

PROFESSIONAL ETHICS

Questions from RTP/MTP/PREVIOUS PAPERS/PRACTICE
MANUAL.

G's publicAtions

GIRIDHAR DANDE

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

(1) CA. Arjit registered his proprietorship firm last year and started practicing in the name of "M/s Arjit & Co.". He is of the view that a professional need to maintain books of accounts only if his earnings exceed the minimum prescribed limit as per section 44AA of the Income Tax Act, 1961. Therefore, he decided not to maintain his books of accounts as his earnings are below the prescribed limit given under section 44AA of the said Act.

Maintenance of Books of Accounts: Chapter V of the Council General Guidelines, 2008 specifies that 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 accounts including the following:

(i) a Cash Book (ii) a Ledger

Thus, a Chartered Accountant in practice is required to maintain books of accounts. In the instant case, CA. Arjit does not maintain books of accounts bearing in mind the provisions of section 44AA of the Income Tax Act, 1961.

Accordingly, it does not matter whether section 44AA of the Income Tax Act, 1961 applies or not. Hence, Mr. Arjit, being a practicing Chartered Accountant will be held guilty of professional misconduct for violation of Council General Guidelines, 2008.

(2) CA. Sufi is practicing since 2008 in the field of company auditing. Due to his good practical knowledge, he was offered editorship of a 'Company Audit' Journal which he accepted. However, he did not take any permission from the council regarding such editorship.

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

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

In the instant case, CA. Sufi accepted editorship of a journal for which he did not take any permission from the Council. In this context, it may be noted that the editorship of professional journals is covered under the general permission.

Therefore, CA. Sufi shall not be held guilty of professional misconduct in terms of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

(3) As a Chartered Accountant in practice, Mr. Denis is offered to conduct a review of the "Profit Forecast" prepared by a company in connection with its application for a term loan from a financial institution.

Certification of Financial Forecast: Under Clause (3) of Part I of Second Schedule to the Chartered Accountants Act, 1949, a CA in practice is deemed to be guilty of professional misconduct if he permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in manner which may lead to the belief that he vouches for the accuracy of the forecast.

Further, **SAE 3400 “The Examination of Prospective Financial Information”**, provides that the management is responsible for the preparation and presentation of the prospective financial information, including the identification and disclosure of the sources of information, the basis of forecasts and the underlying assumptions. The auditor may be asked to examine and report on the prospective financial information to enhance its credibility, whether it is intended for use by third parties or for internal purposes. Thus, while making report on projection, the auditor need to mention that his responsibility is to examine the evidence supporting the assumptions and other information in the prospective financial information, his responsibility does not include verification of the accuracy of the projections, therefore, he does not vouch for the accuracy of the same.

Hence, Mr. Denis may accept the offer if the above requirements are complied with.

(4) CA. Sonu and CA. Monu are two partners of the CA firm ‘Sonu Monu and Associates’. Being very pious (devoutly religious), CA. Sonu organised a religious ceremony at his home for which he instructed his printing agent to add his designation “Chartered Accountant” with his name in the invitation cards. Later on, the invitations were distributed to all the relatives, close friends and clients of both the partners.

Printing of Designation “Chartered Accountant” on Invitations for Religious Ceremony: As per Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.

However, the Council of the ICAI is of the view that the designation “Chartered Accountant” as well as the name of the firm may be used in greeting cards, invitations for marriages, religious ceremonies and any other specified matters, provided that such greeting cards or invitations etc. are sent only to clients, relatives and close friends of the members concerned.

In the given case, CA. Sonu has instructed to write designation “Chartered Accountant” on invitation cards for a religious ceremony and distributed the same to all the relatives, close friends and clients of both the partners.

In this context, it may be noted that the Council has allowed using designation “Chartered Accountant” in invitations for religious ceremony, provided these are sent to clients, relatives and close friends of the members concerned only.

Therefore, CA. Sonu would be held guilty of professional misconduct under the said clause for sending such invitations to the relatives, close friends and clients of CA. Monu as well.

5.CA. X, holding CoP while in employment also, recommends his lawyer friend to his employer in respect of some case. His friend, out of the professional fee received from his employer, paid a particular sum of fee by way of gratification to CA. X. Comment – Is CA. X under no misconduct for receiving such fees from his lawyer friend? (ASKED IN MAY-14 EXAM)

Referral Fee from Lawyer: According to Clause (2) of Part II of First Schedule to the Chartered Accountant Act, 1949, a member of the Institute (other than a member in practice) shall be guilty of professional misconduct, if he being an employee of any company, firm or person accepts or agrees to accept any part of fee, profits or gains from a lawyer, a chartered accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

The member would be guilty of misconduct regardless of the fact that he was in whole-time or part-time employment or that he was holding Certificate of Practice along with his employment.

In the present case, CA. X who besides holding a CoP, is also an employee and by referring a lawyer to the company in respect of some case, he receives a particular sum of fee by way of gratification from the lawyer out of his professional fee.

Therefore, CA. X will be held guilty of professional misconduct by virtue of Clause (2) of Part II of First Schedule to the said Act.

6. M/s CD & Co., a firm of Chartered Accountants, accepted an assignment for audit under State level VAT Act and communicated the same over phone to the previous auditor, M/s AB & Co., Chartered Accountants. Comment.

Failure to Communicate with the Previous Auditor in Writing: As per Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice is deemed to be guilty of professional misconduct if he accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificates Rules 1932, without first communicating with him in writing.

In the instant case, M/s CD & Co. accepted the audit under State Level VAT Act, carried out by M/s AB & Co., another firm of chartered accountants, in the previous year. The current auditor communicated their appointment over phone i.e. no written communication held.

A communication in writing is mandatory requirement for all types of audit, if the previous auditor is a chartered accountant. Hence, the firm would be held guilty of professional misconduct under Clause (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

7. CA. Preeti is a leading Income Tax Practitioner in Delhi. She is very much fond of cooking. Due to this passion of her, she also wrote a cookery book "Delight your tummy" during the year. But, she didn't take any permission from the Council of the Institute for engaging herself into authorship of such book. Comment.

Engaging into Business/Profession Other Than the Profession of CA: As per Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in Practice is deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council so to engage.

Further, the Chartered Accountants Regulation, 1988 provides that a Chartered Accountant in practice shall not 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. According to the same, general permission has been granted for authorship of books and articles.

In the given case, CA. Preeti has written a cookery book without obtaining specific or prior approval of the Council.

On this context, it may be noted that no specific permission is required to be obtained for authorship of books and articles. Therefore, CA. Preeti would not be held guilty of professional misconduct under Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

8. A special notice has been issued for a resolution at 3rd annual general meeting of Tiddle Ltd. providing expressly that CA. Modish shall not be re-appointed as an auditor of the company. Consequently, CA. Modish submitted a representation in writing to the company as provided under section 140(4)(iii) of the Companies Act, 2013. In the representation, CA. Modish incorporated his independent working as a professional throughout the term of office and also indicated his willingness to continue as an auditor if re-appointed by the shareholders of the Company. Comment – Is CA. Modish allowed to submit the representation and write such content?

Soliciting Clients: As per Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means except applying or requesting for or inviting or securing professional work from another chartered accountant in practice and responding to tenders.

