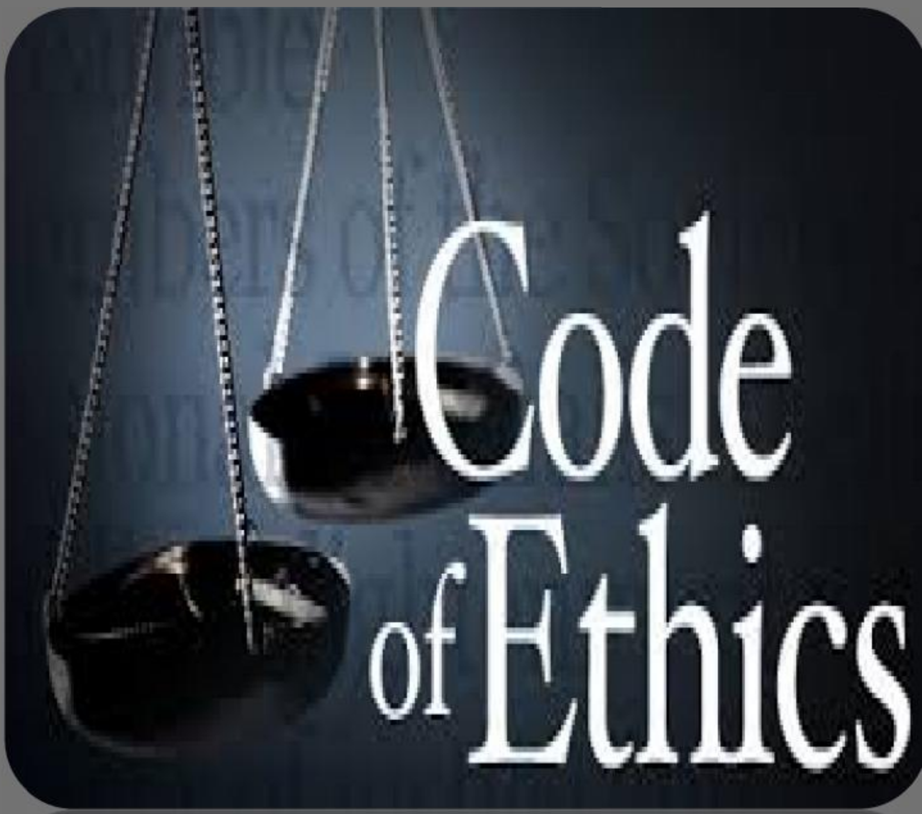
2014

"Excel Commerce Academy Private Limited"

"Code of Ethics – 2009"

A Practical Approach



Prepared By

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"Please do not copy, respect the effort behind these notes."

"Index of Code of Ethics-2009"

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Code of Ethics-2009

Introduction

Code of Ethics **(COE)** was traditionally known as Code of Conduct. The dictionary meaning of the word 'Ethics' is the science of morals in human conduct, moral philosophy, moral principles, rules of conduct. We are living in this *Kaliyuga* and often complain that the old moral values have disappeared. This is not true. The old values still exist. The problem is that everyone expects only the other persons to follow such principles and not himself. In the present economic environment, the professional is also passing through turbulent times. There is a crisis of credibility. The media also makes sensational issues out of small points. The attention of the world is now focused on the independence and ethics of our profession.

PART A – IFAC Guidelines

1. Introduction

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."

2. Objectives

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.**

To meet the above objective a Professional Accountant needs the following basic requirements –

(a) **Credibility** – In the whole of society there is a need for credibility in information and information systems.

(b) **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.

(c) **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.

(d) **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.

3. Fundamental Principles

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 –

(a) **Integrity** - A professional accountant should be **straightforward and honest** in performing professional services.

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

(c) **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

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service based on up-to-date developments in practice, legislation and techniques.

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

(e) **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.

(f) **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.

(g) **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.

PART B – Chartered Accountants Act, 1949

1. Introduction

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	TOPIC
I	Preliminary
II	The Institute of Chartered Accountants of India
III	Council of the Institute
IV	Register of Members
V	Misconduct
VI	Regional Councils
VII	Penalties
VII A	Quality Review Board
VIII	Miscellaneous

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There are TWO Schedules also, arrangement of Both the Schedules are :-

Schedule- I

- Part I- For Members in Practice (12 Clauses)
- Part II- For Members in Service (2 Clauses)
- Part III- For Members in Generally (3 Clauses)
- Part IV- For Members in Generallly (2 Clauses)

Schedule- II

- Part I- For Members in Practice (10 Clauses)
- Part II- For Members in Generally (4 Clauses)
- Part III- For Members in Generally (1 Clauses)

Note → **It must be noted that Part IV of Sch. I and Part III of Sch. II deals with Guilty of "Other Misconduct" and all the other Parts deal with Guilty of "Professional Misconduct".**

2. SOME PROVISIONS OF THE CA ACT, 1949 –

Section	Description
2 (1) (a)	Meaning of Chartered Accountant – Means a person who is member of the Institute.
4	Entry of names in the Register – (1) Any of the following persons shall be entitled to have his name entered in the Register, namely – (i) Any person who is registered accountant or a holder of a restricted certificate at the Commencement of this Act; (ii) Any person who has passed such examination and completed such training as may be prescribed for the member of Institution. Note – Every persons who are covered under clause (i) shall have his name entered in the Register without payment of any entrance fee and Other persons who are covered under clause (ii) 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 (Council with prior approval of the Central Government can exceed such Three Thousand but not more than Six Thousand.)
5	**Fellows and Associates – The Members of the Institute shall be divided into TWO Classes designated respectively as Associates and Fellows.** **Associate** – Any personal shall, on his name, being entered in the Register, be deemed to have become an Associate Member of the Institute of the Institute and be entitled to use the letters A.C.A. after his name to indicate that he is an Associate Member of the ICAI. **Fellow** – Member who has been an Associate for a continuous period of not less than 5 years and who possesses such qualifications as may be prescribed to ensure that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of 5 years as a Chartered Accountant shall, on the payment of such fees, as may be determined, by the notification, by the Council and on application made and granted in the prescribed manner, be entitled to use the letters F.C.A. after his name to indicate that he is an Fellow Member of the ICAI.

	Fees – Fees, not exceeding ₹ 5,000 for grant of FCA Status shall be notified by the Council. The Fees can be increased upto ₹ 10,000 with the prior approval of Central Government. An Associate Member, on being admitted as a Fellow during the year, shall pay only the differential amount to the Institute for that year.
2 (2)	**Members who are deemed to be in Practice –** "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; **Points to be Consider for Section 2 (2) –** 1. The words "to be in practice" with their grammatical variations and cognate expressions shall be construed accordingly. 2. 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. **3.** An **Associate** or a **Fellow** of the Institute who is a **salaried employee** of a Chartered Accountant in practice or a firm of such Chartered Accountants shall, notwithstanding such employment, be deemed to be in practice for the limited purpose of the **training of Articled Assistants".** 4. Pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949, read with Regulation 191 of Chartered Accountants Regulations, 1988 **a member shall be deemed to be in practice if he, in his professional capacity and neither in his personal capacity nor in his capacity as an employee**, Acts as a liquidator, Trustee, Executor, Administrator, Arbitrator, Receiver, Adviser or Representative for costing, financial or taxation matters or Takes up an appointment made by the Central Government or a State Government or a court of law or any other legal authority or Acts as a Secretary unless his employment is on a salary-cum-full-time basis. **5.** A member of the Institute is deemed to be in practice during the period he renders **'service with armed forces'.** 6. 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 – (a) Financial management planning and financial policy determination.* (b) Capital structure planning and advice regarding raising finance.* (c) Working capital management.*

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(d) Preparing project reports and feasibility studies.*

*** Consideration of "tax implications" while rendering the services at (a) to (d) above will be considered as part of "Management Consultancy and other services".**

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

(f) Budgeting including capital budgets and revenue budgets

(g) Inventory management, material handling and storage.

(h) Market research and demand studies.

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

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

(k) Control methods and management information and reporting.

(l) Personnel recruitment and selection.

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

(n) Management and operational audits.

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

(p) Business Policy, corporate planning, organisation development, growth and diversification.

(q) Organisation structure and behaviour, development of human resources including design and conduct of training programmes, work study, job-description, job evaluation and evaluation of workloads.

(r) 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.

(s) Acting as advisor or consultant to an issue, including such matters as -

1. Drafting of prospectus and memorandum containing salient futures of prospectus.
2. Drafting and filing of listing agreement and completing formalities with Stock Exchanges, Registrar of Companies and SEBI.
3. Preparation of publicity budget, advice regarding arrangements for selection of (i) ad-Media, (ii) centers for holding conferences of brokers, investors, etc., (iii) bankers to issue, (iv) collection centers, (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).
4. Advice regarding selection of various agencies connected with issue, namely Registrars to Issue, printers and advertising agencies.
5. Advice on the post issue activities, e.g., follow up steps which include listing of instruments and dispatch 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.

(t) Investment counseling in respect, of securities [as defined in the Securities Contracts (Regulation) Act, 1956 and other financial instruments.]

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

(v) Quality Audit.

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	(w) Environment Audit. (x) Energy Audit. (y) Acting as Recovery Consultant in the Banking Sector. (z) Insurance Financial Advisory Services under the Insurance Regulatory & Development Authority Act, 1999, including Insurance Brokerage. **RECENT AMENDMENT –** In the definition of Management Consultancy Services it included acting as e-Return Intermediary comes within "Management Consultancy and Other Services" hence it is permissible.
8	**A person is debarred from having his name entered in or borne on the Register of Members –** 1. If he has **not** attained the age of **21 years** at the time of his application for the entry of his name in the Register, or 2. If he is of **unsound mind** and stands so adjudged by a competent Court, or 3. If he is an **undischarged insolvent**, or 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 4. 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 5. If he has been removed from Membership of the Institute on being **found on inquiry** to have been guilty of professional or other misconduct. 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. Note → **Failure to disclose the fact that he suffers from any one of the above disabilities would constitute Professional Misconduct.**
6	**Significance of COP –** 1. **COP:** A Member of ICAI shall not be entitled to practice whether in India o elsewhere unless he has obtained a Certificate of Practice (COP) from the Council. 2. **CA Capacity only:** Once a person becomes a Member of ICAI, he is bound by the provisions of the CA Act and its Regulations. If he appears before the Income Tax Tribunal as an Income Tax Representative after becoming a Member, he could appear so only in his capacity as a CA and a Member of ICAI. A Member of ICAI can have no other capacity in which he can take up such practice, separable from his capacity as a Member of the Institute. 3. **Fees:** Every Member shall pay an annual fee, not exceeding ₹ 3,000, for his COP, on or before 1st April of every year. The Fees can be increased upto ₹ 6,000, with the prior approval of Central Government. 4. **Grounds of Cancellation of Certificate of Practice:** The Certificate of Practice shall be liable for cancellation if – (a) The **name** of the holder of the Certificate is **removed** from the Register, or (b) The **Council is satisfied**, after giving an opportunity of being heard to the person concerned, that such **certificate was issued on the basis of incorrect, misleading or false information or by mistake or inadvertence**, or (c) Member has **ceased to practice**, or (d) Member has **not paid the annual fees** for COP till **30th September** of the relevant year. Case – A CA in practice has been suspended from practice for a period of 6 months and he had surrendered his COP for the said period. During the said period of suspension, though the

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	Member did not undertake any audit assignments, he undertook representation assignments for income-tax, Whereby he would appear before the tax authorities in his capacity as a CA. is this action valid? **[Ref. A.C. Kaher in Re:- Page 64 of Vol. IV (1) of Disciplinary Cases]** **Crux –** Once a person becomes a Member of ICAI he is bound by the provisions of the CA Act and its Regulations. If he is suspended is not holding Certificate of Practice, he cannot in any other capacity take up any practice separable from his capacity to practice as a Member of ICAI.
7	**Whether the Member in practice is prohibited from using a Designation other than Chartered Accountant?** (a) 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.** (b) 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 (Similar E.g. can be in CS) **Penalty –** As per **Sec.25 (1),** no Company, whether incorporated in India or elsewhere, shall practice as Chartered Accountants. In case of contravention, then, without prejudice to any other proceedings which may be taken against the Company, every Director, Manager, Secretary any Officer thereof who is knowingly a party to such contravention shall be punishable with fine which may extend on first conviction to ₹ 1,000 and on any subsequent conviction to ₹ 5,000. **Note →** Also refer Clause (7) of Part I of First Schedule. **RECENT AMENDMENTS –** Committee on ethical standards, allowed the use of 'Dr.' with the designation 'CA'. It is left to the discretion of member. Whether to use 'CA' first, or 'Dr.' first, or use 'Dr.' only before the name of the member.

