constituencies as may be specified:

Provided that a fellow of the Institute, who has been found guilty of any professional or other misconduct and whose name is removed from the Register or has been awarded penalty of fine, shall not be eligible to contest the election,- (i) in case of misconduct falling under the First Schedule of this Act, for a period of three years; (ii) in case of misconduct falling under the Second Schedule of this Act, for a period of six years, from the completion of the period of removal of name from the Register or payment of fine, as the case may be;

(b) not more than eight persons to be nominated in the specified manner, by the Central Government.";

(ii) after sub-section (2), the following sub-sections shall be inserted, namely:-

"(3) No person holding a post under the Central Government or a State Government shall be eligible for election to the Council under clause (a) of sub-section (2).

(4) No person who has been auditor of the Institute shall be eligible for election to the Council under clause (a) of sub-section (2), for a period of three years after he ceases to be an auditor."

7. Substitution of new section for section 10 : For section 10 of the principal Act, the following section shall be substituted, namely:-

"10. Re-election or re-nomination to Council.-A member of the Council, elected or nominated under sub-section (2) of section 9, shall be eligible for re-election or, as the case may be, renomination:

Provided that no member shall hold the office for more than three consecutive terms:

Provided further that a member of the Council, who is or has been elected as President under sub-section (1) of section 12, shall not be eligible for election or nomination as a member of the Council."

8. Insertion of new sections 10A and 10B : After section 10 of the principal Act, the following sections shall be inserted, namely:-

"10A. Settlement of dispute regarding election.-In case of any dispute regarding any election under clause (a) of sub-section (2) of section 9, the aggrieved person may make an application within thirty days from the date of declaration of the result of election to the Secretary of the Institute, who shall forward the same to the Central Government.

10B. Establishment of Tribunal.-(1) On receipt of any application under section 10A, the Central Government shall, by notification, establish a Tribunal consisting of a Presiding Officer and two other Members to decide such dispute and the decision of such Tribunal shall be final.

(2) A person shall not be qualified for appointment,- (a) as a Presiding Officer of the Tribunal unless he has been a member of the Indian Legal Service and has held a post in Grade I of the service for at least three years; (b) as a Member unless he has been a member of the Council for at least one full term and who is not a sitting member of the Council or who has not been a candidate in the election under dispute; or (c) as a Member unless he holds the post of a Joint Secretary to the Government of India or any other post under the Central Government

carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India.

(3) The terms and conditions of service of the Presiding Officer and Members of the Tribunal, their place of meetings and allowances shall be such as may be specified.

(4) The expenses of the Tribunal shall be borne by the Council."

9. Amendment of section 12 : In section 12 of the principal Act, - (i) in sub-section (3), after the words "he shall be eligible for reelection", the words, brackets and figure "under sub-section (1)" shall be inserted;

(ii) in sub-section (4), - (a) for the word "President" occurring at both the places, the words "President and the Vice-President" shall be substituted; (b) for the words "charge of his duties", the words "charge of their duties" shall be substituted.

10. Amendment of section 13 : In section 13 of the principal Act, - (i) in sub-section (2), after the words "meetings of the Council", the words "or he has been found guilty of any professional or other misconduct and awarded penalty of fine," shall be inserted;

(ii) in the proviso to sub-section (3), for the words "six months", the words "one year" shall be substituted.