Further, section 140(4)(iii) of the Companies Act, 2013, provides a right, to the retiring auditor, to make representation in writing to the company. The retiring auditor has the right for his representation to be circulated among the members of the company and to be read out at the meeting. However, the content of letter should be set out in a dignified manner how he has been acting independently and conscientiously through the term of his office and may, in addition, indicate, if he so chooses, his willingness to continue as auditor, if re-appointed by the shareholders.

Thus, the incorporation as an independent professional, made by CA. Modish, while submitting representation under section 140(4)(iii) of the Companies Act, 2013 and indication of willingness to continue as an auditor if re-appointed by shareholders, does not leads to solicitation.

Therefore, CA. Modish will not be held guilty for professional misconduct under Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949.

MTP F-16

9. CA. X, a practicing Chartered Accountant, failed to return the books of account and other documents of ABC Ltd. despite many reminders from the company. The company had settled his entire fees dues also. (ASKED IN MAY-13 EXAMS)

Bringing Disrepute to the Profession: A member is liable to disciplinary action under section 21 of the Chartered Accountants Act, 1949, if he is found guilty of any professional or “Other Misconduct”. As per

Clause (2) of Part IV of the First Schedule to the said Act, a member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he, in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

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

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

10.CA. Laxya in practice, is offered the office of managing director of Rahi Pvt. Ltd. which he accepted spontaneously and joined the office from the very next moment.

Specific Permission for Holding Office of Managing Director: As per Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of chartered accountant unless permitted by the Council so to engage.

Further, regulation 190A of the Chartered Accountants Regulation, 1988 provides that a Chartered Accountant in practice shall not 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. According to the same, specific permission from the council would be necessary for holding office of managing director or a whole-time director of a body corporate.

In the given case, CA. Laxya has immediately joined the office of managing director of Rahi Pvt. Ltd. without obtaining specific or prior approval of the Council.

Therefore, CA. Laxya will be held guilty of professional misconduct under Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

11. A Chartered Accountant in practice certified in requisite Form that an articled assistant was undergoing training with him, whereas, he was also employed in a company between 10 a.m. and 6 p.m. on a monthly salary of Rs. 17,000 and attended the office of the Chartered Accountant thereafter until 7 p.m. The Chartered Accountant pleaded that the articled assistant was on audit of the company.

Failure to Observe Regulations: As per Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949, a member shall be held guilty of professional misconduct if he contravenes any of the provisions of the Act or the regulations made thereunder or any guidelines issued by the Council. The chartered accountant, as per Regulations also, is expected to impart proper practical training.

In the instant case, the articled assistant is not attending office on timely basis and the explanation of the Chartered Accountant that the articled assistant was on audit of the company cannot be accepted particularly in view of the fact that articled assistant is getting monthly salary from that company. Under the circumstances, the Chartered Accountant would be held guilty of professional misconduct in regard to the discharge of his professional duties.

12. XYZ & Co. appointed CA. M, a practicing chartered accountant, as liquidator of the company. CA. M charged his professional fees based on percentage of the realisation of assets. (ASKED IN MAY-15 EXAMS)

Charging of Fees Based on Percentage of Profits: According to Clause (10) of Part I of First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he 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.

However, CA Regulation allow the Chartered Accountant in practice to charge the fees in respect of any professional work which are based on a percentage of profits, or which are contingent upon the findings or results of such work, in the case of a receiver or a liquidator, and the fees may be based on a percentage of the realization or disbursement of the assets.

In the given case, CA. M, a practicing Chartered Accountant, has acted as liquidator of XYZ & Co. and charged his professional fees on percentage of the realisation of assets.

Therefore, CA. M shall not be held guilty of professional misconduct as he is allowed to charge fees on percentage of the realisation of assets being a liquidator.

RTP N-15

13. CA Brilliant is a leading income tax practitioner and consultant for derivative products. He resides in Mumbai near to the XYZ commodity stock exchange and does trading in commodity derivatives. Every day he invests most of his time to settle the commodity transactions though he has not obtained any permission from the Institute for conducting such business.

Engaging into a Business: As per clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of Chartered Accountant unless permitted by the Council so to engage.

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

In this case, CA Brilliant is engaged in the occupation of trading in commodity derivatives which is not covered under the general permission. Further, he has not even obtained any permission from the Institute for conducting such business.

Hence, he will be deemed to be guilty of professional misconduct under Hence, he will be deemed to be guilty of professional misconduct under

14. CA Intelligent, a Chartered Accountant in practice, provides part-time tutorship under the coaching organization of the Institute. On 30th June, 2016, he was awarded 'Best Faculty of the year' as gratitude from the Institute. Later on, CA Intelligent posted his framed photograph on his website wherein he was receiving the said award from the Institute.

Posting Photograph on Website: A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct under clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, if he solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.

In the given case, CA Intelligent shared his framed photograph on website wherein he was receiving 'Best Faculty of the year' award from the Institute.

In this context, it may be noted that according to the guidelines approved by the Council of the Institute of Chartered Accountants of India, no photographs of any sort are permitted. Only display of passport size photograph is permitted.

Therefore, CA Intelligent is guilty of professional misconduct under clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

15. Mr. Hopeful, an aspiring student of ICAI, approached Mr. Witty, a practicing Chartered Accountant, for the purpose of articleship. Mr. Witty, the principal, offered him stipend at the rate of Rs.2,000 per month to be paid every 6 month along with interest at the rate of 10% per annum compounded monthly to compensate such late payment on plea that cycle of professional receipts from clients is 6 months. Mr. Hopeful agreed for such late payment in the hope of getting extra stipend in the form of interest. Mr. Witty, however, used to disburse salary to all of his employees on time.

Contravening Provisions of the Act: A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct under clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949, if he contravenes any of the provisions of this Act or the regulations made there under or any guidelines issued by the Council.

In the given case, Mr. Witty has failed to make the payments of stipend to articled assistant every month in accordance with Regulation 48. The fact that the articled assistant will be compensated with extra sum in the form of interest on late payment is not relevant and the plea that cycle of professional receipts from clients is 6 months is not acceptable as Mr. Witty has disbursed salary to all of his employees on time.

Therefore, Mr. Witty is guilty of professional misconduct under clause (1) of Part II of the Second Schedule to the Chartered Accountants Act, 1949 as he has contravened Regulation 48 by not making the payment every month.

16. MNC Pvt. Ltd. appointed CA Posh for some professional assignments like company's ROC work, preparation of minutes, statutory register etc. For this, CA Posh charged his fees depending on the complexity and the time spent by him on each assignment.

Later on, MNC Pvt. Ltd. filed a complaint against CA Posh to the Institute of Chartered Accountants of India (ICAI) that he has charged excessive fees for the assignments comparative to the scale of fees recommended by the Committee as well as duly considered by the Council of ICAI.

Charging Excess Fees: The prescribed scale of fees for the professional assignments done by the chartered accountants is recommendatory in nature. Charging an excessive fee for a professional assignment does not constitute any misconduct in the context of the provisions of the Chartered Accountants Act, 1949 and

regulation made thereunder since the matter of fixation of actual fee charged in individual cases depends upon the mutual agreement and understanding between the member and the client.

In the given case, CA Posh has charged excess fees comparative to the scale of fees recommended by the Committee as well as duly considered by the Council of ICAI. In this context, it may be noted that the scale of fees is the minimum prescribed scale of fees.

From the above facts and provisions, it may be concluded that CA Posh is not liable for any misconduct under the Chartered Accountants Act, 1949. Therefore, the contention of MNC Pvt. Ltd. is not tenable.