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Disciplinary Mechanism Regarding Professional and Other Misconduct

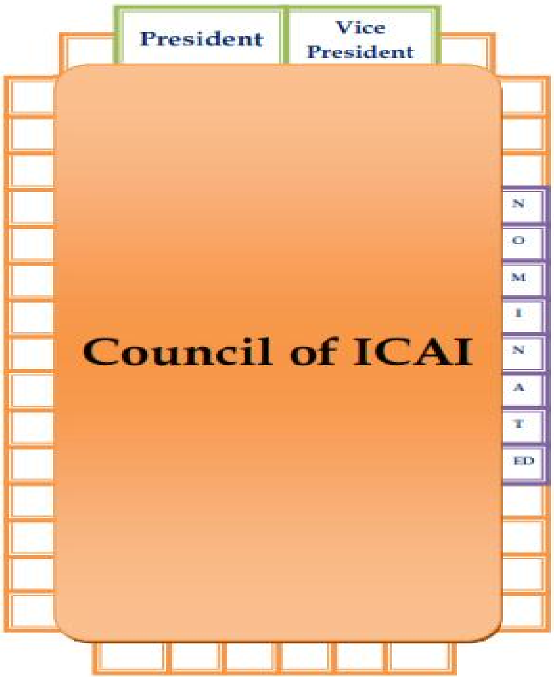
Constitution of the Council of the Institute (Section 9)

➢ According to subsection (1) of section 9 of THE ACT there shall be a Council of the Institute for the management of the affairs of the Institute and for discharging the functions assigned to it under this Act.

➢ According to section 9(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;

b) Not more than eight persons to be nominated in the specified manner, by the Central Government.



Disciplinary Directorate – Section 21

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.

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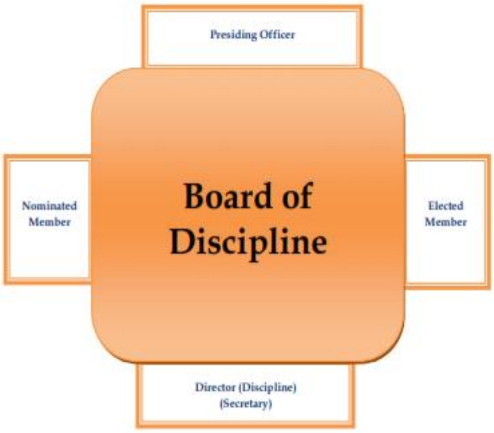
Board of Discipline – Section 21A



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;
2. **The Director (Discipline) shall function as the Secretary of the Board.**
3. The Board of Discipline shall follow **summary disposal procedure** in dealing with all cases before it.
4. 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.
5. 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.

Disciplinary Committee – Section 21B

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.

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Powers of Authorities, DC, BOD & DD – 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 Slave 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.**

<u>Explanation</u> **–** 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**

Constitution of Appellate Authority – Section 22A

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.**

Term of office of Chairperson and members of Authority – Section 22B

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.

Appeal to Authority- Section 22G

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."

Disciplinary Procedure for Misconduct
New provisions of the Chartered Accountant, Act, 1949 regarding –

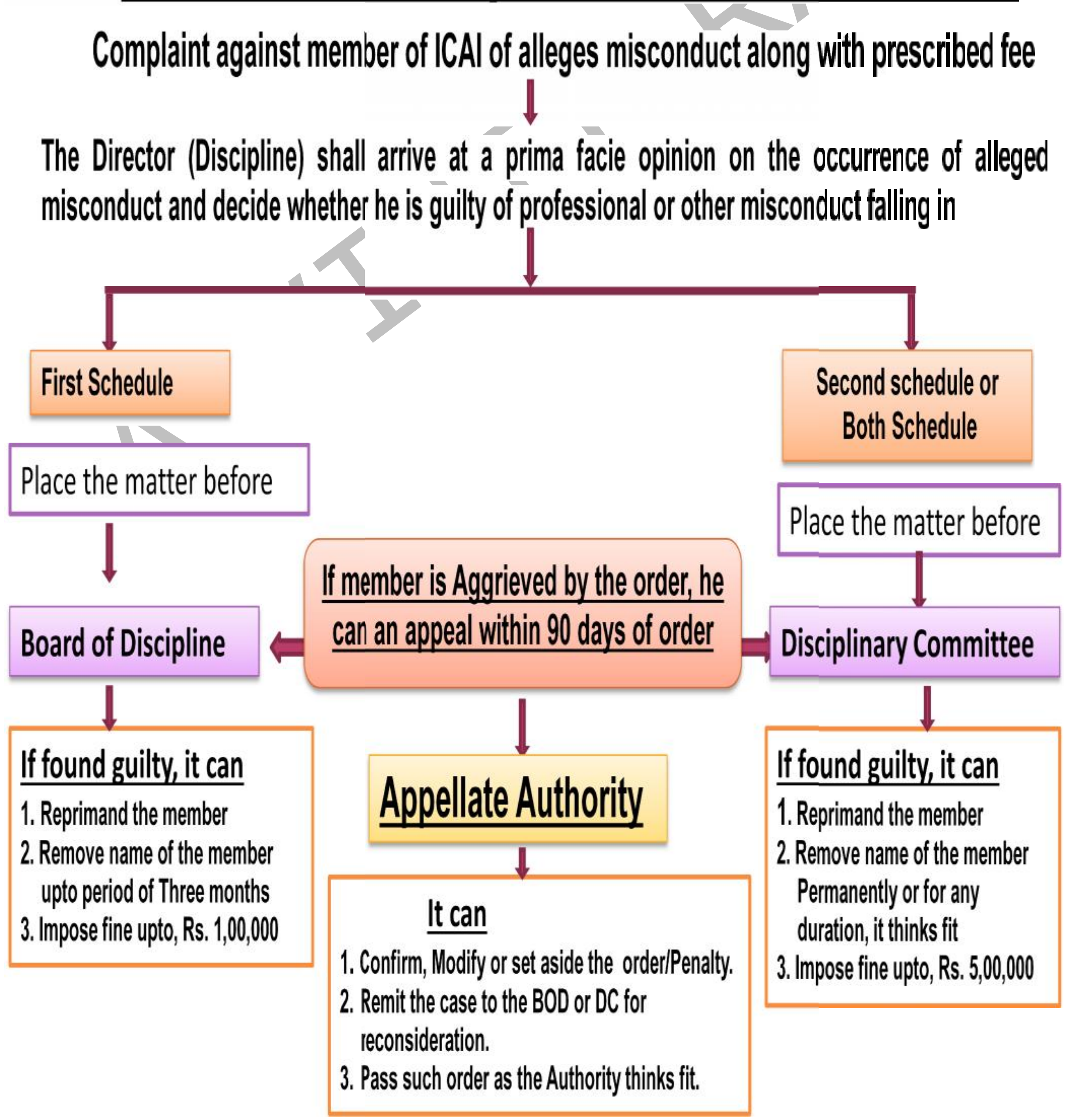
(a) Disciplinary Directorate,

(b) Board of Discipline,

(c) Disciplinary Committee,

(d) 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



Some Issues regarding Disciplinary Mechanism

Case – 1

Can an enquiry initiated against a past member?

Ans.

According to The Act 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.

Case – 2

It is necessary that the complaint shall only be made to Director Discipline?

Ans.

(a) Receipt of complaint in **form I (rule-3)** with **prescribed fee (rule-4)** or **receipt of information (rule-7)** provided information should not be anonymous.

(b) Registration of complaint **(rule-5)**

- ➢ Complaint will be first scrutinized by the office of DD.
- ➢ It found in order the office shall assign a unique no. to the complaint.
  - ✓ If the complain is same as received earlier the complaint will be clubbed with the same.
  - ✓ If the complaint is the same as received earlier over which the decision has been taken the same shall be forwarded to BOD for closure.
- ➢ If complaint found defective rectification from the complainant is required by DD. If not rectified in time it shall be disposed off with the consent of BOD.

(c) If withdrawal of complaint is filed by complainant **(rule-6)**

- ➢ If case is lying before the BOD or DC it will be discretion of BOD or DC to permit such withdrawal.
- ➢ If it is yet be registered by DD, it will be at discretion of BOD to permit withdrawal or not.

(d) **After registering** the complaint **within 60 days** the office of DD shall **forward** particulars of act or omissions alleged by complainant to the Individual member or partners of the firm and require that member or partner to submit any statement in **defense within 21 days (or additional time allowed by DD not exceeding 30 days)** of receipt of the copy of complaint.

(e) On receipt of statement in defense the DD shall send a copy of statement to the complainant and required **rejoinder within 21 days (maximum 30 days if allowed by DD).**

(f) If complainant and respondent are **not submitting replies in time** DD may take **further action at his discretion.**

Case – 3

Whether it is required to attach evidences with the complaint made to Director Discipline?

Ans.

Yes, the prescribed form includes a column regarding evidences in support of complaint.

Case – 4

Mr. YM a practicing Chartered Accountants argued that Director Discipline can not initiate any inquiry against him only on the basis of complaint made to it by his brother alleging him as a party forged the fathers will as this is not an act resultant of those activities specified for a practicing Chartered Accountant.

Ans.

No, DD is empowered to initiate enquiry against a member for other misconducts also u/s 22.

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Case – 5

Mr. Tarun has surrendered his membership after misusing the funds of CIRC of which he was treasurer. Mr. Tarun is arguing that Director Discipline cannot initiate any inquiry against him in respect of the above as presently he is not member of the Institute.

Ans.

All provisions of inquiries relating misconduct of a member will be effective even after the CA ceases to be a member.

Case – 6

Whether Board of Discipline may decide to remove the name of the member permanently from the register of members?

Ans.

No, BOD can remove the name of the member for max. 3 months.

Case – 7

If DD is of opinion that there is not prima facie opinion against the member can he decide to close the matter?

Ans.

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.

Case – 8

Is it possible to withdraw Complaint made to DD against any member?

Ans.

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.

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Penalties

Penalty for Falsely Claiming to be a Member etc. – Section 24

Any person who –

(i) **Not being a member of the Institute**;

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

(b) Uses the designation Chartered Accountant;

(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.**

Note → **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),

Companies not to engage in accountancy – Section 25

1. **No company**, whether incorporated in India or elsewhere, **shall practice as chartered accountants.**
2. If any **company contravenes** this provision then, without prejudice to any other proceedings which may be taken against the company, every director, manager, secretary and any other officer thereof who is knowingly a party to such contravention shall be **punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent conviction to five thousand rupees.**

Unqualified persons not to sign documents – Section 26

1. No person other than a member of the Institute shall sign any document on behalf of a chartered accountant in practice or a firm of such chartered accountants in his or its professional capacity.
2. Any person **contravenes** this provision shall, without prejudice to any other proceedings, which may be taken against him, be **punishable on first conviction with a fine not less than five thousand rupees but which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year or with fine not less than ten thousand rupees but which may extent to two lakh rupees or with both."**

Maintenance of Branch Offices – Section 27 (Important)

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 –

(a) Such members/firm is allowed to **open temporary offices** in a city in the plains for a limited period not **exceeding three months in a year.**

(b) The regular office need not be closed during this period and all correspondence can continue to be made at the regular office.

(c) 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.

(d) 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.

(e) 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.**

Note → 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.

Note → 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.

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Whether a member can be Incharge of two offices?

Ans. 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.**
4. 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.
5. 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, this of the two offices is his main office, which would constitute his professional address.
6. 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.

Case – 1

Ram Singh, a CA in practice as a Sole Proprietor, has an office in Mumbai near Churchgate. Due to increase in professional work, he opens another office in a suburb of Mumbai, which is approximately 80 kilometers away from his existing office. For running the new office, he employs 3 retired income-tax Officers. Is he guilty of professional misconduct?

Ans.

1. In the given case, the Second Office is located beyond 50 Kms from the Municipal Limits of Mumbai City. The exemption in respect of Second Office is not available.
2. The CA in practice has contravened the provision of Sec.27, since the suburb "Branch" is not under the separate charge of a Member.
3. Hence, Mr. Ram Singh is guilty of professional misconduct under Clause (1) of Part II of Second Schedule.

Case – 2

Garisma, Chartered Accountant in practice as a Sole Proprietor has an office near Jodhpur, due to increase in professional work, he opens another office in Mathaniya which approximately 30 Kms away from his existing office. For running the new office, he has employed a retired Income Tax Officer. Comment on the above.

Ans.

Garisma is **not guilty of professional misconduct**, as the Second Office is within 50 Kms.

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Procedure with regard to noting by the Institute of retirement of Partner(s) of a firm (Not Imp)

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

QUALITY REVIEW BOARD [Section 28A] (Imp.)

- **A newly inserted section by amendment 2006, Section 28A has given powers to Central Government to constitute by notification** a Quality Review Board consisting of a Chairperson and ten other members.
- 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.
- Five members of the Board shall be nominated by the Council and other five members shall be nominated by the Central Government.
- According to section 28B 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.

SCHEDULE TO CA ACT, 1949

Before we move forward let's understand what does Professional and Other Misconduct means –

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.

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

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

Hence we can say that every act and omission under the schedules to the Chartered Accountants Act is defined as professional or other misconduct.

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.

Clause 1	Allows any person to **practice in his name as a chartered accountant** unless such person is also a chartered accountant in practice and is in partnership with or employed by him.
Clause 2	**Pays or allows or agrees to pay or allow**, directly or indirectly, **any share**, commission or brokerage in the fees or profits of his professional business, to any person **other than a:-** (a) Member of the Institute or (b) A partner or (c) A retired partner or (d) The legal representative of a deceased partner, or (e) A member of any other professional body or (f) 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.

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	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.**

Some Important Decisions held

Name of Case	Case
Vadilal V.Shah Vs. J.B. Sanghavi	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
D. S. Sadri Vs. B.M. Pithewala	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.