11. Substitution of new section for section 15 : For section 15 of the principal Act, the following section shall be substituted, namely:-

"15. Functions of Council.-(1) The Institute shall function under the overall control, guidance and supervision of the Council and the duty of carrying out the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the Council shall include - (a) to approve academic courses and their contents; (b) the examination of candidates for enrolment and the prescribing of fees therefor; (c) the regulation of the engagement and training of articled and audit assistants; (d) the prescribing of qualifications for entry in the Register; (e) the recognition of foreign qualifications and training for the purposes of enrolment; (f) the granting or refusal of certificates of practice under this Act; (g) the maintenance and publication of a Register of persons qualified to practice as chartered accountants; (h) the levy and collection of fees from members, examinees and other persons; (i) subject to the orders of the appropriate authorities under the Act, the removal of names from the Register and the restoration to the Register of names which have been removed; (j) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute; (k) the carrying out, by granting financial assistance to persons other than members of the Council or in any other manner, of research in accountancy; (l) the maintenance of a library and publication of books and periodicals relating to accountancy; (m) to enable functioning of the Director (Discipline), the Board of Discipline, the Disciplinary Committee and the Appellate Authority constituted under the provisions of this Act; (n) to enable functioning of the Quality Review Board; (o) consideration of the recommendations of the Quality Review Board made under clause (a) of section 28B and the details of action taken thereon in its annual report; and (p) to ensure the functioning of the

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

12. Insertion of new section 15A.: After section 15 of the principal Act, the following section shall be inserted, namely:-

"15A. Imparting education by Universities and other bodies.-(1) Subject to the provisions of this Act, any University established by law or any body affiliated to the Institute, may impart education on the subjects covered by the academic courses of the Institute.

(2) The Universities or bodies referred to in sub-section (1) shall, while awarding degree, diploma or certificate or bestowing any designation, ensure that the award or designation do not resemble or is not identical to one awarded by the Institute.

(3) Nothing contained in this section shall enable a University or a body to adopt a name or nomenclature which is in any way similar to that of the Institute."

13. Substitution of new section for section 16: For section 16 of the principal Act, the following section shall be substituted, namely:-

"16. Officers and employees, salary, allowances, etc.-(1) For the efficient performance of its duties, the Council shall- (a) appoint a Secretary to perform such duties as may be prescribed;

(b) appoint a Director (Discipline) to perform such functions as are assigned to him under this Act and the rules and regulations framed thereunder.

(2) The Council may also- (a) appoint such other officers and employees as it considers necessary;

(b) require and take from the Secretary or from any other officer or employee such security for the due performance of his duties, as the Council considers necessary; (c) prescribe the salaries, fees, allowances of the officers and employees and their terms and conditions of service; (d) with the previous sanction of the Central Government, fix the allowances of the President, Vice-President and other members of the Council and members of its Committees.

(3) The Secretary of the Council shall be entitled to participate in the meetings of the Council but shall not be entitled to vote thereat."

14. Amendment of section 17 : In section 17 of the principal Act,- (a) in sub-section (1), for clause (iii), the following clause shall be substituted, namely:-

"(iii) a Finance Committee.";

(b) for sub-sections (2) and (3), the following sub-sections shall be substituted, namely :-

"(2) The Council may also form such other committees from amongst its members as it consider necessary for the purpose of carrying out the provisions of this Act, and any Committee so formed may, with the sanction of the Council, co-opt such other members of the Institute not exceeding one-third of the members of the committee as it thinks fit, and any member so co-opted shall be entitled to exercise all the rights of a member of the committee.

(3) Each of the Standing Committees shall consist of the President and the Vice-President ex officio, and minimum of three and maximum of five members to be elected by the Council from amongst its members."

15. Amendment of section 18 : In section 18 of the principal Act,- (i) for sub-sections (3), (4) and (5), the following sub-sections shall be substituted, namely:-

"(3) The Council shall keep proper accounts of the fund distinguishing capital from revenue in the manner prescribed.

(4) The Council shall prepare in the manner prescribed and approve, prior to the start of the financial year, an annual financial statement (the budget) indicating all its anticipated revenues as well as all proposed expenditures for the forthcoming year.