MTP O-15

17. Ms. Aabha, a Chartered Accountant in practice, entered into a partnership with Mr. Abhay, 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.

Partnership with an Advocate: As per Clause (4) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a chartered accountant will be guilty of professional misconduct if he enters into partnership with any person other than a chartered accountant in practice or a person resident without India who but for his residence abroad would be entitled to be registered as a member under Clause (v) of Sub-section (1) of Section 4 or whose qualification are recognized by the Central Government or the Council for the purpose of permitting such partnership.

However, for the purpose of Limited Liability Partnership, Regulation 53B of the Chartered Accountants Regulations, 1988 permits a Chartered Accountant in practice to enter into partnership with other prescribed Professional Bodies which includes an Advocate, a member of Bar Council of India.

In the instant case, Ms. Aabha, a chartered accountant in practice, has entered into partnership with Mr. Abhay, an advocate.

Thus, she would not be guilty of professional misconduct as per Clause (4) of Part I of First Schedule read with Regulation 53B.

18. Mr. 'P' is a practicing Chartered Accountant working as a proprietor of M/s P & Co. He went abroad for 2 months. He delegated the authority to Mr. 'C' a Chartered Accountant his employee for taking care of routine matters of his office. During his absence, Mr. 'C' has issued the audit queries to clients which were raised during the course of audit.

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

However, 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 and such delegation will not attract provisions of this clause like issue of audit queries during the course of audit, etc.

In the given case, CA. 'P' proprietor of M/s P & Co., went to abroad and delegated the authority to another Chartered Accountant Mr. C, his employee, for taking care of routine matters of his office who is not a partner but a member of the Institute of Chartered Accountants. Mr. 'C' has issued audit queries which were raised during the course of audit.

Here "C" is right in issuing the query, since the same falls under routine work which can be delegated by the auditor. Therefore, there is no misconduct in this case as per Clause (12) of Part I of First schedule to the Act.

19. M/s XYZ & Co., a firm of Chartered Accountants, has taken a loan for acquiring computers, printers and scanner from a company whose Managing Directors' son is an Articled Trainee with CA. X, a partner of M/s XYZ & Co. (ASKED IN NOV-14)

Loan from a Company: As per Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant is deemed to be guilty of professional misconduct if he contravenes any of the provisions of Chartered Accountants Act, 1949 or Regulations made thereunder.

Regulation 47 of the Chartered Accountant's Regulations, 1988, prohibits a member from accepting any premiums or loans or any deposit in any form from an articled clerk directly or indirectly.

In the given case, M/s XYZ & Co. has taken loan from a company whose Managing Director happens to be father of articled clerk with CA. X, a partner of M/s XYZ & Co. Here, the articled trainee has no direct interest in that company. There has been a case wherein a chartered accountant was held guilty of professional misconduct because he took a loan from a firm in which the articled clerk and his father were both interested. But, in this case as per the facts, the articled trainee has no direct interest in the company. However, if relationship, direct or indirect, can be established in view of relationship of articled trainee with MD of the company, CA. X of M/s XYZ & Co. would be held liable for professional misconduct. Thus, M/s XYZ & Co. would be guilty of professional misconduct under this clause if it is proved that the loan was related to the engagement of the articled clerk.

20. CA. Panash is practicing in the name of M/s P & Associates at Chennai Office. Due to increase in the income tax assessment work, he opens another office near the income tax office within 46 kms of the municipal limits of his first office. For running the new office, he has employed a retired Income Tax Commissioner who is not a chartered accountant. Comment? (ASKED IN NOV-15 EXAM) (ASKED IN NOV-12 EXAM)

Maintenance of Branch Office: As per section 27 of the Chartered Accountants Act, 1949, if a chartered accountant in practice has more than 1 office in India, each one of these offices should be in the separate charge of a member of the Institute. However, a member can be in-charge of 2 offices if the second office is located in the same premises or in the same city, in which the first office is located; or the second office is located within a distance of 50 Kilometres from the municipal limits of a city, in which the first office is located.

In the given case, CA. Panash has a sole proprietorship in the name of M/s P & Associates at Chennai Office and due to increase in the work he opened another branch near the income tax office. His new office is within a distance of 46 Kilometres from the municipal limits of his first office. He also employed the income tax commissioner to run the new office.

Therefore, there will be no misconduct if CA. Panash will be in-charge of both the offices, however, he will be liable to declare which of the two offices is the main office.

MTP S-15

21. Mr. Brilliant, a chartered accountant in practice, created his own website in attractive format and highlighted the contents in blue colour. He also circulated the information contained in the website through E-mail to acknowledge public at large about his expertise. However, due to shortage of time, he could not intimate his website address to the Institute.

Circulating Information Contained in Own Website: As per clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.

However, the guidelines approved by the Council of the Institute of Chartered Accountants of India permit creation of own website by a chartered accountant in his or his firm name and no standard format or restriction on colours is there. The chartered accountant or firm, as per the guidelines, should ensure that none of the information contained in the website be circulated on their own or through E-mail or by any other mode except on a specific "Pull" request.

Further, members are not required to intimate the Website address to the Institute. Members are only required to comply with the Website Guidelines issued by the Institute in this regard.

In the given case, Mr. Brilliant has circulated the information contained in the website through E-mail to public at large. Therefore, he is guilty of professional misconduct under clause (6) of Part I of the First Schedule to the said Act. However, there is no such misconduct for not intimating website address to the Institute.

22. CA. Raj is a leading income tax practitioner and consultant for derivative products. He resides in Bangalore near to the XYZ commodity stock exchange and does trading in commodity derivatives. Every day, he invests nearly 50% of his time to settle the commodity transactions, though he has not taken any permission for this. Is CA. Raj liable for professional misconduct?

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

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

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

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

23. CA. Elegant is in practice for 2 years and runs his proprietorship firm in the name of “M/s Elegant & Co.”. He maintains notes in his mobile in which he writes the fees received from various clients. Based on his record, he prepares and files his income tax return.

Maintenance of Books of Account by a CA in Practice: Chapter V of the Council General Guidelines, 2008 specifies that 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 accounts including the following-

(i) a Cash Book (ii) a Ledger

Thus, a Chartered Accountant in practice is required to maintain proper books of accounts.

In the instant case, CA. Elegant does not maintain proper books of accounts and writes the fees received from various clients in notes in his mobile. Notes maintained by him in mobile cannot be treated as books of accounts.

Hence, CA. Elegant, being a practicing Chartered Accountant will be held guilty of misconduct for violation of Council General Guidelines, 2008.

24. The manager of ZedEx (P) Ltd. approached CA. Vineet in the need of a certificate in respect of a consumption statement of raw material. Without having certificate of practice (CoP), CA. Vineet issued the certificate to the manager of the company, acting as a CA in practice and applied for the CoP to the Institute on very next day to avoid any dispute.

Issuing Certificate without having Certificate of Practice: As per Clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949, a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council.

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

In the given case, CA. Vineet has issued a certificate in respect of a consumption statement of raw material to the manager of ZedEx (P) Ltd., as a Chartered Accountant in practice when he had not even applied for the CoP to the Institute, thereby contravening the provisions of **section 6** of the Chartered Accountants Act, 1949.

Therefore, CA. Vineet will be held guilty of professional misconduct in terms of clause (1) of Part II of Second Schedule to the Chartered Accountants Act, 1949 for contravention of provisions of this Act.