Some Important Issues

S.N.	Issue	Answer
1.	**With whom fees can be shared by PCA?**	1. It is in order for a member to share his fees or profits with another member of the Institute and/or a firm of Chartered Accountants. 2. For the Purpose of Point No. 5 and 6 of clause 2 a practicing Member of the Institute can share fees or profits arising out of his professional business with such **members of other professional bodies** *or with such other persons having such qualifications* **as may be prescribed from time to time by the Council**. The Council has prescribed **(Regulation 53-A of the Chartered Accountants Regulations, 1988)** the professional bodies which are as under – (a) **The Institute of Company Secretaries of India;** (b) **The Institute of Cost & Works Accountants of Indian;** (c) **Bar Council of India;** (d) **The Indian Institute of Architects**; (e) **The Institute of Actuaries of India**; (f) **Bachelor in Engineering/Bachelor in Technology/Bachelor in Architecture/Bachelor in Law;** (g) **Master in Business Administration (MBA) or Technical institutions** recognised by All India Council for Technical Education. 3. The membership of the **professional bodies or institutions outside India** whose qualifications relating to accountancy are recognized by the Council under sub-section (2) of section 29 shall also be taken into consideration for the purposes of Items (2), (3) and (5) of the Part I of the First Schedule to the Act.
2.	**Issues related to Co – operative Societies.**	➢ The Institute came across certain Circulars/Orders issued by the Registrars of various State Co-operative Societies wherein it has been mentioned that **certain amount of audit fee is payable to the concerned State Government and the auditor has to deposit a percentage of his audit fee in the state Treasury by a prescribed Challans within a prescribed time of the receipt of Audit fee.** ➢ In recent past, the Council considered the issue and while noting that the Government is asking auditors to deposit such

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		percentage of their **audit fee for recovering the administrative and other expenses incurred in the process**, the Council decided that as such there is **no bar in the Code of Ethics to accept such assignment wherein a percentage of professional fee is deducted by the Government to meet the administrative and other expenditure.**
3.	**Issue related to Sharing in Profit and/or Sharing in Goodwill of Deceased Partner/Member**	➢ 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 case of Practicing Firm of Chartered Accountant.	(a) When there are two or more partners and one of them dies, them dies, the **widow of the deceased "partner can continue to receive a share of the firm**. (b) 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.
	(b) In case of Sole Proprietor	(a) 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. (b) Payment of goodwill to the widow is permissible in such cases only for the goodwill of the firm and to enable such payments to be made **in installments** provided **the agreement of the sale of goodwill contains such a provision.** (c) These payments even if they are spread over the specified period **should not be linked up with participation in the earnings of the firm (i.e. as % of profit).** (d) 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.** **Note →** 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**.

Some Problems for practice –

P.1– Mr. Abhishek a Chartered Accountant in practice pays 20% of his professional fees to the widow of his deceases partner only on humanitarian grounds.

P.2– The widow of deceased partner receives share of profit every year for the next fifteen years pursuant to a

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clause in partnership deed to this effect.

P.3– Mr. Ravi purchased a proprietary firm of Mr. Gupta after his death and agrees to pay 20% of total professional fees to Mrs. Gupta in addition to purchase consideration paid ₹ 325000 as goodwill.

P.4– Mr. Ram paid 50% of the audit fees received by him to a non Chartered Accountant under the nomenclature of office allowance.

P.5– Grishma a PCA obtain loan from TATA FINANCE for office construction and agreed to pay interest @ 2% (commercial rate is 12%) and 15% of gross professional receipts till the loan is repaid.

P.6– Sajid is a practicing Chartered Accountant and Mr. Bhuwana a lawyer agree to pay each other 12% of the gross fees received by them from clients referred by them to each other. The account was scheduled to settle at the end of each year. After one year Mr. Sajid refused to accept and pay any share on the grounds that this constitutes a professional misconduct and they have terminated the contract mutually.

P.7– Asha who is practicing in CA enters into partnership with Grishma another Chartered Accountant who is the bank manager of the Mumbai branch of IDBI in regarding filing of IT returns of all employees of that branch.

P.8– A chartered Accountant, who gave under the nomenclature of **'office allowance'** 50% of the audit fees received by him to the complainant, was held guilty of professional misconduct?

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".**

Points to be remember –

1. It is to be noted that **nothing** in the Clause shall be construed **as prohibiting a member 'from entering into profit sharing** or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, **as is referred to in item (2) of this part**.
2. Just as a member cannot share his fees with a non-member, he is also not permitted to **receive and share the fees of others except for sharing with Member of such professional body or other person having such qualification as may be prescribed (Regulation 53A of The Chartered Accountants Regulations, 1988) by the Council for the purpose of Clause (2), (3) and (5) of Part I of First Schedule.**
3. The above **restriction** is necessary so that a Chartered Accountant who is often required to engage or to recommend for engagement by his clients, the services of the members of other professions, **cannot share the fees received by other persons who are otherwise not permitted by the Council in terms of provision of this clause.**

Clause 4	"Enters into partnership, in or outside India, with any person other than **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".

Point to be remember –

1. The Council has prescribed [regulation 53A (3) and 53B of The Chartered Accountants Regulations, 1988] for the persons qualified and the professional bodies.
2. Partnership between members of the Institute and members of foreign professional bodies are permissible provided members of such bodies are eligible for the membership of the Institute.

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Some Important Decisions held

Name of Case	Case
Harish Kumar	Where a Chartered Accountant had **engaged** himself a**s a partner in two business firms and Managing Director in two Companies** and was also holding Certificate of Practice without obtaining permission of the Institute. Held that he was guilty of professional misconduct inter alia under Clauses (4) and (11).
Assistant Director of Income Tax (investment), Calicut Vs. P Subramanian	The Respondent was a Taxation Advisor of a group of Companies. During search and seizure under Section 132 of The Income Tax Act, 1961 of the group and also of the Chartered Accountant, the Complainant found that the Respondent was **colluding with this group in evasion of tax.** The Respondent had **signed two sets of financial statements** of the same Auditee, for the same financial year. The two financial statements **showed different figures** of contract receipts, net profits and balance sheet. He **was grossly negligent** in the conduct of his professional duties. The Respondent admitted that he **was managing partner/partner in two partnership firms** where there were **other partners who were not Chartered Accountants.** Held, the respondent is guilty under Clause (4) of Part I of First Schedule and under Clauses (5), (6) & (7) of Part I of Second Schedule

Some Problems for practice –

P.1– Ravi, a CA in practice, entered into a Partnership with Radha, an advocate, for sharing of fees for work sent by one to the other. However, due to some disputes, the Partnership was dissolved after 1 month, without any fees having been received. Give your views in light of CA Act and Schedules thereto.

P.2– Mr. Manish is a Chartered Accountant holding certificate of practice could not succeed in getting any professional work from last 4 years finally entered into partnership with his brother who is MBA to undertake management consultancy services.

P.3– Mr. Tarun a fresh Chartered Accountant entered into partnership with Jordan & Co. a chartered Accountancy firm from Italy on the terms to share profits and losses both in India and without India.

P.4– A Chartered Accountant in practice entered into partnership with his uncle in textile business which however did not take off will be held guilty of professional misconduct.

P.5– Narayan a Chartered Accountant in practice entered into partnership with Mr. Ram a member of ICAI and CMA holding COP of ICAI (Cost Accountant).

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".**

Some Important Decisions held

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

Some Problems for practice –

P.1– CA. Akash who is finance manager of Evergreen International Ltd. has offered Vinit practicing CA. to a reconciliation work of dealer's accounts on the basis that Mr. Vinit will pay 10% of his fees with Mr. Akash for next five years.

P.2– Mr. Sudhir a practicing Chartered Accountant managed to get a table and chair in the industrial finance branch of IDBI Ltd. and manager is forwarding all projects to him on the profit sharing mutually decided by them.

P.3– Mr. Sajid a practicing Chartered Accountant has been allotted a cabin in the industrial finance branch of Bank of Baroda and manager is forwarding all projects on weekly basis for credit appraisal the fees has been decided by the Head office as ₹ 3,000/- per application.

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.

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

1. Advertisement and Note in Press

What not Permitted	Exceptions
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.	1. A member may **request another Chartered Accountant** in practice for professional work. 2. A member may **advertise changes in partnerships** or 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.** 3. 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.**

2. 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. It would not be	1. 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. 2. It is permissible to **quote fees on enquiries** being received from such bodies, which maintain such panel.

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proper for the Chartered Accountant to make **roving enquiries** by applying to any such organization for having his name included in any such panel.

3. 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, the following is permitted by the council –

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'.

4. Responding to Tenders, Advertisements and Circulars

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

5. **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.

6. 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.

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.**

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7.	**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.**
8.	**Seeking work from professional colleagues –** The issue of an advertisement or a circular by a Chartered Accountant, seeking work from professional colleagues on any basis whatsoever except as provided above would be in violation of this Clause.
9.	**Scope of Representation which an auditor is entitled to make under Section 225(3) of the Companies Act, 1956 –** 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. **(More details Read Company Audit)**
10.	**Acceptance of original professional work by a member emanating from the client Introduced to him by another member** (a) The Council has decided that a member should **not accept** the **original professional work** emanating from a client introduced to him by another member. (b) 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**.
11.	**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.**
12.	**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.
13.	**Website – To be discussed with Council General Guidelines 2008**

Some Important Decisions held

Name of Case	Case
M.J. Gadre Vs. W.G. Ambekar	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.
MR Walke In Re	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.
B.K. Swain in Re	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.

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D.C. Pal in Re	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.
D.N. Das Gupta, Chief auditor of Co-operative Societies, West Bengal vs. B.B. Mukherjee	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 pervious 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.
G.P. Agrawal in Re	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	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	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).
Shashindra S Ostwal in Re	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.
Parimal Majumder in Re	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 ` 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	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	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	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.

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DM Kothari in Re	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.
Vijay Kumar Goel in Re	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	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	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.

Some Problems for practice –

P.1– XY & Co. a Firm of CAs having 2 Partners X & Y, one in charge of Head Office and another in charge of Branch at a distance of 80 Kms, puts up a Name-Board of the Firm in both premises and also in their respective residences. Give your views on the above.

P.2– As Airtel Ltd. changed all telephone No., a Group of 25 Chartered Accountants in practice has published their own telephone Directory for new telephone No. and sent it to all the clients, friends, relatives, and any person happens to be connected with them directly or indirectly.

P.3– A classified in **Economic Times** appeared as follows –
"Wanted a suitable life partner for a practicing Chartered Accountant whom should also be a practicing Chartered Accountant as to create a life time partnership "MS. Mehta & Co, Chartered Accountant.

P.4– A classified in **Chartered Accountants Journal** appeared as follows –
"Wanted a partner for a practicing Chartered Accountant whom should also be a practicing Chartered Accountant having exposure in internal auditing "MS. Mehta & Co, Chartered Accountant".

P.5– M/s. G&A, Chartered Accountants have changed their office premises gave full page advertisement in international edition of Hindustan Times although they do not have any client outside India.

P.6– M/s. G&A, Chartered Accountants have changed their office premises gave a full page advertisement in international edition of Hindustan Times as their all clients are the business groups situated outside India.

P.7– Mr. Ram wrote a letter to Bank of Rajasthan asking them whether they have formed any panel for allotment of audit of their branches and requesting the inclusion of his name into case such panel is being maintained.

P.8– What would be your answer if the letter were in response to specific inquiry from the bank?

P.9– Mr. Gafla & Associates have included their name into telephone Directory with sparkling Blue and Bold Font.

P.10– Mr. Abhishek practicing CA has included his name in Yellow Pages both in category of Practicing Chartered Accountants as well as in Tax Practitioners.

P.11– A Chartered Accountant in practice responds to an advertisement in news paper regarding appointment of professionals eligible to carry out the statutory audit of a company.

P.12– Mr. Singh a practicing Chartered Accountant responded to an advertisement appearing in the news paper inviting profiles of persons regarding management consultancy services.

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P.13– After budget 2013 Asha a practicing Chartered Accountant has circulated to all of his nearest and dearest write-up on major changes in direct and indirect taxation and resultant tax planning.

P.14– During the course of a television interview, a Chartered Accountant in practice mentions his association with his firm in response to a specific question in this regard.

P.15– A Chartered Accountant in practice inserts an advertisement in news paper seeking professional work. However, he does not disclose his identify and merely give a box No. for getting the response.

P.16– A Chartered Accountant in practice writes to the registrar of co operative societies, stating that though his name is on the panel, no allotment of audit has been made to him and requests him to take actions immediately.

P.17– An assistant of a Chartered Accountant in practice, under his authorization, writes a letter to a company requesting for appointment as auditor.

P.18– All members whether practicing or not are free to create their website.

P.19– Mr. A Chartered Accountant in practice created a website of his firm the website is so designed that once visitor enters into the power point auto driven program projects the slides one by one. Until the slide show is not over the visitor is neither allowed to quit nor allowed to access any desired information.

P.20– Mr. B Chartered Accountant in practice created a website. Website is so designed that every visitor shall enter its E Mail Id which is stored at website and afterwards every month end the profile of the firm is sent to the visitor on that email address.