(5) The annual accounts of the Council shall be prepared in such manner as may be prescribed and be subject to audit by a chartered accountant in practice to be appointed annually by the Council:

Provided that no member of the Council or a person who has been a member of the Council during the last four years or a person who is in partnership with such member shall be eligible for appointment as an auditor under this sub-section:

Provided further that, in the event it is brought to the notice of the Council that the accounts of the Council do not represent a true and fair view of its finances, then, the Council may itself cause a special audit to be conducted:

Provided also that, if such information, that the accounts of the Council do not represent a true and fair view of its finances, is sent to the Council by the Central Government, then, the Council may, wherever appropriate cause a special audit or take such other action as it considers necessary and shall furnish an action taken report on it to the Central Government.";

(ii) after sub-section (5), the following sub-sections shall be inserted, namely:-

"(5A) As soon as may be practicable at the end of each year, the Council shall circulate the audited accounts to its members at least fifteen days in advance and consider and approve these accounts in a special meeting convened for the purpose.

(5B) The Council shall cause to be published in the Gazette of India not later than the 30th day of September of the year next following, a copy of the audited accounts and the Report of the Council for that year duly approved by the Council and copies of the said accounts and Report shall be forwarded to the Central Government and to all the members of the Institute."

16. Amendment of section 19 : In section 19 of the principal Act,- (i) in sub-section (3), the words "on payment of such amount as may be prescribed" shall be inserted at the end;

(ii) for sub-section (4), the following sub-section shall be substituted, namely:-

"(4) Every member of the Institute shall, on his name being entered in the Register, pay such annual membership fee as may be determined, by notification, by the Council, which shall not exceed rupees five thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand, which shall not in any case exceed rupees ten thousand."

17. Amendment of section 20 : In section 20 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:-

"(3) If the name of any member has been removed from the Register under clause (c) of sub-section (1), on receipt of an application, his name may be entered again in the Register on payment of the arrears of annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council which shall not exceed rupees two thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees two thousand, which shall not in any case exceed rupees four thousand."

18. Substitution of new section for section 21: For section 21 of the principal Act, the following section shall be substituted, namely:-

"21. Disciplinary Directorate.-(1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

(2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct.

(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

(4) In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

(5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or, as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage."

19. Insertion of new sections 21A, 21B, 21C and 21D : After section 21 of the principal Act, the following sections shall be inserted, namely:-

'21A. Board of Discipline.-(1) The Council shall constitute a Board of Discipline consisting of -

(a) a person with experience in law and having knowledge of disciplinary matters and the profession, to be its presiding officer;

(b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy;

(c) the Director (Discipline) shall function as the Secretary of the Board.

(2) The Board of Discipline shall follow summary disposal procedure in dealing with all cases before it.

(3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:- (a) reprimand the member; (b) remove the name of the member from the Register up to a period of three months; (c) impose such fine as it may think fit, which may extend to rupees one lakh.

(4) The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case and the Board of Discipline may, if it 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.

21B. Disciplinary Committee.-(1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:

Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.

(2) The Disciplinary Committee, while considering the cases placed before it shall follow such procedure as may be specified.

(3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely: - (a) reprimand the member; (b) remove the name of the member from the Register permanently or for such period, as it thinks fit; (c) impose such fine as it may think fit, which may extend to rupees five lakhs.

(4) The allowances payable to the members nominated by the Central Government shall be such as may be specified.

21C. Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court.-For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath; (b) the discovery and production of any document; and (c) receiving evidence on affidavit.

Explanation.-For the purposes of sections 21, 21A, 21B, 21C and 22, "member of the Institute" includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

21D. Transitional provisions.-All complaints pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to the commencement of the Chartered Accountants (Amendment) Act, 2006, shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Chartered Accountants (Amendment) Act, 2006.'

20. Substitution of new section for section 22 : For section 22 of the principal Act, the following section shall be substituted, namely:-

'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 inquire into the conduct of any member of the Institute under any other circumstances.'