RTP M-15

25. Mr. Clever, a Chartered Accountant, prepared a project report for one of his client, Mr. King, to obtain long term loan of Rs.100 lakhs from a scheduled bank and decided to charge fees @10% of the loan approved. Subsequently, the bank approved the loan amounting to Rs.80 lakhs. Consequent to the approval of loan by the bank, Mr. Clever raised an invoice for his services @10% of the loan approved, as decided.

Charging of Fees Based on Percentage: As per Clause (10) of Part I of First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he 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.

In the given case, Mr. Clever has prepared a project report, to obtain a long term loan, for Mr. King. However, he decided to raise the invoice of his service @10% of the loan to be sanctioned in future, which is basically contingent upon the findings. Therefore, Mr. Clever will be held guilty for professional misconduct under the abovementioned clause.

26. Ms. Preeti is a practicing Chartered Accountant. Mr. Preet is a practicing Advocate representing matters in the court of law. Ms. Preeti and Mr. Preet decided to help each other in the matters involving their professional expertise. Accordingly, Ms. Preeti recommends Mr. Preet in all tax litigation matters in the court of law and Mr. Preet consults Ms. Preeti in all matters related to finance and other related matters, which comes to him in arguing various cases in the court of law. Consequently, they started sharing some part in the profits of their professional work. (ASKED IN MAY-16 EXAMS)

Sharing and Accepting of Part of Profits with an Advocate: According to Clause (2) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute, for the purpose of rendering such professional services from time to time in or outside India.

Furthermore, Clause (3) of Part I of the First Schedule to the said Act states that a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he accepts any part of the profits of the professional work of a person who is not a member of the Institute.

However, 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 prescribed by the Council under Regulation 53-A of the Chartered Accountants Regulations, 1988. Under the said regulation, the member of "Bar Council of India" is included.

Therefore, Mr. Preet, an advocate, a member of Bar Council, is allowed to share part of profits of his professional work with Ms. Preeti. Hence, Ms. Preeti, a practicing Chartered Accountant, will not be held guilty under any of the abovementioned clauses for paying and accepting part of profits from Mr. Preet.

27. A special notice has been issued for a resolution at 3rd annual general meeting of Fiddle Ltd. providing expressly that CA Smart shall not be re-appointed as an auditor of the company. Consequently, CA Smart submitted a representation in writing to the company as provided under section 140(4)(iii) of the Companies Act, 2013. In the representation, CA Smart incorporated his independent working as a professional throughout the term of office and also indicated his willingness to continue as an auditor if reappointed by the shareholders of the Company.

Soliciting Clients: As per Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he solicits clients or

professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means except applying or requesting for or inviting or securing professional work from another chartered accountant in practice and responding to tenders.

Further, section 140(4)(iii) of the Companies Act, 2013, provides a right, to the retiring auditor, to make representation in writing to the company. The retiring auditor has the right for his representation to be circulated among the members of the company and to be read out at the meeting. However, the content of letter should be set out in a dignified manner how he has been acting independently and conscientiously through the term of his office and may, in addition, indicate, if he so chooses, his willingness to continue as auditor, if re- appointed by the shareholders.

Thus, the incorporation as an independent professional, made by CA Smart, while submitting representation under section 140(4)(iii) of the Companies Act, 2013 and indication of willingness to continue as an auditor if reappointed by shareholders, does not leads to solicitation.

Therefore, CA Smart will not be held guilty for professional misconduct under Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949.

28. Mr. Brainy, a Chartered Accountant in practice, is the auditor of Fair Ltd. He advised the Managing Director of the company to include 'orders under negotiation' in sales, to reflect higher profit and better financial position for obtaining bank loans in future. Mr. Brainy, thereafter, gave clean reports on the balance sheet prepared accordingly without examining the accounts.

Grossly Negligent and Bringing Disrepute to the Institute: Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 states that a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.

Furthermore, Clause (2) of Part IV of the First Schedule to the said Act states that a member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he, 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.

In the given case, Mr. Brainy, a Chartered Accountant in practice, is grossly negligence in conduct of his professional duties by issuing clean reports on the balance sheet without examining the accounts. Further, he has also brought disrepute to the profession by advising unethical practice to the managing director of the company. Therefore, Mr. Brainy will be held guilty for professional and other misconduct under abovementioned Clauses to the Chartered Accountants Act, 1949.

MTP M-15

29. Mr. Raj, a renowned practicing Chartered Accountant, decided to tie his knot(rope) with Ms. Anjani. While giving order for marriage invitation cards, Mr. Raj instructed to add his designation "Chartered Accountant" with his name. Later on, the cards were distributed to all his relatives, close friends and clients.

Printing of Designation "Chartered Accountant" on Marriage Invitations: As per Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 , a Chartered Accountant in practice shall be

deemed to be guilty of professional misconduct if he solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.

However, the Council of the ICAI is of the view that the designation —Chartered Accountant|| as well as the name of the firm may be used in greeting cards, invitations for marriages and religious ceremonies and any other specified matters, provided that such greeting cards or invitations etc. are sent only to clients, relatives and close friends of the members concerned.

In the given case, Mr. Raj instructed to write designation Chartered Accountant on his marriage invitation cards and distributed the same to all his relatives, close friends and clients.

On this context, it may be noted that the Council has allowed using designation Chartered Accountant in invitations for marriages, provided these are sent only to clients, relatives and close friends of the members concerned. Therefore, Mr. Raj would not be held guilty of professional misconduct under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

30. CA Ram is practicing in the field of financial management planning for over 15 years. He has gained expertise in this domain over others. Mr. Ratan, a student of Chartered Accountancy course, is very much impressed with the knowledge of CA Ram. He approached CA Ram to take guidance on some topics of financial management subject related to his course. CA Ram, on request, decided to spare some time and started providing private tutorship to Mr. Ratan along with some other aspirants. However, he forgot to take specific permission for such private tutorship from the Council. (ASKED IN MAY-16 EXAMS)

Permission for Providing Private Tutorship: As per Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of chartered accountant unless permitted by the Council so to engage.

Further, regulation 190A of the Chartered Accountants Regulation, 1988 provides that a Chartered Accountant in practice shall not 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. According to the same there is no specific permission from the council would be necessary in the case of private tutorship.

In the given case, CA Ram has started providing private tutorship to Mr. Ratan along with some other aspirants, without obtaining specific or prior approval of the Council.

On this context, it may be noted that the Council has provided general permission for providing such private tutorship. Therefore, CA Ram would not be held guilty of professional misconduct under Clause (11) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

31. Mr. Sam, a Chartered Accountant in practice, provides guidance on post-issue activities to his clients e.g. follow up steps which include listing of instruments, dispatch of certificates and refunds etc. with the various agencies connected with the work. During the year 2015-16, looking to the growing needs of his clients to invest in the stock markets, he also started advising them on Portfolio Management Services whereby he managed portfolios of some of his clients.

Advising on Portfolio Management Services: The Council of the Institute of Chartered Accountants of India (ICAI) pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949 has passed a resolution permitting a Chartered Accountant in practice to render entire range of Management Consultancy and other Services. A clause of the aforesaid resolution allows Chartered Accountants in practice to act as advisor or consultant to an issue of securities including such matters as drafting of prospectus, filing of documents with SEBI, preparation of publicity budgets, advice regarding selection of brokers, underwriters etc., advice regarding post issue activities, like, follow up steps for listing of instruments, dispatch of certificates, refunds etc. It is, however, specifically stated that Chartered Accountants in practice are not permitted to undertake the activities of broking, underwriting and portfolio management services.