P.21– Mr. Tarun Chartered Accountant in practice created his website in the following name www.taxexperts.com .

P.22– Mr. Tarun after creating the above website gave an advertisement in press How to plan the tax visit www.taxexperts.com

P.22– A prospectus of D.K. Infra Ltd. includes introduction of its Directors. In the introduction of Mr. Bala a Chartered Accountant in practice and one of the Directors of the company was appeared as follows – "Mr. Bala aged 58 years is a senior partner in B & S Chartered Accountants and having vast experience and expertise in income tax matters".

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".

Do's	Don'ts
1. There should be **no objection** to the **publication of photographs** and **brief particulars** of members **in magazines provided no payment** is made for such publication and there is **no advertisement of professional attainments.** **2.** The **name, description** and address of member (or firm) may **appear in** any	**1.** 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.** 2. 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.

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directory or list of members of a particular body in which the **names are listed alphabetically.**

3. 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.**

4. The **Website,** the year of establishment can be given on the specific **"pull" request.**

5. **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.

6. 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.

7. **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.

8. **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.

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

3. A member must **not use the designation** such as 'Member of Parliament **(MP)**', Municipal Councilor any other functionary in addition to that of Chartered Accountant.

4. 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.**

5. It is **not proper for Chartered Accountant** to use the **designation "Chartered Accountant" except on professional documents, visiting cards, letter heads/sign boards and under the circumstances clarified under Para (f) of Clause 6.**

6. 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).

7. Use **of glow signs or lights on large-sized boards as is used by traders or shop-keepers would not be proper.**

8. When **advertising for staff, it is desirable that members should avoid the expression such as "a well-known firm",** since this would be form of advertisement.

9. 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.**

10. The Council has issued following **Guidance Note for Members Holding Certificate of Practice** on acceptance of directorships in companies.

    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.

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10. 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.	

Some Important Decisions held

Name of Case	Case
B.S.N. Bhushan	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.
Sirdar P.S. Sodhbans	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.
Bijoy Kumar	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.
N.O. Abraham Isaac Raj	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.
Yogash Gupta	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).
Bhartarcharjee Vs. B.K. Chakraborty	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 end politics in his letterheads and letters for professional attainments. Held he was guilty under clause (7).

Some Problems for practice –

P.1– Kailash, a practicing Chartered Accountant uses the designation, 'Municipal Councilor' apart from the expression 'FCA' on his visiting card. Comment.

P.2– Manish CA in practice appearing on Television on Budget Proposals was introduced to the viewers, on the basis of the bio-data furnished by him, as the Senior-most Partner of M/s. Tick and Tag, a leading Firm of CA's established in Delhi in 1948. See whether there is any professional misconduct in this case.

P.3– Ravi practicing CA uses a visiting card in which he designates himself, besides as CA, as – (a) Tax Consultant, and (b) Cost Accountant. Is the guilty of professional misconduct?

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P.4– Mr. OPM, who recently started his practice, has put up signboards outside his office describing himself as a 'Chartered Accountant and Management Consultant'. What is the nature of misconduct, if any, committed there?

P.5– Ram, a CA in practice, is a Partner in 3 Firms. While printing his personal letterheads, he gave the names of all 3 Firms in which he is a Partner. Is there any professional misconduct?

P.6– Raja, a CA wrote several letters to a Government Department, pointing out seniority of his Firm, sending his life sketch and stating that he had a glorious record of service to the country as well as to the organization of accountancy profession with a view to get the audit work. Is he guilty of professional misconduct?

P.7– The Offer Document of a Listed Company in which Mr. Daud, a practicing CA is a Director, mentions the name of Mr. Daud as a Director along with his various professional attainments and spheres of specialization. Is there any misconduct on the part of the CA in this case?

P.8– The visiting card of a Chartered Accountant in practice mentions that he specializes in tax planning.

P.9– A Chartered Accountant in practice being a member of state legislature states this fact on his professional visiting card which along with his name contains the words "Chartered Accountant, MLA"

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.**

<u>Situation when the appointment must not be accepted by the new auditor</u> –

1. **Non-compliance** of the provisions of **Sections 224 and 225** of the Companies Act as mentioned in Clause (9).
2. **Non-payment** of **undisputed audit fees** by Auditee other than in case of sick units for carrying out the statutory audit under the Companies Act, 1956 or various other statutes.
3. **Under-cutting of fees**. (earlier there was separate clause in the Schedule I Part I)
4. **Issuance of a qualified report.**

<u>Note</u> → For the Point No. 1 & 2, 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 Council Guidelines No. 1-CA/(7)/02/2008 dated 08.08.08. ***In the said guidelines, Council has explained that the provision for audit fee in accounts signed by both the Auditee and the auditor shall be considered as "undisputed" audit fee and "sick unit" shall mean where the net worth is negative.***

<u>Note</u> → **<u>For the Point No. 4</u> –**

1. New Auditor may accept the audit if he is satisfied that the attitude of the retiring auditor was not proper and justified.
2. 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.
3. There is however no rule, written or unwritten, which would prevent an auditor from accepting the appointment offered to him in these circumstances.
4. However, before accepting the auditor he should ascertain full facts of the case.

<u>Note</u> → 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.

(Council Guidelines on the Communication will be discussed with CGG 2008)

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Some Queries –

1. 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?

Response

(a) 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.

(b) If the answer is in the affirmative, then a communication should be addressed to the retiring auditor.

(c) 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.

(d) If new is no valid reason for a change, it would be healthy practice not to accept the audit.

(e) If he decides to accept the audit he should address a communication to the retiring auditor.

2. What should Incoming auditor do when retiring auditor fails to respond without justifiable reason?

Response –

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.**

3. Mere posting of a letter "under certificate of posting" is sufficient or not?

Response –

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 (E.g. Of POD, communication by a letter sent "Registered Acknowledgment due" or by hand against a written acknowledgment).

(The view taken by the Council has been confirmed in a decision by the Rajasthan High Court in J.S. Bhati Vs. The Council of the Institute of Chartered Accountants of India and another.)

4. Is it obligatory to follow clause 8 for section 223A of Companies Act, 1956?

Response –

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.

5. Whether a Chartered Accountant who is appointed as tax auditor for conducting special audit under the Income-tax Act is required to communicate with statutory auditor?

Response –

Yes, Council directions under Clause (8) of Part I of First Schedule to the CA Act prescribe that it would be a healthy practice if a tax auditor appointed for conducting special audit under the Income-tax Act, communicates with the member who has conducted the statutory audit.

Some Important Decisions held

Name of Case	Case
S.N. Johri Vs. N.K. Jain	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
Radhey Shyam Vs.	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

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K.S. Dubey	under the clause.
S. B. Chidrawaar Vs. O.K. Rao	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.
M.L. Agarwal Vs. J.S. Bhati	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.
Mehra Khanna & Co. Vs. Man Mohan Mehra	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.
K.K. Sud Vs. K.N. Chandla	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.
Rajeev Kumar Vs. R.K. Agrawal	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.
V.A. Parikh Vs. R.I. Galledar	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.
D. H. Firke Vs. L.B. Jadhav	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.
V. K. Gupta vs. A.K. Jain	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).
M/s M.R. Daga & Co. Vs. R.K. Vora	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).

Some Problems for practice –

P.1– Rajesh accepted his appointment as an Auditor immediately after intimating his appointment over the phone to the Previous Auditor. Is he guilty of professional misconduct? Give brief answer.

P.2– Ramesh, a CA has sent letters under Certificate of Posting to the Previous Auditor informing him his appointment as an Auditor before the commencement of audit by him. Can he be hauled up for professional misconduct under CA Act?

P.3– Ashok & Co, a Firm of practicing CA's, was appointed the Internal Auditor of a Company. They failed to intimate their appointment to the Statutory Auditor. Is there any breach of Code of Conduct in this case?

P.4– A Chartered Accountant in practice on being appointed as the auditor of a company writes to his predecessor enquiring of him whether there are any professional or other reasons for his not accepting the appointment the letter is send by "Registered AD" post.

P.5– A Chartered Accountant in practice on being appointed as the statutory auditor of a company writes to his predecessor inquiring of him whether there are any professional or other reasons for his not accepting the appointment he starts the audit work immediately after sending the letter.

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P.6– A Chartered Accountant in practice who is appointed as the tax auditor of a company accepts the audit without communicating with the predecessor.

P.7– A Chartered Accountant in practice appointed as Special Auditor has not communicated to the statutory auditor before accepting the appointment.

P.8– Mr. Ram before accepting an audit appointment communicated to Mr. Shyam the predecessor about his appointment as a new auditor. Mr. Shyam objected on the same and replied to Mr. Ram that he must not accept the appointment as he would have been issued a qualification on financial statement if he would have been allowed to conduct the audit. Mr. Ram however accepted the appointment.

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".**

Some Queries –

1. What is the meaning of word "ascertaining" in the Above Clause?

Response –

The word "ascertain" means "to find out for certain".

(a) 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.**

(b) 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.

(c) 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.

(d) 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 assignmen**t.

E.g. for the RELEVANT RECORD are BOD Resolution, GM Resolution, Previous Approval of CG, Special Resolution, Notices (Special or 14 days), POD of Notice sent by the Company to Old Auditor, Representation of Auditor, Advertisement in Newspaper.

2. What are the steps to be taken by an auditor of a company who is appointed in .the following circumstances are indicated below –

(a) When the auditor appointed is the **first auditor** of the company?

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

(c) When the auditor or auditors appointed by the company were holding this **office jointly with others** and one or more of such joint auditors are not reappointed?

(d) When one or more of the auditors appointed by the company was/were **not holding this office earlier**?

Response –

(Refer the Chapter Appointment of the Auditor and Removal of the Auditor of Audit under Co's Act, 1956)

Some Important Decisions held

Name of Case	Case
M.K. Biswas (1962)	A CA accepted the appointment, as Statutory Auditor of a Company, based on Board's resolution. **There was no compliance with the requirement of Sec.224.** The appointment should have been made by the Central Government as the Company did

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	not make appointment in the General Meeting. **Held, guilty under Clause (9).**
M.R. Gulati Vs. S.C. Chirania (1978)	**Special Notice received** from one of the Shareholders though sent to Outgoing Auditor**, was not sent to the Members.** Another **CA accepted the appointment without ascertaining compliance u/s.225.** **Held he was guilty under Clause (9).**
C.L. Tomson Vs. A. Chandrashekara Menon (1989) And B.B. Shah Vs. Nagarkar (1989)	A CA was appointed the First Auditor of a Company within 30 days of the incorporation u/s.224 (5). **Later another Member was appointed as Joint Auditor after 8 months of the Incorporation of the Company, by a Board resolution. The second Member did not ascertain compliance with Sec.224 (5).** **He did not communicate with the First Auditor. Held guilty under Clauses (8) and (9).**

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.

Some Exceptions to clause 10 –

1. Fees should not be regarded as being, contingent if **fixed by a court or other public authority.**
2. The Council of the Institute has however framed **Regulation 192 which exempts members** from the operation of this clause in certain professional services.

   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."

Some Important Decisions held

Name of Case	Case
R.B. Basu Vs. P.K. Mukherji	**"Where a chartered accountant had charged fees at certain percentage of the expected relief.** **Held, he was guilty of the charges.**

Some Problems for practice –

P.1– Jay has changed a fee for representing his Client in an Income Tax appeal based on the expected relief to his Client as a result of appeal. Is there any professional misconduct?

P.2– The Chairman of an Audit Committee of a Blue chip Company, who is a CA, asked the Firm in which he was previously a Partner, to quote their fee on a success fee basis so as to ensure that a professional work is assigned to such Firm. Is this action allowed under professional ethics? If not, why?

P.3– An Auditor of a Co-operative Society has agreed to charge fees at 5% of the Profits of the Society.

P.4– Mr. Sunder, a practicing Ca, who is appointed to value the goodwill of a running concern for the purpose of its take-over, charged his fees on the basis of a pre-determined percentage of the value of the goodwill.

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Is there any misconduct on his part?

P.5– The auditor of a company charges audit fee on the basis of quantum of work as indicated by the audited figure of sales for the year.

P.6– A Chartered Accountant in practice who is appointed as a receiver of the company charges the fees as a specified percentage of the aggregate of realizations and disbursements.

P.7– The auditor of a co operative society charges the audit fee as a specified percentage of the working capital of the society.

P.8– A Chartered Accountant in practice who is appointed as valuer for direct taxes purpose charges his fee as a specified percentage of the value of the properties valued by him.

P.9– A Chartered Accountant in practice undertakes to conduct an appeal before the IT appellate tribunal on the understanding with his client that he would be paid ₹ 2000 in the event of his succeeding in the appeal and ₹ 500 in the event of appeal not succeeding.

P.10– A client of Mr. Zuber a Chartered Accountant in practice, made complaint to Institute that Mr. Zuber charged ₹ 3000/- as tax audit fees from him and usually he charges ₹ 1000/- with others.

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.

Some Exceptions to clause 10 –

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 9 – 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 9 of C.A. Regulations, 1988** are also reproduced below for information.

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 –	**Special Permission to be taken** – "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. Employment under Chartered Accountants in practice or firms of such chartered accountants.	1. Full-time or part-time employment in business concerns provided that **the member and/or his relatives** do not hold **"substantial**

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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 us 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.
13. Owning agricultural land and carrying out agricultural activity (w.e.f. August 9th, 2008).

interest" in such concerns".