21. Substitution of new section for section 22A : For Section 22A of the principal Act, the following sections shall be substituted, namely:-

"22A. Constitution of Appellate Authority.-(1) The Central Government shall, by notification, constitute an Appellate Authority consisting of- (a) a person who is or has been a judge of a High Court, to be its Chairperson; (b) two members to be appointed from amongst the persons who have been members of the Council for at least one full term and who is not a sitting member of the Council; (c) two members to be nominated by the Central Government from amongst persons having knowledge and practical experience in the field of law, economics, business, finance or accountancy.

(2) The Chairperson and other members shall be part-time members.

22B. Term of office of Chairperson and members of Authority.-(1) A person appointed as the Chairperson shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

(2) A person appointed as a member shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty-two years, whichever is earlier.

22C. Allowances and conditions of service of Chairperson and members of Authority.-The allowances payable to, and other terms and conditions of service of, the Chairperson and members and the manner of meeting expenditure of the Authority by the Council and such other authorities shall be such as may be specified.

22D. Procedure to be regulated by Authority.-(1) The office of the Authority shall be at Delhi.

(2) The Authority shall regulate its own procedure.

(3) All orders and decisions of the Authority shall be authenticated by an officer duly authorised by the Chairperson in this behalf.

22E. Officers and other staff of Authority.-(1) The Council shall make available to the Authority such officers and other staff members as may be necessary for the efficient performance of the functions of the Authority.

(2) The salaries and allowances and conditions of service of the officers and other staff members of the Authority shall be such as may be prescribed.

22F. Resignation and removal of Chairperson and members.-(1) The Chairperson or a member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or a member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is earlier.

(2) The Chairperson or a member shall not be removed from his office except by an order of the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by such person as the Central Government may appoint for this purpose in which the Chairperson or a member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

22G. Appeal to Authority.-(1) Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority, if so authorised by the Council, within ninety days:

Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

(2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (3) of section 21A and sub-section (3) of section 21B and may- (a) confirm, modify or set aside the order; (b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order; (c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or (d) pass such other order as the Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order."

22. Amendment of section 24A. : In section 24A of the principal Act, sub-section (3) shall be omitted.

23. Amendment of section 26 : In section 26 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-

"(2) Any person who contravenes the provisions of sub-section (1) shall, without prejudice to any other proceedings, which may be taken against him, be punishable on first conviction with a fine not less than five thousand rupees but which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year or with fine not less than ten thousand rupees but which may extend to two lakh rupees or with both."

24. Insertion of new Chapter VIIA : After Chapter VII of the principal Act, the following Chapter shall be inserted, namely:- "CHAPTER VII A : QUALITY REVIEW BOARD

28A. Establishment of Quality Review Board.-(1) The Central Government shall, by notification, constitute a Quality Review Board consisting of a Chairperson and ten other members.

(2) The Chairperson and members of the Board shall be appointed from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy.

(3) Five members of the Board shall be nominated by the Council and other five members shall be nominated by the Central Government.

28B. Functions of Board.-The Board shall perform the following functions, namely:-

(a) to make recommendations to the Council with regard to the quality of services provided by the members of the Institute;

(b) to review the quality of services provided by the members of the Institute including audit services; and

(c) to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

28C. Procedure of Board.-The Board shall meet at such time and place and follow in its meetings such procedure as may be specified.

28D. Terms and conditions of services of Chairperson and members of Board and its expenditure.-(1) The terms and conditions of service of the Chairperson and the members of the Board, and their allowances shall be such as may be specified.

(2) The expenditure of the Board shall be borne by the Council."

25. Insertion of new section 29A: After section 29 of the principal Act, the following section shall be inserted, namely:-

"29A. Power of Central Government to make rules.-(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

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

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

(c) the procedure of investigation under sub-section (4) of section 21;

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

(e) the allowances and terms and conditions of service of the Chairperson and members of the Authority and the manner of meeting expenditure by the Council under section 22C;

(f) the procedure to be followed by the Board in its meetings under section 28C; and

(g) the terms and conditions of service of the Chairperson and members of the Board under sub-section (1) of section 28D."