In the given case, Mr. Sam has started advising his clients on portfolio management along with other management consultancy services related to an issue.

Therefore, Mr. Sam would be guilty of misconduct under the Chartered Accountants Act, 1949 as a chartered accountant in practice is not permitted to manage portfolios of his clients.

32. Mr. P and Mr. Q are running a firm of Chartered Accountants in the name of M/s PQ & Co. On 23.05.2016, they included the name of Mr. R, a practicing Chartered Accountant, without his knowledge, as a partner while submitting an application for empanelment as auditor for Public Sector Bank branches to the Institute. However, they added Mr. R as a partner to their firm offering a share of 25% of the profits, on 25.05.2016. (ASKED IN MAY-16 EXAMS)

Submitting Wrong Information to the Institute: As per Clause (3) of Part II of the Second Schedule to the Chartered Accountants Act, 1949, a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct if he includes in any information, statement, return or form to be submitted to the Institute, Council or any of its committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false.

In the instant case, Mr. P and Mr. Q, partners of M/s PQ & Co., included the name of Mr. R, another Chartered Accountant, as partner in their firm, without his knowledge, in their application for empanelment as auditor of branches of Public Sector Banks submitted to the Institute. However, such a member was not a partner of the said firm as on the date of application submitted. Here, Mr. P and Mr. Q have submitted wrong information to the Institute.

Therefore, Mr. P and Mr. Q, both, would be held guilty of professional misconduct under Clause (3) of Part II of the Second Schedule to the Chartered Accountants Act, 1949.

MTP F-15

33. Mr. Altar, a Chartered Accountant, is employed as a paid Assistant with a Chartered Accountant firm. On 31st December, 2015 he leaves the services of the firm. Despite many reminders from ICAI he fails to reply regarding the date of leaving the services of the firm.

Failed to supply information called for: As per Clause (2) of Part III of the First Schedule to the Chartered Accountants Act, 1949, a member, whether in practice or not, will be deemed to be guilty of professional misconduct if he does not supply the information called for, or does not comply

with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate authority.

In the given case, Mr. Altar has failed to reply to the letters of the Institute asking him to confirm the date of leaving the service as a paid assistant.

Therefore, he will be held guilty of professional misconduct under Clause (2) of Part III of the First Schedule to the Chartered Accountants Act, 1949.

34. Mr. Clever, a Chartered Accountant was invited by the Chamber of Commerce to present a paper in a conference on the issues facing Indian IT Industry. During the course of his presentation, he shared some of the vital information of his client's business under the impression that it will help the Nation to compete with other countries at international level.

Disclosure of Client's Information: According to Clause (1) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be guilty of professional misconduct, if he 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. The Code of Ethics further clarifies that such a duty continues even after completion of the assignment. The Chartered Accountant may however, disclose the information in case it is required as a part of performance of his professional duties.

In the given case, Mr. Clever has disclosed vital information of his client's business without the consent of the client under the impression that it will help the nation to compete with other countries at International level.

Thus, Mr. Clever will be held guilty of professional misconduct under Clause (1) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

35. Mr. Unlucky, a Chartered Accountant, was in practice since last 30 years. Unfortunately, he died in a road accident. His widow sold the practice to Mr. Lucky, another Chartered Accountant in practice, for Rs. 30 lakhs. The price also included the right to use the firm name. Would it amount to sharing of fees with widow of Mr. Unlucky who is a non-member. (ASKED IN NOV-12 EXAM)

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

The Council resolved that the sale/transfer of goodwill in the case of a proprietary firm of chartered accountant to another eligible member of the Institute shall be permitted. It further laid down that in cases where the death of proprietor occurs after 30.08.1998, the goodwill of the deceased member's practice can be sold to another member and permission of the Institute has to be obtained within a year of the death of the proprietor concerned. It is even laid down that in such cases the name of the proprietary firm concerned would not be removed up to a period of 1 year from the death of the proprietor.

Thus, in the instant case, when the widow of Mr. Unlucky sold the practice to Mr. Lucky, it is nothing but sale of goodwill. The sale of the practice and the right to use the name is also allowed in terms of the above decision of the Council. Therefore, the above act of the widow of Mr. Unlucky is permissible.

36. An advertisement was published by Mr. Dozy, a member of the Institute, in a Newspaper containing the photograph of him, wherein he was congratulated on the occasion of the opening ceremony of his office.

Solicitation of Professional Work: As per Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.

In the given case, Mr. Dozy published an advertisement in a Newspaper containing his photograph on the occasion of the opening ceremony of his office which amounts to soliciting professional work by advertisement directly or indirectly. Therefore, Mr. Dozy will be held guilty of professional misconduct under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

RTP N-14

37. CA N, in practice, started project consultancy work as a part of his practice and to advance the same, sent mail to all the CAs in the country informing them of his services and for securing professional work.

As per clause 6 of Part I of First Schedule to the Chartered Accountants Act, a chartered accountant in practice is deemed to be guilty of professional misconduct, if he solicit clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.

However, nothing herein contained shall be construed as preventing or prohibiting, any chartered accountant from applying or requesting for or inviting or securing professional work from another chartered accountants in practice.

In the instant case, CA N has written email to all the CA for securing professional work from them and has not approached any other person or professional or communicated with any client,

Thus as per exception to the clause 6, CA N is well within the regulation of the act and has not committed any professional misconduct.

38. CA T, in practice, was appointed to carry out Internal audit of a stock broker, listed with BSE. However, he failed to intimate his appointment to the statutory auditors of the company. The statutory auditor feels this is violation of professional ethics.

As per clause 8 of Part I of First Schedule to the Chartered Accountants Act, a chartered accountant in practice is deemed to be guilty of professional misconduct, if he 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.

This clause is applicable in situation of replacing of one auditor by another auditor. Internal auditor and statutory audition are parallel positions and not replacement positions. The management generally

appoints the internal auditor whereas the statutory auditor will be appointed by the shareholders in the AGM. In this situation there is no need for communication by one to other.

In view of above the contention of the statutory auditor is unacceptable and there is no question of communicating in writing by Mr. T.

39. Mr. Ram, a Chartered Accountant in practice, received Rs.15,00,000 on 15th December, 2015 on behalf of one of his clients, who has gone to USA. Mr. Ram deposited the said amount in his saving bank account (SB Account). As per instruction of the client, the said amount is to be returned to the client on March 31, 2016 when he will return to India. On the occasion of birthday of his wife Sita, Mr. Ram withdrew Rs.5,00,000 and spent on Birthday party. He re-deposited Rs.5,00,000 in the said SB account on 25th March, 2016 and then returned the entire amount of Rs.15,00,000 to the client on March, 31, 2016.

Clause 10 of Part I of Second Schedule states that a Chartered Accountant shall be deemed to be guilty of professional misconduct if “he fails to keep money of his clients in separate banking account or to use such money for the purpose for which they are intended.”

Mr. Ram received the money on 15th December, 2015 which is to be paid to the client only on March 31, 2016. Hence, it should be deposited in a separate bank account.