2. Full-time or part-time employment in **non-business 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 in inheritance/succession / partition of the family business) or concerns in which interests has 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.**

Note → **It is open to the Council to refuse permission in individual cases though covered under any of the above categories.**

Some important point to be considered –

1. **For the purpose of point no. 1 of Special Permission Relative shall mean –** In relation to a member, means the husband, wife, brother or sister or any lineal ascendant or descendant of that member.
2. **For the purpose of point no. 3 of Special Permission Exceptions shall be –**
   - **(a)** **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.**
   - **(b)** **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.
   - **(c)** 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.**

3. **For the purpose of above point no. 2 Substantial Interest means –**

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 –

   1. One or more relatives of the member;

   2. One or more partners and/or their relative,

   3. 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.**

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

IT IS FURTHER RESOLVED that the general and specific permission granted by the Council is subject to the condition that –

(i) Any **member engaged in any other business or occupation**, in terms of general or specific permission granted as per Appendix NO. (9) **Shall not be entitled to perform any attest function except in the following cases** –

   1. Authorship of books and articles.
   2. Holding of Life Assurance Agency License for the limited purpose of getting renewal commission.
   3. Attending classes and appearing for any examination.
   4. Holding of public elective offices such as M.P., MLA & MLC.
   5. Honorary office-bearer ship of charitable, educational or other non-commercial organizations.
   6. Acting as Notary Public, Justice of the Peace, Special Executive Magistrate and the like.
   7. Part-time tutorship under the Coaching Organisation of the Institute.
   8. Valuation of papers, acting as paper-setter, head-examiner or a moderator for an examination.
   9. Editorship of professional journals (not in employment).Acting as surveyor and Loss Assessor under the Insurance Act, 1938 (not in employment).Acting Recovery consultant in the Banking Sector (not in employment).Any coaching assignment organized by the Institute, its Regional Councils and Branches of Regional Councils.
   10. Engagement as Lecturer in an University, affiliated college, educational institution, coaching organization, private tutorship, provided the direct teaching hours developed to such activities taken together do not exceed 25 hours a week.
   11. Engagement in any other business or occupation permitted by the Executive Committee from time to time.
   12. Insurance brokerage.

(ii) A member who is not entitled to perform attest function shall not be entitled to train articled clerks/assistant.

Note → **The word relative and substantial interest have same meaning as they have been explained in Income Tax Act, 1961.**

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Some Important Decisions held

Name of Case	Case
D.S. Sadri Vs. B.M. Pithawalla	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.
K.S. Dugar	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.
M.K. Abrol and S.S. Bawa Vs. V.P.	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.
S.K. Kaul Vs. S.C. Mangal	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 accountants without the permission of the Council.
R.D. Bhatt Vs. K.B. Parikh	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).
Anil Kumar	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.

Some Problems for practice –

P.1– A CA in practice takes up the appointment as Managing Director of a Public Limited Company. Is he guilty of professional misconduct?

P.2– Mr. Chatur, a practicing CA, accepts appointment as a Full-Time Lecturer in a Commerce College affiliated to the Bombay University. Is he guilty of professional misconduct?

P.3– A CA in practice holding Law Degree can practice both as a Chartered Accountant and as a Lawyer. State your views on the above.

P.4– Jagan started his practice as CA in 2007. During 2012, he got an offer for the post of Chief Accountant of a Software Development Company, as a full-time employee, for a Salary of ₹1.5 Lakhs per month. On accepting this offer, Jagan converted his practice into a Partnership Firm by taking a fresh CA as his Partner. Jagan neither intimated the Institute nor obtained permission from the Institute about his employment. Will Jagan be held guilty of professional misconduct?

P.5– A Chartered Accountant in practice who was an agent of LIC before he becomes a member of the Institute of Chartered Accountants of India is receiving the commission from the said corporation.

P.6– Mr. Aditya Chartered Accountant in practice authored a book on "Jyotish and Vastu Shastra"

P.7– Mr. Vinod Chartered Accountant accepted editorship of a monthly magazine "Desh Darshan" without first obtaining the permission from the council.

P.8 – Mr. Puneet a Chartered Accountant became signatory to the M & AOA of P. Ltd.

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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**.

Some Exceptions to clause 12 –

- 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.

  Example where the power can be delegated and clause will not be attracted:-

  1. Issue of audit queries during the course of audit.
  2. Asking for information or issue of questionnaire.
  3. Letter forwarding draft observations/financial statements.
  4. Initiating and stamping of vouchers and of schedules prepared for the purpose of audit.
  5. Acknowledging and carrying on routine correspondence with clients.
  6. Issue of memorandum of cash verification and other physical verification or recording the results thereof in the books of the clients.
  7. Issuing acknowledgements for records produced.
  8. Raising of bills and issuing acknowledgements for money receipts.
  9. Attending to routing matters in tax practice, subject to provisions of Section 288 of Income Tax Act.
  10. Any other matter incidental to the office administration and routine work involved in practice of accountancy.

Note → It is also clarified that where the authority to sign documents given in the above examples 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.**

Some important point to be considered –

1. **Meaning of "Financial Statement" –** For the purposes of this clause **FS** would cover an examination of the accounts or of financial statements given under a statutory enactment or otherwise.
2. **Meaning of "Report" –** For the purpose of this clause **Report** 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.
3. **Reference has to be made of section 26 of the ICAI Act, 1949 i.e.** –
   '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'.

Some Problems for practice –

P.1– A Chartered Accountant in practice to allows his audit assistant who is not a Chartered Accountant to sign the bills for audit fee on behalf of the firm.

P.2– A Chartered Accountant in practice met with an accident and hence authorized his employee who is a qualified Chartered Accountant to sign the audit report of the company as it was getting delayed.

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PART II

PROFESSIONAL MISCONDUCT IN RELATION TO MEMBER OF 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.**

Some Exceptions to clause 1 –

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.

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.

Some Problems for practice –

P.1– A Chartered Accountant in employment pays 15% of his salary to the person who secured the employment for him the arrangement continues for one year.

PART III

PROFESSIONAL MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE GENERALLY

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

Clause 1	Not being a fellow of the Institute, acts as a fellow of the Institute
Clause 2	Does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority.

Some Important Decisions held

Name of Case	Case
P.S. Rao	Clause (11) of Part I and clauses (1) and (2) 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 unreplied. Held that he was guilty under clause (11) of part I and clauses (1) and (2) of Part III of the First Schedule.

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S.M. Vohra	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 (2) of Part III of the First Schedule.

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.

Point to be Considered –

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.

Some Problems for practice –

P.1– A Chartered Accountant in practice is presently an associate member of the Institute but has applied for admissions to fellowships describes himself as FCA in an empanelment of auditors, since only FCAs are entitled to make the applications.

P.2– Inspite of repeated reminders a Chartered Accountant fails to reply to the letters of the Director Discipline asking him to confirm the date of registration by a paid assistant.

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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 –

Clause 1	Is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months.

Point to be Considered –

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.**

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

Point to be Considered –

1. This provision empowers the Council to inquiry 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.**
2. 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.** ***(THIS POINT IS COMMON FOR BOTH THE ABOVE CLAUSES)***

Some Problems for practice –

P.1– Mr. Shiv PCA retains the books of his client and fails to return them to the client without reasonable cause.

P.2– Mr. Ram PCA retain the books of accounts on the grounds that client is not paying the fees for work done by him on the books

P.3– During a raid of income tax some important files of income concealment were found at auditor's residence?

P.4– The Mayor of Jodhpur Nagar Nigam Palika has complained to the council that Mr. Ashok the PCA is not giving property tax of his office premises despite of several reminders.

P.5– Manager of Dena Bank complained about the Mr. Ravi a PCA that he has signed the balance sheet of their branch on the following grounds –

- All pending finance proposal of his client M/S. SG shall be cleared before the dispatch of the audit report.
- All financial proposal of South Mumbai shall be directed by the manager to him for CMA data and projection.

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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.

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.

Some Exceptions to clause –

1. 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.
2. 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.

Note → 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.**

Some Queries –

1. What should be impressed on client for disclosing and non disclosing?

Response –

It should be impressed on the client that –

- While disclosure may entail only monetary penalties, nondisclosure and subsequent discovery thereof may entail imprisonment and fine, in addition to penalties.
- 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.

2. When Income Tax Authority call the Member?

Response –

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.**

3. Is auditor required to have access of his working paper?

Response –

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.**

(*For this purpose, the term 'auditor' includes 'internal auditor'*.)

4. What are auditor's duities if information is required to be disclosed by law?

Response –

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 (req. Carefulness)** of law and **expert legal advice** may be sought **prior to, such disclosure.**

5. Role of Chartered Accountant in case of unlawful Act by the Client –

(a) What is the duty of member's 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?*

Response –

The Response are generally in line with similar recommendations made by the Institute of chartered accountants in England and Wales for the guidance of its members.

1. **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.
2. **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.
3. 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.**
4. **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.**
5. 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.**

(b) What is the duty of the CA if there is a *genuine mistake or inadvertent omission?*

Response –

It is presumed that the client would not have any objection to make a complete disclosure to the tax authorities.

(c) What is duty of CA 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?

Response –

The client should be **advised to make a complete disclosure.**

If the **client 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.**

(d) What is duty of the CA if disclosure is consented by the client?

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Response –

It should be made immediately disclosure. 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.

(e) What is the duty of the CA if the *suppression etc. relates to accounts* or returns *currently being prepared?*

Response –

- The member should **advise** the client to **make full disclosure** in the accounts and/or return.
- But if the **client refuses**, he should **make full reservation** in his report, and should **not associate himself with the return.**
- But if the **suppression is trivial** (not so Imp), the disclosure may be made when the current return is submitted.

(f) What is duty of a CA if 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.)?

Response –

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.**

Some Important Decisions held

Name of Case	Case
Jamnadas Harakchand and others Vs. P. C. Parekh	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).
Bank of India Vs. Ved Prakesh	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.

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.

Exception to clause –

If an examination carried out by another chartered accountant in practice.

Note → 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.**

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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.**

Exception to clause –

The Council has issued **Standard on Assurance Engagements (SAE) 3400, "The Examination of Prospective Financial Information",** which is effective in relation to reports on projections/forecasts, **issued on or after April 1, 2007. Pursuant to the issuance of this Standard, the Guidance Note on Accountant's Report on Profit Forecasts and/or Financial Forecasts, issued in September, 1982 stands withdrawn.**

The guidance provided in this Standard is in line with the provisions of clause (3) of Part I of the Second Schedule to The Chartered Accountants Act, 1949.

Through 24th July 1982, a chartered accountant can participate in the preparation of profit or financial forecasts and can review them, **provided he indicates clearly in his report –**

1. The **sources of information**,
2. The **basis of forecasts** and
3. Also the **major assumptions** made in arriving at the forecasts and
4. So long as he does **not vouch for the accuracy of the forecasts.**

Note → The Council has further opined that the **same above opinion would also apply to projections made on the basis of hypothetical assumptions** about future events and management actions which are not necessarily expected to take place so long as the auditor does not vouch for the accuracy of the projection.

Some Problems for practice –

P.1– While reporting on a profit forecast to be submitted to a bank in connection with a loan application of the client the CA. mentions that in his view forecast are most likely to materialize.

P.2– MN & Co, a Firm of CAs, prepared and signed the forecast of a Company's Earnings upon future transactions without mentioning the basis on which the said estimates were prepared. A Bank granted a Loan to the said Company based on the above forecast signed by MN & Co. When the Company defaulted in repayment of the Loan, the Bank filed a complaint against M/s MN & Co. Comment under CA Act, 1949.

P.3– As a CA in practice, you are asked to conduct a review of "Profit Forecast" prepared by a Company in connection with its request for Term Loan from a Scheduled Bank. Can you accept the offer?

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.**

Some Important point to be considered –

- **In this connection attention of members is also invited to Chapter IV of Council Guidelines No.1-CA (7)/02/2008 dated 8TH August, 2008.**
  The said guidelines state that a member of the Institute shall **not express his opinion on financial statements of any business or enterprise in which one or more persons, who are his "relatives"** within the meaning of Section 6 of the Companies Act, 1956, have either by themselves or in conjunction with such members, **a substantial interest in the said business or enterprise.**
  (For detail Discussion refer the CGG 2008)
- The Council wishes to emphasize that the aforesaid **requirement of Clause (4) are equally applicable while performing all types of attest functions by the members.**
- **Some illustrative examples –**
  (a) **Part-time lectures of college –** Cannot accept an appointment as auditors of a college in which he is working as a part time lecture.

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(b) **Employee or trustee of a trust –** Cannot accept appointment as auditor of a trust in which he or his partner is either an employee or a trustee.

(c) **Liquidator of a company –** Cannot accept appointment as auditor in which he is appointed as liquidator

(d) **Proprietor or partner –** Cannot appointment as auditor of an enterprise of which he is a proprietor or partner.

(e) **Member in employment & holding a certificate of practice –** Cannot report on the financial statement of the concern in which he is employed, or under the same management of the concern in which employed.

(f) **Above clause is applicable to all type of attest function –** E.g. tax audit, audit of member's stock exchange & other statutory audit.