26. Amendment of section 30 : In section 30 of the principal Act,- (a) in sub-section (1), the words " and a copy of such regulations shall be sent to each member of the Institute" shall be omitted.

(b) in sub-section (2),- (i) in clause (g), the words "the Council and" shall be omitted; (ii) in clause (j), for the word "clerks" occurring at both the places, the word "assistants" shall be substituted; (iii) in clause (r), the word " and" shall be inserted at the end; (iv) clause (s), shall be omitted.

27. Substitution of new section for section 30B : For section 30B of the principal Act, the following section shall be substituted, namely:-

"30B. Rules, regulations and notifications to be laid before Parliament. Every rule and every regulation made and every notification issued under this Act shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, regulation or notification, or both Houses agree that the rule, regulation or notification should not be made or issued, the rule, regulation or notification, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, regulation or notification."

28. Insertion of new sections 30C, 30D and 30E : After section 30B of the principal Act, the following sections shall be inserted, namely:-

"30C. Power of Central Government to issue directions.-(1) In the event of non-compliance by the Council of any provisions of this Act, the Central Government may give to the Council such

general or special directions as it considers necessary to ensure compliance and the Council shall, in the discharge of its functions under this Act, comply with such directions.

(2) If, in the opinion of the Central Government, the Council has persistently made default in giving effect to the directions issued under sub-section (1), it may, after giving an opportunity of being heard to the Council, by notification, dissolve the Council, whereafter a new Council shall be constituted in accordance with the provisions of this Act with effect from such date as may be decided by the Central Government:

Provided that the Central Government shall ensure constitution of a new Council in accordance with the provisions of this Act within a period of one year from the date of its dissolution.

(3) Where the Central Government has issued a notification under subsection (2) dissolving the Council, it shall, pending the constitution of a new Council in accordance with the provisions of this Act, nominate any person or body of persons not exceeding five members to manage the affairs and discharge all or any of the functions of the Council under this Act.

30D. Protection of action taken in good faith.-No suit, prosecution or other legal proceeding shall lie against the Central Government or the Council or the Authority or the Disciplinary Committee or the Tribunal or the Board or the Board of Discipline or the Disciplinary Directorate or any officer of that Government, Council, Authority, Disciplinary Committee, Tribunal, Board, Board of Discipline or the Disciplinary Directorate, for anything which is in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder.

30E. Members, etc., to be public servants.-The Chairperson, Presiding Officer, members and other officers and employees of the Authority, Disciplinary Committee, Tribunal, Board, Board of Discipline or the Disciplinary Directorate shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860)."

29. Substitution of new Schedules for First Schedule and Second Schedule : For the First Schedule and the Second Schedule to the principal Act, the following Schedules shall be substituted, namely:-

'THE FIRST SCHEDULE [See sections 21 (3), 21A(3) and 22]

PART I (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 -

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

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

Explanation. - In this item, "partner" includes a person residing outside India with whom a chartered accountant in practice has entered into partnership which is not in contravention of item (4) of this Part;

(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;

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

(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;

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

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

(i) any chartered accountant from applying or requesting for or inviting or securing professional work from another chartered accountant in practice; or

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

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

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

(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;

(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;

(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;

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

Provided that nothing contained herein shall disentitle a chartered accountant from being a director of a company (not being a managing director or a wholetime director) unless he or any of his partners is interested in such company as an auditor;

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

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

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

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

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

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

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

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

(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;

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

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

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

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

(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

THE SECOND SCHEDULE [See sections 21 (3), 21B (3) and 22]

PART I (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-

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

(2) 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;

(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;

(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;

(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;

(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;

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

(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;

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

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

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

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

- (1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council;
- (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;
- (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;
- (4) defalcates or embezzles moneys received in his professional capacity.

PART III (Other misconduct in relation to members of the Institute generally)

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