Since in this case Mr. Ram have failed to keep the sum of Rs.15 lakhs in a separate Bank Account and utilised the part money for personal purpose on birthday occasion. Therefore, it amounts to professional misconduct under clause 10 of part I of Second Schedule.

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

40. CA. Smart, a CA in practice runs his proprietorship firm as “M/s Smart & Co.”. His annual gross receipts are in excess of Rs.40 Lakhs. He maintains a small pocket diary in which he writes the fees received from various clients. Based on his record, he prepares and files his income tax return.

Chapter V of the Council General Guidelines, 2008 specifies that 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 accounts including the following:

(i) a Cash Book (ii) a Ledger

Thus, a Chartered Accountant in practice is required to maintain books of accounts. In the instant case, CA Smart does not maintain books of accounts and writes the fees received from various clients in small pocket diary. A small pocket diary maintained by him cannot be books of accounts.

Hence, Mr. Smart, being a practicing Chartered Accountant will be held guilty for professional misconduct for violation of Council General Guidelines, 2008.

MTP O-14

41. CA Sushi, a practicing Chartered Accountant gave 60% of the audit fees received by her to Mr. Sushil, who was not a Chartered Accountant, under the nomenclature of office allowances. (ASKED IN MAY-14 EXAM)

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

In the instant case, CA Sushi, a practicing Chartered Accountant gave 60% of the audit fees received by her to Mr. Sushil, who was not a Chartered Accountant, under the nomenclature of office allowance. In this case, it is not the nomenclature to a transaction that is material but it is the substance of the transaction, which has to be looked into.

Therefore, CA Sushi will be held guilty of professional misconduct under clause (2) of Part I of First Schedule of Chartered Accountants Act, 1949.

(D. S. Sadri vs B.M. Pithewala - 14th & 17th September, 1974)

42. Mr. Rahul, a Chartered Accountant in practice approached Manager of a Nationalised Bank for a loan of Rs. 36 lakhs. He has also informed the Manager that if the loan is sanctioned, the Income Tax return of the Manager and Manager's wife will be filed for free of cost, as quid Pro quo for the loan sanctioned.(ASKED IN NOV-11)

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

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

In the given case, Mr. Rahul, a Chartered Accountant in practice approached Manager of a Nationalised Bank for a loan and offered for filing Income tax Returns without any fees. This approach of Mr. Rahul brings disrepute to the profession of a Chartered Accountant.

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

43. Mr. CA, a Chartered Accountant in practice is a partner in 4 firms. On the personal Letter Heads, he mentioned the names and address of all the 4 firms in small fonts. (ASKED IN NOV-15 EXAMS)

Advertisement of Professional Attainment: As per Clause (7) of Part I of First Schedule of the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he (i) advertises his professional attainments or services or (ii) uses any designation or expressions other than "Chartered Accountant" on professional documents, visiting cards, letter heads or sign boards unless it be a degree of a university established by law in India or recognized by the Central Government or a title indicating membership of the ICAI or of any other institution that has been recognized by the Central Government or may be recognized by the council.

Here there is no prohibition for printing names on the personal letter heads in which a member holding certificate of practice is a partner.

In the given case, Mr. CA mentioned the names and address of all the 4 firms in which he is a partner on the personal letter heads. Therefore, Mr. CA will not be held guilty of any professional misconduct in pursuant to Clause (7) of Part I of First Schedule of the Chartered Accountants Act, 1949.

44. CA Lazy, a practicing Chartered Accountant, did not complete his work relating to the audit of the accounts of a company and had not submitted his audit report in due time to enable the company to comply with the statutory requirements. (ASKED IN MAY-13 EXAMS)

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

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

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

In the given case, Mr. Lazy has not completed his audit work in time and consequently could not submit audit report in due time and consequently, company could not comply with the statutory requirements.

MTF S-14

45. Mr. A, a practicing Chartered Accountant, took over as the executive chairman of Software Company on 1.4.2016. On 10.4.2016 he applied to the Council for permission.

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

Thus, Mr. A took over as the executive chairman on 01.04.2016 and applied for permission on 10.04.2016, on the basis of these facts he was engaged in other occupation between the period 01.04.2016 and 10.04.2016, without the permission of the Council and is guilty of misconduct in terms of this clause.

46. CA XY who conducted the audit of a Gujarati daily '21st Century' certified the circulation figures based on Management Information System Report (M.I.S Report) without examining the books of Account.

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

In the given case, CA XY certified the circulation figures without examining the books of accounts. To ascertain the number of paid copies; verification of remittances from the agents; credit allowed to the agents for unsold copies returned, examination of books of account is essential. He did not exercise due diligence and is grossly negligent in the conduct of his professional duties.

Further, certification of circulation figures based on statistical information without cross verification with financial records amounts to gross negligence and failure to exercise due diligence.

Thus, CA XY will be held guilty of professional misconduct under Clause (7) of Part I of Second Schedule of Chartered Accountants Act, 1949.

47. Mr. A, a practicing Chartered Accountant agreed to prepare, project reports and feasibility studies along with the consideration of tax implications while rendering such services, for and on behalf of a client.

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

The definition of the expression "Management Consultancy and other Services" includes preparing project reports and feasibility studies. Consideration of tax implications while rendering above services will be considered as part of "Management Consultancy and other Services".

Therefore, Mr. A will not be held guilty of professional misconduct in pursuant to the provisions of the Section 2(2)(iv) of the Chartered Accountants Act, 1949 and further resolutions passed in this regard.

48. Mr. Superior, a Chartered Accountant in practice, wrote several letters to Government Department, pointing out seniority of his firm, sending his life sketch and stating that he had a glorious record of service to the nation as well as to the organization of accountancy profession with a view to get the audit work.

As per Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.

In the given case, Mr. Superior, a Chartered Accountant in practice, wrote several letters to Government Department pointing out the seniority of his firm and sending his life sketch and stating that he had rendered glorious service to the nation and to the accountancy profession with a view to getting the audit work.

Since these letters were clearly in the nature of advertising professional attainments, Mr. Superior will be held guilty of professional misconduct under Clause (6) of Part I of First Schedule to the Chartered Accountants Act, 1949.

49. The Cashier of a company committed a fraud and absconded with the proceeds thereof. This happened during the course of the accounting year. The Chief Accountant of the company also did not know about fraud.

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

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

Failure to Exercise Reasonable Care and Skill: Apparently, as it appears from the facts of the case that the auditor did not exercise proper skill and care and that he performed his work in a desultory and haphazard manner. In this matter, the test for auditor's liability lies in whether he has applied reasonable care, skill and caution called for in the circumstances of the case and whether he reasonably used all the information that he came across in the course of audit.

Cash is a very significant item in any situation and the fact that the cashier had left during the year without notice should have placed the auditor on alert as regards the cash book. In fact, the very fact that the cashier was absconding, i.e., left without any notice constituted sufficient circumstances to excite suspicion of the auditor to probe to the bottom. As per SA 240, "The Auditor's Responsibilities relating to Fraud in an Audit of Financial Statements", it can be concluded that the auditor did not plan and perform the audit with an attitude of professional skepticism. Thus, having regard to this and a fraud has actually taken place during the year, committed by the absconding cashier, it is reasonable to think that prima facie there is a case against the auditor for gross negligence.

Clause (7) of Part I of Second Schedule to the CA Act, 1949 requires that it is the duty of an auditor to bring to bear in the work he has to perform that skill, care and caution as per the circumstances in an honest and reasonable manner. As it appears from the facts of the case, the auditor has been grossly negligent in performing his duties which constitutes professional misconduct.