(g) **Substantial interest** carries the same meaning as defined in income tax act.

(h) **Relative means –** As defined CCG **("relative will have the same meaning as assigned to it in AS-18)**

(i) **Financial statement means –** Both report & certificate.

Some Problems for practice –

P.1– A Chartered Accountant in practice who is working as a part-time lecture in a college accepts its audit.

P.2– A Chartered Accountant in practice accepts an audit of a trust in which his partner is a trustee.

P.3– A Firm of CA's was appointed by a Company to evaluate the costs of the various products manufactured by it for their information system. One of the Partners of the Firm was a Non-Executive Director of the Company. Do you approve the above? Why?

P.4– A practicing CA accepted appointment as Part-Time Lecturer of a College of which he was the Auditor. Is he guilty of any professional misconduct?

P.5– Vijay, a CA, certified the Financial Statements of a Company in which his wife is a Director holding substantial interest. Is he guilty of any misconduct?

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.

Some Important point to be considered –

1. **Meaning of Financial Statement –** 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.

But would **not however, apply to cases** where such statements are prepared by members in employment purely for the information of their respective employers in the **normal course of their duties and not meant to be submitted to any outside authority.**

2. 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 explained in SA 320,"Audit Materiality".**

Query –

1. Whether the Materiality is to be judged of either of B/S or P&L, or both?

Response –

It is 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.

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Some Important Decisions held

Name of Case	Case (ALL THE CASES ARE VERY IMPORTANT)
Davar & Sons Ltd. Vs. M.S. Krishnaswamy (Imp)	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 where 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.
A. Doraiswami/ Naidu Vs. P.M. Raghavendra Rao	Where a Chartered Accountant failed to examine how debts become bad and were written off- Held he was guilty under Clause (5).
Kishori Lal Dutta Vs. P.K. Mukherjee (Imp)	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 Fun**d 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).

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

Some Important Decisions held

Name of Case	Case (ALL THE CASES ARE VERY IMPORTANT)
Registrar of Joint Stock Companies Vs. S.S. Iyer	A Company did not provide for depreciation as required by Section 205 and Section 250 of the Companies Act, 1956 and although the Chartered Accountant was aware that the Company had **underprovided depreciation**, he did not bring out this fact in his report. **Held** the Chartered Accountant **was guilty of professional misconduct** under the clause. He had failed to disclose a material fact known to him but disclosure of which was necessary to make the financial statement not misleading.
Attorney General of Kenya Vs.	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

V.B. Joshi	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).**
Registrar of Joint Stock Companies Vs. S.S. lyer	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 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 Companies, Bombay Vs. V.P. Bagadthey	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	***(MOST IMPORTANT)*** **Does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.**

Some Important point to be considered –

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.

1. 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.
2. What is reasonable skill, care and caution must depend on the particular circumstances of each case.
3. 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.
4. He is a **watchdog but not a bloodhound.**
5. 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.

Query –

1. **Whether the minor errors or mistakes to be considered as Gross negligence?**

Response –

No this 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.**

Some Important Decisions held

Name of Case	Case
M.C. Poddar Vs. P.S. Sodhbans (Imp)	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).**

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S.N. Das Gupta (Imp)	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 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.
V.K. Madhava Rao (Imp)	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.**
The Fairdeal Corporation Ltd. Bombay Vs. K. Gopalakrishna Rao	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 pas 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.
Sunder Lal Fatehpuria	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.**
Company Law Administration Vs. D.B. Kulkarni	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.
D. C. Sopariwala	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).
M/s. 0. M. Agency Private Ltd. & M/s. Oriental Mercantile Distributors Private Ltd. Surendra Sastry	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).

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TS. Vaidyanath Iyer	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).
B. Shantharam Rao	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.S. Waierker	A Chartered Accountant was charged under Clauses (5), (6), (7) and (8) of Part I of Second Schedule in regard to a loss of ₹ 1.84 Lakhs in a bank of sale of some investments out of which only a sum of ₹ 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.
Registrar of Newspapers for India Vs. P.K. Mukherji	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).
Air Commodore Dilbagh Singh Vs. C.G. Apte	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).
Audit Bureau of Circulations Ltd., Vs. A.D. Shinde	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).

Some Problems for practice –

P.1– A Chartered Accountant in practice issues an audit report without examining the books of accounts at all however he has been the auditor of the company for the last three years and has found nothing wrong in the books of accounts in the past.

P.2– A Chartered Accountant certifies the circulation figures of a news paper by stating that he has checked interalia news print sheets and machine room returns when they have not at all been maintained by the publishers.

P.3– Rakesh, A CA, was employed by the Complainant for the purpose of Income Tax Appeal, before the Income Tax Appellate Tribunal (ITAT). The remuneration for this purpose to be paid had been fixed on certain percentage of the relief of tax.

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The Complainant now submitted a complaint to the ICAI on the following grounds –

(a) That the Respondent failed to appear at the hearing of the appeal before the Tribunal inspite of agreement between them.

(b) Those large sums of money were wrongfully taken by him by false representation of the case.

P.4– Mohan is a practicing CA. He issued a certificate of consumption which did not reflect the correct factual position of the consumption of Raw Material by the concerned Entity. It is found that the certificate is given on the basis of data appearing in the minutes of meeting of the Board of Directors. Comment under CA Act.

P.5– MM, a Partner of MM & Co. CA's has signed the Balance sheet of False Ltd. for submission to the Bankers of the said Company. X has also signed at the request of the said Company, another Balance Sheet inflating the value of assets by 20% for submission to a Term Lending Institution. Both the Balance Sheets were not in conformity with the books of account maintained by the Company, as they were not up-to-date. Is MM guilty of professional misconduct?

P.6– Ramu, a CA was the Auditor of A Limited. During a financial year, the Investments appeared in the Balance Sheet, of the Company at ₹ 10 Lakhs, and was the same amount as in the last year. Later on, it was found that the Company's investments were only ₹25,000, but the value of Investments was inflated for the purpose of obtaining higher amount of Bank Loan. Comment.

P.7– Rajesh, a Partner of R & Co. CA's advised the Managing Director of True Ltd. to include in Sales, orders under negotiations to reflect a better financial position for obtaining future Bank Loan. R & Co., are the Internal Auditors of True Ltd. Comment on his conduct and liability in the given case.

P.8– A CA sends his report by Value Paid Postage (VPP) to cover the Audit Fee Payable, without signing the report. Discuss whether it attracts any misconduct.

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

Some Important point to be considered –

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.

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.

Some Important Decisions held

Name of Case	Case
T.S. Vaidyanatha lyer	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).

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Clause 9	Fails to invite attention to **any material departure from the generally accepted procedure** of audit applicable to the circumstances

Some Important points to be considered –

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 SAs to members.**

Some Important Decisions held

Name of Case	Case
M.R. Ramanathan Vs. A. Utnatlath Rao	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).
Punjab State Govt. Vs. K.N. Chandla	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).
Air Commodore Dilbagh Singh Vs. E.S. Venkataraman	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).
Audit Bureau of Circulations Ltd. Vs. M.L. Nanda (Imp)	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).

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.

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Some Important points to be considered –

Council has considered **some practical difficulties** of the members and the following suggestions have been made to remove these difficulties –

1. 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.
2. **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.
3. **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.
4. **Moneys received** by a Chartered Accountant, **in his capacity as trustee, executor liquidator**, etc. must be put in a separate bank account immediately.

Some Important Decisions held

Name of Case	Case
N.S. Chenoy Vs. K.V. Subba Rao	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 filed 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.**
R.S. Murgai Vs. (I) S.K. Gadh & (2) V.K. Bajaj	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.

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PART II

PROFESSIONAL MISCONDUCT IN RELATION TO MEMBER OF INSTITUTE IN 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.**

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

Regulation 43	**Engagement of Articled Assistant**
Regulation 46	**Registration of Articled Assistant**
Regulation 47	**Premium from Articled Assistant**
Regulation 48	**Stipend to Articled Assistant**
Regulation 56	**Termination or assignment of Articles**
Regulation 65	**Articled Assistant not to engage in any other occupation**
Regulation 67	**Complaint against the employer (From Articled Assistant)**
Regulation 68 to 80	**Audit Assistant**
Regulation 190	**Register of offices and firms**
Regulation 190A	**CAs not to engage in any other Business or occupation**
Regulation 191	**Part time employments a CA may accept**
Regulation 192	**Restriction on fees**

Some Important Decisions held –

Name of Case	Case
J.K. Ghosh	A Chartered Accountant certified in Form K-2**(102/103/108)** that an **audit clerk (Article Assistant)** 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.
A.K. Basu Vs. P.K. Mukherjee	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.

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J.K. Ghosh	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.
M.N. Bhargava	**Where a Chartered Accountant –** **(a)** 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, **(b)** Violated Regulation 62 by not refunding the premium within the time specified in the Regulation, and **(c)** The refund of premium in installments in one case was not as specified in the certificate. **Held** he was guilty of dishonest behaviour both as regards his clients and articled clerks.
Radhey Mohan	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.
M.K. Tripathi	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.
B.B. Rohatgi	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.
R.C. Gupta	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, (a) That the declaration filed by the articled clerks could not be regarded as 'information' in order to justify the commencement of disciplinary proceedings (b) 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.

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	(c) 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 ₹ 500 Per Month.
Virender Kumar Vs. K.B. Madan	The Chartered Accountant received ₹ 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.
V.K. Mittal	A Chartered Accountant did not pay stipend to the articled clerk per month in accordance with Regulation 32B of the Chartered Accountant Regulations, 1964 in view of the letter written by the articled clerk to the effect that the stipend is not paid to him every month. This letter was purported to have written at the time of commencement of training- **Held** the letter taken from the articled clerk would not be relied upon as it was **ante (bet) – dated** and it was not written on the date it purported to be. The Chartered Accountant **was guilty of professional misconduct** under the clause. It was observed that it was very reprehensible that a practicing Chartered Accountant should have tried to fabricate evidence in support of the defence.
U.V. Benadikar Vs. N.G. Kulkarni	A Chartered Accountant did not pay stipend to the articled clerk in accordance with Regulation 32B of the Chartered Accountants Regulations, 1964 for the period during which the Article Clerk worked with him. Also the Article Clerk was asked to work in excess of the prescribed working hours in violation of Regulation 45 of the Chartered Accountants Regulations, 1964. **Held** that he was guilty of professional misconduct under Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949.

Some Problems for practice –

P.1– A Chartered Accountant in practice accepts a audit of a concern in which one of his relatives has a substantial interest.

P.2– A Chartered Accountant employed by a firm of Chartered Accountants is grossly but not willfully negligent in the conduct of his duty he holds a COP.

P.3– A Chartered Accountant employed by a business concern is grossly but not willfully negligent in conduct of his duties.

P.4– A Chartered Accountant in practice does not maintain any record of his professional receipts.

P.5– A Chartered Accountant who does not hold COP accepts the tax audit of a concern under s. 44AB of the income Tax Act.

P.6– A Chartered Accountant in practice accepts appointment as an auditor of a company in which his relative has a substantial interest he does not disclose this fact in his audit report.

P.7– A Chartered Accountant in practice took a loan ₹ 20000 from a firm in which his articled clerk and his father were interested.

P.8– A and B two Chartered Accountants practice incorporate "Ticks and Ticks Pvt. Ltd. Chartered Accountants with the main object of carrying on the profession of accountancy and auditing.

P.9– A chartered Accountant in practice who was entitled to take not more than 5 articled clerks had already taken 5 such clerks he represented to X that he had a vacancy and induce him to enter into articles with him a formal deed was executed. A subsequently cancelled the articles of the fifth articled clerk for irregular attendance without reference to the Institute.

P.10–Mr. X accepted the appointment as a cost auditor of a company in which he is auditor appointed U/S 224

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P.11– Mr. Ankit is having 44 tax audit assignments of various companies and accepted two tax audit assignments of non corporate entities.

P.12– MMM & CO a big firm of Chartered Accountants having 10 partners, all are FCA accepted a tax audit assignment of a non corporate assesses at an agreed fee of ₹ 1500 per annum.

P.13– What will be your answer if all the partners of the above firm were ACA.

P.14– Mr. Bala denied to sign on balance sheet of Aircon ltd for the year 2012-2013 on the grounds that he cannot sign the balance sheet as fees of the previous auditor Mr. Arora is outstanding since 2012-2013.

P.15– Mr. A accepted the audit of Jodhpur Nagar Nigam despite his property tax from last 20 years is pending amounting to ₹ 12000/-

Clause 2	Being an **employee of any company**, firm or person, **discloses confidential** information acquired in the **course of his employment** except as and when required by any law for the time being in force or except as permitted by the employer.
Clause 3	Includes in **any information, statement, return or form to be submitted** to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline. Disciplinary Committee, Quality Review Board or the Appellate Authority **any particulars knowing them to be false.**
Clause 4	**Defalcates or embezzles money received in his professional capacity.**

Point to be remember –

Defalcation and embezzlement of moneys received in professional capacity amounts to **fraud [Covered in SA-240 (R)]** and such member will be deemed to be guilty of professional misconduct under this clause.