Conclusion: Thus, such instances require reference to Disciplinary Committee of the Council of the Institute. If a member is found guilty by the Council of any of the acts or omissions stated in the Schedule, its finding with recommendations are to be referred to the High Court for decision.

50. Priya Co. Ltd. has applied to a bank for loan facilities. The bank on studying the financial statements of the company notices that you are the auditor and requests you to call at the bank for a discussion. In the course of discussions, the bank asks for your opinion regarding the company and also asks for detailed information regarding a few items in the financial statements. The information is available in your working paper file. What should be your response and why?

Clause (1) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 states that a chartered accountant in practice shall be deemed to be guilty of professional misconduct if he discloses information acquired in the course of his professional engagement to any person other than his client, without the consent of the client or otherwise than as required by law for the time being in force. SA 200 on "Basic Principles Governing an Audit" also reiterates that, "the auditor should respect the confidentiality of information acquired in the course of his work and should not disclose any such information to a third

party without specific authority or unless there is a legal or professional duty to disclose". In the instant case, the bank has asked the auditor for detailed information regarding few items in the financial statements available in his working papers. Having regard to the position stated earlier, the auditor cannot disclose the information in his possession without specific permission of the client as far as working papers are concerned, SA 230 on "Audit Documentation" states "working papers are the property of the auditor. The auditor may at his discretion, make portions of or extracts from his working papers available to his client".

Conclusion: Thus, there is no requirement compelling the auditor to divulge information obtained in the course of audit and included in the working papers to any outside agency except as and when required by any law.

51. XYZ Ltd. appoints you as the auditor of the company. You observe that previous auditors A & Co., resigned. Also Balance Sheet as at 31-03-2015 shows an audit fee payable of Rs.25,000. What precautions you will take before commencing the audit work?

Precautions before Commencing the Audit Work: In the instant case, before accepting the appointment as well as commencing the audit work, the auditor should see the following –

- (i) Check whether a statement, in the prescribed form, has been filed by the resigning auditor within a period of 30 days from the date of resignation, to the company and the registrar (or the Comptroller and Auditor-General of India, as the case may be), indicating the reasons and other facts as may be relevant with regard to the resignation, for the compliance of Section 140(2) of the Companies Act, 2013 (herein after referred as the Act).
- (ii) Ascertain that the appointment of new Auditor is in compliance with Section 139(8) of the Act as mentioned above i.e. the resolution appointing the new auditor has been approved by the company in the general meeting as in the case of casual vacancy by resignation.
- (iii) The auditor must obtain the NOC from previous auditor. He should also refer the resignation statement file by the previous auditor and communicate with him (previous auditor) to ascertain the circumstances which led up him to retire.
- (iv) The auditor must ascertain whether there existed any circumstances on account of which he should not accept the appointment.
- (v) As per Section 139 of the Act, the auditor must ensure that before any appointment or reappointment of auditors is made at an annual general meeting, a written certificate has been provided by him to the company that his appointment is in accordance with the limits specified in Section 141(3)(g).
- (vi) He should also satisfy himself that the notice provided for under Sections 139 and 140 has been effectively served on the outgoing auditor.

Further, Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949, provides that a member in practice shall be deemed to be guilty of professional misconduct if he accepts a position as auditor previously held by another chartered accountant without first communicating with him in writing. Moreover, Clause (9) of Part I of the same Schedule, provides that a member in practice shall be deemed to be guilty of professional misconduct if he accepts an appointment as auditor of a company without first

ascertaining from it whether the requirements of Sections 224 and 225 of the Companies Act, 1956 (now Section 139 and 140 of the Companies Act, 2013), in respect of such appointment have been duly complied with.

52. Qurashi, a Chartered Accountant, failed to report to the shareholders of the Zee Ltd, about the non-creation of a sinking fund in accordance with the Debenture Trust Deed and did not make clear that the amount shown as Sinking Funds were borrowed from the Managing Agents of the Zee Ltd.

As per Clause 5 of Part I of Second Schedule to the Chartered Act, 1949, if a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he fails to disclose a material fact known to him which is not disclosed in the financial statement, but disclosure of which is necessary in making such financial statement in a professional capacity.

In the instant case, Qurashi was in duty bound to see that the nature and subject matter of the charge over a security and the nature and mode of valuation of the Sinking Fund Investments were disclosed in the Balance Sheet of Zee Ltd.,

Conclusion: Hence, Q was found guilty of misconduct.

53. M/s. Appu, a firm of Chartered Accountants responded to a tender from a State Government for computerization of property takings records. For this purpose, the firm also paid Rs.60, 000 as earnest deposit as part of the terms of the tender.

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

In the instance case, since computerisation of property takings records does not fall within exclusive areas for chartered accountants, M/s Appu can respond to tender as well as deposit Rs.60,000 as earnest deposit and shall not have committed any professional misconduct.

MTP A-14

54. P, a Chartered Accountant in practice provides management consultancy and other services to his clients. During 2016, looking to the growing needs of his clients to invest in the stock markets, he also advised them on Portfolio Management Services whereby he managed portfolios of some of his clients.

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

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

55. Mr. Shah, a Chartered Accountant certified the financial statements of a company in which his wife is a Director holding substantial interest.

Relative of Auditor Holding Position of Director with Substantial Interest: Clause (4) of Part I of Second Schedule to the Chartered Accountants Act, 1949 states that if an auditor expresses his opinion on the financial statements of any business or enterprise in which he, his firm or partner in his firm has a substantial interest, he is committing professional misconduct. Further as per Council General Guidelines, 2008, a member of the Institute shall not express his opinion on financial statements of any business or enterprise in which one or more persons, who are his “relatives” within the meaning of AS 18 have, either by themselves or in conjunction with such member, a substantial interest in the said business or enterprise.

The Council also emphasizes that the aforesaid requirement of Clause (4) is equally applicable while performing all types of attest functions by the members.

This is further a contravention of section 141(3)(f) of the Companies Act, 2013, which requires that a person shall not be eligible for appointment as an auditor of a company whose relative is a director or is in the employment of the company as a director or key managerial personnel.

In the given case, Mr. Shah, Chartered Accountant, has certified the financial statements of a company in which his wife is a director with substantial interest. Hence, this amounts to professional misconduct which attracts Clause (4) of Part I of Second Schedule to the Chartered Accountants Act, 1949 and Mr. Shah shall have to vacate the office accordingly.

56. XYZ & Associates, a firm with 5 partners developed a website www.xyzassociates.com. The website also contained a link to “All India Chartered Accountants Association”, a voluntary association where X, a partner of the firm is currently the Vice-president.

Developing Website: As per the guidelines laid down under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 in respect of websites by chartered accountants in practice, it is permitted that website may provide a link to the website of ICAI, its Regional Councils, Branches and Government Departments and other professional Bodies like AICPA, ICAEW, CICA. In this case, M/s XYZ Associates provided a link to “All India Chartered Accountants Association” which is not permitted. Hence the firm would be liable for misconduct under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

57. M/s LMN, a firm of Chartered Accountants responded to a tender from a State Government for computerization of land revenue records. For this purpose, the firm also paid Rs. 50,000 as earnest deposit as part of the terms of the tender.