PART III
OTHER MISCONDUCT IN RELATION TO MEMBER OF INSTITUTE IN GENERALLY

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

Clause 1	Held guilty by any civil or criminal court for an **offence** which is punishable with imprisonment for a **term exceeding six months.**

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"Council General Guidelines – 2008"

A. Guidelines for Advertisement – For the Members in Practice

(Issued Pursuant to Clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949, council has issued ICAI Guidelines No. 1 – CA (7)/Council Guidelines/01/2008, dated 14th May, 2008)

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

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

3. **Meaning of "write up" –** The writing of particulars according to the information given in the Guidelines setting out services rendered by the Members or firms and any writing or display of the particulars of Member(s) in Practice or the firm(s) issued, circulated or published by way of print or electronic mode or otherwise including in newspapers, journals, magazines and websites (Pull or Push Mode) in accordance with the Guidelines.

4. **The Write – up may include only the following information –**

For Members	For Firms
1. Name ……………… Chartered Accountant 2. Membership No. with Institute 3. Age 4. Date of becoming ACA 5. Date of becoming FCA 6. Date from which COP held 7. Recognized qualifications 8. Languages known 9. Telephone/Mobile/Fax No. 10. Professional Address 11. Web 12. E – mail 13. C A Logo 14. Passport size photograph 15. Details of Employees (Nos.–) (a) Chartered Accountants – (b) Other Professionals – (c) Articles/Audit Assistants – (d) Other Employees. 16. Names of the employees and their particulars on the lines allowed for a member as stated above. 17. Services provided (a) ……………………………… (b) ……………………………… (c) ………………………………	1. Name of the Firm ……………… Chartered Accountants 2. Firm Registration No. (FRN) with Institute 3. Year of Establishment 4. Professional Address(s) 5. Working Hours 6. Telephone/Mobile/Fax No. 7. Web 8. E – mail 9. No. of Partners 10. Name of the Proprietor/Partners and their particulars on the lines allowed for a member as stated above including passport size photograph. 11. C A Logo 12. Details of Employees (Nos.–) (a) Chartered Accountants – (b) Other Professionals – (c) Articles/Audit Assistants – (d) Other Employees. 13. Names of the employees of the firm and their particulars on the lines allowed for a member as stated above. 14. Services provided (a) ……………………………… (b) ……………………………… (c) ………………………………
Note → The write-up may have the Signature, Name of the Member/ Name of the Partner signing on behalf of the firm, Place and Date.	

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5. Other Conditions –

1. The write-up should not be false or misleading and bring the profession into disrepute.
2. The write-up should not claim superiority over any other Member(s)/Firm(s)The write-up should not be indecent, sensational or otherwise of such nature which may likely to bring the profession into disrepute.
3. The write-up should not contain testimonials or endorsements concerning Member(s).
4. The write-up should not contain any other representation(s) that may like to cause a person to misunderstand and/or to be deceived.
5. The write-up should not violate the provisions of the 'Act', Rules made there under and 'The Chartered Accountants Regulations, 1988'.
6. The write-up should not include the names of the clients (both past and present)The write-up should not be of font size exceeding 14.
7. The write-up should not contain any information other than stated above point no.4.
8. The write-up should not contain any information about achievements/award or any other position held.
9. The particulars of information required – Membership No. with Institute and Firm Registration No. with Institute as required above in point no. 4 is mandatory.

B. Council General Guidelines – For the Members in Practice or Not

(Council has issued ICAI Guidelines No. 1 – CA (7)/Council Guidelines/02/2008, dated 08th August, 2008)

Chapter No.	Name of Chapter
I	Preliminary
II	Conduct of a Member being an employee
III	Appointment of a Member as Cost Auditor
IV	Opinion on Financial Statements when there is substantial interest
V	Maintenance of Books of Accountants
VI	Tax Audit assignments under Section 44AB of the Income Tax Act, 1961
VII	Appointment of an Auditor in case of Non – Payment of undisputed fees
VIII	Specified number of audit assignments
IX	Appointment as a Statutory Auditor
X	Appointment of an auditor when he is indebted to a concern
XI	Directors in case of unjustified removal of auditors
XII	Repeal and Saving

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Chapter – I
Preliminary

1. **Short Title, commencement, etc** –

   (a) These Guidelines have been issued by the Council of the ICAI under the provision of the CA Act, 1949, as amended by the CA (Amendment) Act 2006, in supersession of the Notifications issued by the Council under erstwhile Clause (ii) of the Part II of Sch. – II of the CA Act, 1949.

   (b) These Guidelines be called the ***'Council General Guidelines, 2008'.***

2. **Applicability of Guidelines** – These Guidelines shall be applicable to all Members of ICAI whether in practice or not wherever the context so requires.

Chapter – II
Conduct of a Member being an Employee

A member of the Institute who is an **employee** shall exercise **due diligence and shall not be grossly negligent** in the conduct of his duties. **(Similar to Clause 7 of Part I of Second Schedule)**

Chapter – III
Appointment of a Member as Cost Auditor

- **A member of the Institute shall not accept –**
  1. The appointment as Cost auditor of a Company under Section 233B of the Companies Act, 1956 while he–
     (a) Is an auditor of the Company appointed under Section 224 of the Companies Act or
     (b) Is an officer or employee of the Company; or
     (c) Is a partner, of any employee or officer of the Company; or
     (d) Is a partner or is in the employment of the Company's auditor appointed under Section 224 of the Companies Act, 1956; or
     (e) Is indebted to the Company for an amount exceeding one thousand rupees, or has given any guarantee or provided any security in connection with the indebtedness of any third person to the Company for an amount exceeding one thousand rupees;

     OR

  2. **After his appointment** as Cost Auditor, he becomes subject to any of the disabilities stated in items (i) (a) to (e) above and continues to function as a cost auditor thereafter.
- A member of the Institute in practice shall **not accept** the appointment **as auditor** of a Company **under Section 224** of the Companies Act, 1956, **while he is an employee of the cost auditor of the Company appointed under Section 233B** of the Companies Act, 1956.

Chapter – IV
Opinion on Financial Statements when there is Substantial Interest

1. A member of the Institute **shall not express his opinion on financial statements** of any business or enterprise in which one or more persons who are his **"relatives"** within the meaning of Section 6 of the Companies Act, 1956 have, either by themselves or in conjunction with such member, **a substantial interest in the said business or enterprise.**
2. In terms of its decision taken at the 299th Meeting of the Council held on 27th – 28th October, 2010, it has been decided that the term **"relative"** for the purpose of Chapter-IV of Council General Guidelines, 2008 (Opinion on Financial Statements when there is substantial interest) will have the **same meaning as assigned to it in AS-18**
3. A member of the Institute shall **not express his opinion** on financial statements of any business or enterprise in which one or more persons who are **his "relatives"** within the meaning of Accounting Standard (AS - 18) has / have, either by themselves or in conjunction with such member, **a substantial interest** in the said business or enterprise.

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Explanation – For this purpose and for the purpose **of compliance of Clause (4) of Part I of the Second Schedule** to the Chartered Accountants Act, 1949, the expression "**substantial interest**" shall have the **same meaning** as is assigned thereto under **Appendix (9)** to the Chartered Accountants Regulations, 1988. "

This decision shall be in force with effect from 28th June, 2011 (vide No. ICAI/ESB//2011/02)

Chapter – V
Maintenance of Books of Account

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

1. **A Cash Book,**
2. **A Ledger.**

Chapter – VI
Tax Audit assignments u/s 44 AB of the Income Tax Act, 1961

S.N.	Situation	Specified Limit/Ceiling Limit)
1.	For Individual CA's or Proprietary Firms	**45 Tax Audits**
2.	For Partnership Firms	**45 Tax Audits per Partner of the Firm**
3.	When a CA is a Partner in a number of Firms	**45 Tax Audits on his account in all the Firms taken together in which he is a Partner or Proprietor.**
4.	Where the Partner of a Firm also holds office in his individual capacity	**45 Tax Audits in his individual capacity and all Firms taken together.**

Some Extra points to be considered while calculating ceiling Limit –

(a) Audits conducted **u/s 44AD, 44AE and 44AF** of IT Act **shall not be taken into account** for the purpose of computing ceiling limit.

(b) Tax Audit assignments means Tax Audit assignments in a Financial Year, **whether** in respect of **corporate or non-corporate assesses.**

(c) In computing the 45 Tax Audit assignments, each year's audit would be taken as a **separate assignment**.

(d) The number of such assignments, which a CA or any Partner of his Firm has **accepted** whether **singly or in combination with any other** CA in Practice or Firm of such CAs, shall be taken into account.

(e) The Audit of the **Head Office and Branch Offices** of Concern shall be regarded as **one** Tax Audit assignment.

(f) The Audit of **one or more branches** of the **same concern** by one CA in practice shall be construed as **only one** Tax Audit assignment.

(g) A CA being a **part time practicing Partner of a Firm shall not be taken into account** for the purpose of reckoning the tax audit assignments of the Firm.

(h) A CA in practice shall **maintain a record of the Tax Audit assignments** accepted by him in each financial year in the format as may be prescribed by the Council.

Chapter – VII
Appointment of an Auditor in case of Non – Payment of Undisputed Fees

A Member in practice shall not accept the appointment as Auditor of an entity, in case the Undisputed Audit Fee of another CA for carrying out the statutory audit under the Companies Act, 1956 or various other statutes has not been paid. This prohibition does not apply to a Sick Unit.

Note – Undisputed Audit Fee is the provision for Audit **Fee in accounts signed by both** the Auditee and the Auditor and **Sick Unit** is a Unit whose **Net Work is negative.**

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Chapter – VIII
Specified number of Audit Assignment

- A member of the Institute in practice shall not hold at any time appointment of more than the "specified number of audit assignments" of Companies under Section 224 and/or Section 228 of the Companies Act, 1956.

S.N.	Situation	Specified Limit/Ceiling Limit)
1.	For Individual CA's or Proprietary Firms	**30 Audits**
2.	For Partnership Firms	**30 Audits per Partner of the Firm**
3.	When a CA is a Partner in a number of Firms	**30 Audits on his account in all the Firms taken together in which he is a Partner or Proprietor.**
4.	Where the Partner of a Firm also holds office in his individual capacity	**30 Audits in his individual capacity and all Firms taken together.**

Some Extra points to be considered while calculating ceiling Limit –

(a) The number of audit assignments of **Public Companies** each of which has a **Paid-up Share Capital ₹ 25 Lakhs or more, shall not exceed 10.**

(b) In computing the 30 audit assignments, the number of audit of such Companies, within a CA or any Partner of his Firm has **accepted** whether **singly or in combination with any other** CA in practice or Firm of such CAs, shall be taken into account.

(c) Audit of **Head Office** and **Branch** Office of a Company by one CA or Firm of such CAs in practice shall be regarded as **one** audit assignment.

(d) The audit of **one or more branches** of the same Company by one CA in Practice or by Firm of CAs in practice in which he is a Partner shall be construed as **one** audit assignment only.

(e) The **number of Partners** of a Firm on the **date of acceptance** of audit assignment shall be taken into account.

(f) A CA in practice, whether in **full-time or part-time employment** elsewhere, **shall not be counted** for the purpose of determination of ceiling limit by Firms.

(g) A CA being a **part time practicing Partner** of a Firm **shall not be taken into account** for the purpose of reckoning the audit assignments of the Firm.

(h) A CA in practice as well as firm of Chartered Accountants in practice shall **maintain a record** of the audit assignments accepted by him or by the Firm of Chartered Accountants, or by any of the partners of the firm in his individual name or as a Partner of any other firm, as far as possible, in the following **format** –

S.N.	Name of the Company	Registration Number	Date of Appointment	Date of Acceptance	Date on which Form 23B filed with ROC

Chapter – IX
Appointment as Statutory Auditor

(a) A **Member in practice** shall **not accept** the **appointment** as **Statutory Auditor** or Public Sector Undertaking(s)/ Government Company(ies)/Listed Company(ies) and other Public Company(ies) having **turnover of ₹ 50 Crores or more** in a year **if he accepts** any other work(s) or assignment(s) or service(s) **in regard to the same** Undertaking(s)/ Company(ies) on a **remuneration which in total exceeds the fee payable** for carrying out the **Statutory Audit** of the same Undertaking/company.

(b) In case Appointing Authority (ies)/Regulator, body (ies), specify (ies) more stringent condition(s) / restriction(s), the same shall apply instead of the aforesaid conditions/restrictions.

(c) The above **restriction shall apply in respect of fees** for other work(s) or service(s) or assignment(s) payable to the **Statutory Auditor and their Associate Concern(s) put together.**

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(d) **Restriction on Other Assignments –** In regard to taking up other work(s) or assignment(s) of the Undertaking Company referred to above, it shall be open to such **Associate Concern** or Corporate Body to **render such work(s) or service(s) or assignment(s) so long as aggregate remuneration** for such other work(s) or service(s) or assignment(s) **payable to the Statutory Auditor/s together with fees payable to its Associate Concern**(s) or Corporate Body(ies) do/does **not exceed the aggregate of fee payable for carrying out the statutory audit.**

(e) **Meaning –**

- "Other Work(s)" / "Service(s)" / "Assignment(s)" shall include Management Consultancy and all other professional services permitted by the Council u/s 2(2)(iv) of the CA Act, 1949 but shall not include –
  1. Audit under any other Statute,
  2. Certification work required to be done by the Statutory Auditors, and
  3. Any representation before an authority.

(f) **"Associate Concern" means** any **Corporate Body** or **Partnership Firm** which renders the Management Consultancy and all other professional services permitted by the Council, wherein the Proprietor and/or Partner(s) of the Statutory Auditor Firm and/or their "relative(s) is/are Director/s, or Partner/s and/or jointly or severally hold "substantial interest" in the said Corporate Body or Partnership.

(g) **"Relative" & "Substantial Interest"** shall have the same meaning as under Appendix (9) to CA Regulations.

Chapter – X
Appointment of an Auditor when he is Indented to a Concern

A member of the Institute in practice or a partner of a firm in practice or a firm shall not accept appointment as auditor of a concern while indebted to the concern or given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding ₹ 10,000/-

Chapter – XI
Directors in case of Unjustified Removal of Auditors

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

Chapter – XII
Repeal and Saving

- The Notifications as specified in the Schedule hereto, issued under erstwhile (previous) Clause (ii) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 by the Council from time to time shall stand repealed from the date herein.
- **Notwithstanding such repeal** –
  (a) Anything done or any action taken or purported to have been done or taken, any enquiry or investigation commenced or show cause notice issued in respect of the said notifications shall be deemed to have been done or taken under the corresponding provisions of these guidelines.
  (b) Any application made to the Council or Director (Discipline) under the said Notifications and pending before the Director (Discipline), Board of Discipline, Disciplinary Committee and the Council shall be deemed to have been made under the corresponding provisions of these Guidelines.

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Recommended Self-Regulatory Measures

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.**

   Note → 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 –

   (a) Where the accounting records of the branches are maintained at the head office of the respective companies, and

   (b) Where significant operations of an undertaking or a company are carried out at its branch office.

2. **Joint Audit –** In the case of **large compan**ies 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.**

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/assistant, typists, peons and other persons not engaged directly in such professional work.

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.

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(1B)** 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,**
   - ✓ **Public Financial Institutions or**
   - ✓ **Where appointment is made by the Government.**

6. **Statement on CPE** – All members of the Institute, except those who are exempted below, are required to meet the CPE credit requirement as would be recommended by the Council from time to time.

   (a) Exception –
   - ✓ A Member who attains the **age of 60 years** during a particular Calendar Year;
   - ✓ A Member, for the year during which he gets his **Membership for the First Time;**
   - ✓ A Member or class of Members to whom the **CPE Committee grant Full/Partial exemption.**

   (b) Penal action – As would be decided by the Council, will be taken on the Members who have shown their willful non – compliance, with the requirements of this Statement.

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7. Recommended scale of fees chargeable for the work done by the members of the Institute –

The Council of the Institute of Chartered Accountants of India recommended from time to time scale of fees chargeable for the work done by the member of the Institute. Such scales of fees were last revised effective from April 1, 2000. Keeping in view the overall increase in the cost of living since then, the Council at its meeting held in January 2006, has revised the existing recommended fees asunder (effective from 12th May 2006)

S.N.	Services	Revised fees with effect from 12/05/2006	
		BETWEEN (₹)	**AND (₹)**
1.	For giving expert evidence in courts of law in the Union of India according to professional standing of the witness.	7500	15000
		[For each day or part there- of, spent in attendance and/ or travelling]	
2.	**Other Work –**		
	(a) Statutory Audit, Tax Audit, Internal Audit, Accountancy and Secretarial Work –		
	Principal	**900**	**1800**
	Qualified Assistant	**450**	**900**
	Semi – Qualified/Other Assistants	**150**	**300**
		[Per Hour]	**[Per Hour]**
	(b) Taxation Work –		
	Principal	**1500**	**3000**
	Qualified Assistant	**750**	**1500**
	Semi – Qualified/Other Assistants	**200**	**600**
		[Per Hour]	**[Per Hour]**
	(c) Investigation, Management Services or Special Assignments –		
	Principal	**2250**	**4500**
	Qualified Assistant	**1125**	**2250**
	Semi – Qualified/Other Assistants	**375**	**750**
		[Per Hour]	**[Per Hour]**

Note –

1. Office time spent in travelling would be chargeable. In case of outstation work, travelling and out-of-pocket expenses would also be chargeable.
2. The Council issues for general information the above revised recommended scale of fees which it considers reasonable under present conditions. It will be appreciated that the actual fees charged in individual cases will be matter of agreement between the member and the client.

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Some Additional Guidelines of the Councils

A. Guidelines for permitting the Chartered Accountants/Firms of Chartered Accountants to create and post their particulars at "WEBSITE"

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 –

1. The actual **format** of the Website is **not being prescribed nor** is **any standard format** of the Website being given to provide independence to the Members.
2. There is **no restriction on the colours** which may be used in the Website.
3. Individual Members would also be permitted to have their Web pages in **their trade name or individual name.**
4. 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. **(Most Imp)**
5. 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.**
6. 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.
7. The Chartered Accountants would, however, be **permitted** to mention their **Website address on** their **professional stationery.(Most Imp)**
8. The following **information** may be allowed to be displayed on the Firms'/Members' **Websites –**

(a) Member/Trade/Firm Name.

(b) Year of Establishment. (Most Imp)

(c) Member/Firms Address (both HO and Branches).

(d) Tel.

(e) Fax.

(f) E – Mail ID(s)

(g) Nature of Services rendered (To be displayable only on specific "Pull" request). (Imp)

(h) Partners –

Partners Name	Year of Qualifications	Tel. No. /Off. – Direct/Res. Mobile/E – mail add.	Area of Experience(To be displayable only on specific "Pull" request)

(i) Details of Employees –

Professional	Others	Name	Designation	Area of Experience(To be displayable only on specific "Pull" request)

(j) Job Vacancies for the Chartered Accountant/Firm of Chartered Accountants (including Articleship)

(k) No. of Article Clerks/Assistant. (To be displayable only on specific "Pull" request). (Imp)

(l) Nature of Assignments handles (To be displayable only on specific "Pull" request). (Most Imp)

(m) Names of Clients and Fee charged cannot be given. (Most Imp)

(n) Logo on the website is not permitted. (Imp)

(o) Passport size photograph is permitted. (Most Imp)

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

(q) The **bulletin boards can be provided**.

(r) 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.

(s) The Members/Firms can provide **online advice to their clients** who specifically request for the advice **whether free of charge or on payment.**

(t) The **listing** on suitable **search engine** is **permitted.**

(u) The Website may provide a **link** to the Website of ICAI, its Regional Councils (CIRC/WIRC) and Branches (Jodhpur branch) and also to the Websites of Government / Government Departments / Regulatory Authorities / **Other Professional Bodies** (AICPA, ICAEW).

(v) The address of the **Website** should be **intimated** to the **ICAI** within **30 days.**

(w) 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.**

Some Quires –

1. Can Members or Firms have their name on listed on data – bases created by Chartered Accountant Societies (Bombay Chartered Accountant Society) or Other Bodies? (Recent Amendment)

Response –

- A number of **Chartered Accountants Societies** or other bodies are creating **data-bases** of Chartered Accountants or Firms and are offering listing to Chartered Accountants.
- Such listing would be **permitted with or without payment.**
- In case a Chartered Accountant or 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.**

2. Can a Chartered Accountants or Firms provide consultation and advice through Websites set – up by Non – Chartered Accountants Firm, Corporates including Banks, Finance Co. and Newspapers? (Recent Amendment)

Response –

- A number of **non-Chartered Accountants' firms, Corporates** including **Banks, Finance Companies** and **Newspapers** have set up **their own websites providing advisory services on taxation** and other areas where Chartered Accountants are rendering professional service.
- Some of such websites may request Chartered Accountants or Firms to provide **consultation and advice through their websites.**
- The above 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 Firm with **suffix "Chartered Accountants"** would **not be permitted."**

3. Can a Chartered Accountants or Firms Advertisement in the nature or any other nature Website?

Response –

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

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B. Guidelines of the Council in the context of use of designation etc. and manner of Printing of Letter Heads

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

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C. Guidelines of the Council in the context of Visiting card

1. **Photos on visiting card –** Members are not permitted to use own photograph on visiting cards.
2. **Some points to be considered in case of where Visiting cards are printing for CCM/RCM/MCM of Branches**
   (a) The visiting cards will be printed for both the elected and nominated Council members.
   (b) The visiting cards are also printed for members of Regional Councils and Managing Committees of the branches. The visiting cards will be used only for official work of the Institute.
   (c) The Head office of the Institute will print the visiting cards for President, Vice-President and Members of Council including Chairman / Vice – Chairman of the Committees of the Council.
   (d) The offices of Regional Councils and Branches will print the visiting cards for respective Regional Councils and Branches.
   (e) The members themselves will not print the visiting cards.
   (f) The full term of the Council/Regional Council/Branch will be mentioned for example 2007 to 2010.
   (g) Cards with the designation/description viz., former/past President, membership of national/international bodies even at personal cost will not be permitted.
   (h) The visiting cards will be returned to the offices of the Institute as soon as the term of the President and Vice-President, the Membership of the Council/ Chairmanship/Vice Chairmanship of respective Committees of the Council/ Chairmanship/Vice Chairmanship/Secretaryship/Treasurership/Membership of the Regional Council/Managing Committee of the Branch expires.
   (i) The visiting cards will be printed in the prescribed formats. The type of paper, printing, colour of ink of the visiting cards will be uniform and of the same type and manner.

Important decisions of the Ethical Standards Board

1. Transfer Pricing certification Services are permissible for an Auditor of an entity as it is only a certification work and not an audit, and the issue of independence is not involved.
2. Consultancy work is permissible with the assignment of internal audit.
3. Exemption is given from provisions of Minimum Audit Fees in case of public sector /other banks in charging fees for other similar assignments along with concurrent audit.
4. Use of CA logo in the stamp is permissible subject to CA logo guidelines issued by the Institute.
5. A Chartered Accountant in practice may accept a professional assignment of investigation given by Insurance Company.
6. In case of a CA firm providing Internal Audit and Tax Consultancy services to a holding company accepting appointment as the statutory auditor in the subsidiary company, there is possibility of independence of the auditor being compromised in the perception of ethics from the view point of the public. Hence the said assignment is not permissible.
7. On the issue whether a member can be a Director in Cooperative Bank, it was decided that a member may be a Director Simplictor in a Co-operative Bank, provided he is not in charge of the executive functions.
8. On the issue whether Paid Assistants in the CA firms be allowed to do attest functions, it was decided that attest functions are not permissible.
9. Can a concurrent auditor of a bank also undertake the assignment of quarterly review of the same bank?

   No, the concurrent audit and the assignment of quarterly review of the same entity cannot be taken simultaneously as the concurrent audit is a kind of internal audit and the quarterly review is a kind of statutory audit.
10. Whether a statutory auditor can accept the system audit of same entity?

    Yes, the statutory auditor can accept the assignment of a system audit of the same entity, provided it did not involve any scrutiny/review of financial data and information.
11. Whether a statutory auditor can be appointed in the adjourned meeting in place of existing statutory auditor where no special notice for removal or replacement of the retiring auditor is received at the time of the original meeting?

    No, 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, 1956, special notice should be given to the Company at least fourteen clear days before the meeting.
12. Whether an **Independent Director can sign** the financial statements of the company despite he is practicing CA?

    A CA in practice can be a **'Director Simplictor'**, which includes an independent director. The independent directors are part of the Board where the Accounts are approved, they being party to approval of financial statement. A CA who is **director (Independent) can sign** the financial statement. However, he **cannot be involved in the day to day affairs of the company.**

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How Present Answers in Exams

Before you start solving the problems I want to share something with you all –

1. As you all are CA – Final students so our Institute expects from you Expert Level of Knowledge because you all served for atleast 2/2.5 years or some may have completed also their Articleship.

2. As you have served your Articleship so there requires some maturity while presenting your views or for solving or answering problems.

3. The above Maturity and Expertise will be counted if you give proper source of your answers (i.e. Sections/Sub – sections/Clauses no. /Names of case laws).

4. It must be noted that as such there is no such requirement of Sections, etc. but again remember that you have served your Articleship and clear Intermediate.

5. While following point no. 3 students must remember that I have always while teaching in class said and you all while studying this subject read that audit is having relationship with many disciplines [For e.g. Accounts (A.S), Taxations (DT/ITD), Laws (Co's Act)] so to make better your presentation write your answers in integrated manner (i.e. make links with other Acts, laws as and when required)

Students must note I have given only clue to of the problems so that you can approach in right direction but one may doubt or ask that sir clues are already known or we can find by any way/means, what we requires is that 'How to Present' our answer.

So here is the answer of the your doubt/question which will help to answer the questions/problem in very effective and efficient manner –

1. Find relevant provision/para/clause.
2. Relate the provision with the facts of the problem.
3. Give the reference of case law(s) (i.e. decision of court) if any which have similar facts as given in the problem.

First 3 points are starting lines of your answer.

4. Write facts of the given problems in the problem(i.e. briefing the problem)

This is middle lines of your answer.

5. Finally approach towards to the conclusion. (It must be noted that conclusion must not be more that 2 – 3 lines)

This is last lines of your answer

6. One must be note that Standard language for starting conclusion is –

   "Hence as per the above provision, decision held and facts given the question/problem..."

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