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

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

MTP F-14

58. Mr. Rajiv, a locally based Chartered Accountant, accepted an audit assignment at a fee lower than that charged by the previous auditor, who was stationed in another town and had to spend a lot of money on travel for which he did not charge separately.

Undercutting of fees: In this case, Mr. Rajiv is a locally based Chartered Accountant, accepted an audit assignment at a fee lower than that charged by the previous auditor, who was outstation based Chartered Accountant and had to spend a lot of money on travel which was included in his audit fee and was not charged by him separately. The motive of Mr. Rajiv was not to get the work from previous auditor by accepting the audit assignment on lower fee i.e. undercutting of fee. Because, in considering whether variation in fees charged would constitute undercutting, the following factors should be considered:

- the quantum of work;
- incidental and out of pocket expenses and
- other terms of appointment.

Since the previous auditor was stationed in another town and therefore, had to incur higher cost on account of conveyance, and the previously the fee was decided on a composite basis inclusive of travelling expenses of the auditor, it cannot be said that Mr. Rajiv has accepted an audit assignment based on under cutting of fees. Hence, Mr. Rajiv will not be held guilty for misconduct.

59. The superannuation-cum-pension fund for the employees of a company was under a separate 'trust'. Both the company and the trust were under the same management. The auditor, who was auditing the accounts of the company as well as the trust noted some irregularities in the operation of the trust and commented upon these irregularities in the confidential report given to the trustees, but did not mention about these irregularities in his report on the Annual accounts of the Trust.

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

60. M/s ABC a firm of Chartered Accountants received Rs.2 lakhs in January, 2016 on behalf of one of their clients, who has gone abroad and deposited the amount in their Bank account, so that they can return the money to the client in July, 2016, when he is due to return to India.

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

ABC received the money in January, 2016 which is to be paid only in July 2016; hence it should be deposited in a separate bank account. Since in this case ABC have failed to keep the sum of Rs.2 lakhs received on behalf of their client in a separate Bank Account and it amounts to professional misconduct under clause 10 of part I of Second Schedule.

61. Mr. Jojo. a practicing Chartered Accountant engages himself as part time finance manager of Fast Return Securities Ltd. He is of the view that as both functions are independent, he need not take permission from the Institute.

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

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

RTP N-13

62. Mr. Angad, a chartered accountant in practice takes up the appointment as managing director of a public limited company.

Under clause 11 of Part I of First Schedule to the Chartered Accountants Act, a chartered accountant in practice is deemed to be guilty of professional misconduct, if he engages in any business or occupation other than the profession of chartered accountants, unless permitted by the council so to engage.

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

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

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

63. S, a practicing chartered accountant has to go out of town and to meet the work requirements gives power of attorney to an employee chartered accountant to sign reports and financial statements, on his behalf.

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

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

The term 'Financial Statement' for this purpose would cover an examination of the accounts or financial statements given under a statutory enactment or otherwise. Accordingly, S is guilty of professional misconduct under clause 12 of part I of First Schedule and also under clause (1) of Part II of Second Schedule for contravening Section 26.

64. A practicing Chartered Accountant was appointed to represent a company before the tax authorities. He submitted on behalf of his clients certain information and explanations to the authorities, which were found to be false and misleading.

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

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

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

65. AB & Co., a firm of Chartered Accountants, included the name of P as a partner while filing an application for empanelment as auditor for Public Sector bank branches. It was subsequently noticed that on the date of application, P was not a partner with AB & Co.

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

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

66. Mr. Karan, a practicing Chartered Accountant, received a sum of Rs.1 lac on 1.9.2015 from a Client who intends to leave abroad for a period of a year, with a request that his advance tax liabilities to be paid over the three instalments. On 15th September, 2015, 15th December, 2015 and 15th March, 2016. After remitting the 1st instalment of advance tax on 15.9.2015, Karan did not keep the Balance Money in a separate Bank account and he is of the opinion he will remit the money within reasonable time as per payment schedule of Advance tax (ASKED IN NOV-14)

As per Clause (10) of Part I of Schedule II of the Chartered Accountant Act, 1949, a Chartered Accountant in practice will be deemed to be of professional misconduct if he fails to keep moneys of his client other than the fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

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

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

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

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

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

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

68. Mr. Rohan, a Chartered Accountant in practice approached Manager of a Nationalised Bank for a loan of Rs.25 lakhs. He has also informed the Manager that if the loan is sanctioned, the Income Tax return of the Manager and staff will be filed without charging any fees, as quid Pro quo for the loan sanctioned.

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

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

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

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

69. A firm of Chartered Accountants was appointed by a company to evaluate the costs of the various products manufactured by it for its information system. One of the partners of the firm was a Non-Executive Director of the company. (ASKED IN NOV-14)

Evaluation of Cost of Products: Clause 4 of Part I of the Second Schedule to Chartered Accountants Act, 1949 states that expressing an opinion on financial statements of any business or any enterprise in which the auditor, his firm or a partner in his firm has a substantial interest would constitute misconduct, unless he discloses the interest also in his report. Also, the Council of the Institute of Chartered Accountants of India has stated that in cases where a member of the Institute is a director of a company, or the firm in which the said member is a partner, should not express any opinion on its financial statements. As per facts of the case, the firm has been retained to evaluate the cost of products manufactured by it for its information system. It is a part of management consultancy service of the firm and moreover its partner was on the Board. Hence, the firm can perform this assignment and it will not constitute misconduct. However, the firm while accepting the position as auditor in future would have to consider whether it would be possible to act in independent manner and express opinion on financial statements.

MTP S-13

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

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

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

Hence Mr. A would be guilty of Professional Misconduct.

71. M/s B & Co. a firm of Chartered Accountants received Rs.10 lakhs in January, 2016 on behalf of one of their clients, who has gone abroad and deposited the amount in their Bank account, so that they can return the money to the client in July, 2016, when he is due to return to India.

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

B & Co. received the money in January, 2016 which is to be paid only in July 2016; hence it should be deposited in a separate bank account. Since in this case B & Co. have failed to keep the sum of Rs.10 lakhs received on behalf of their client in a separate Bank Account, it amounts to professional misconduct under clause 10 of part I of Second Schedule.

72. M/s C & Co., a firm of Chartered Accountants responded to a tender from a State Government for computerization of land revenue records. For this purpose, the firm also paid Rs.5,00,000 as earnest deposit as part of the terms of the tender.

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

In the instance case, since computerization of land revenue records does not fall within exclusive areas for chartered accountants, M/s C & Co. can respond to tender as well as deposit Rs.5,00,000 as earnest deposit and has not committed any professional misconduct.

73. Mr. D, a Chartered Accountant was invited by the Chamber of Commerce to present a paper in a symposium on the issues facing Indian Leather Industry. During the course of his presentation he shared some of the vital information of his client's business under the impression that it will help the Nation to compete with other countries at international level. (ASKED IN NOV-14)

Disclosure of Client's Information: Clause (1) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 deals with the professional misconduct relating to the disclosure of information by a chartered accountant in practice relating to the business of his clients to any person other than his client without the consent of his client or otherwise than as required by any law for the time being in force would amount to breach of confidence. The Code of Ethics further clarifies that such a duty continues even after completion of the assignment. The Chartered Accountant may however, disclose the information in case it is required as a part of performance of his professional duties. In the given case, Mr. D has disclosed vital information of his client's business without the consent of the client under the impression that it will help the nation to compete with other countries at International level. Thus it is a professional misconduct covered by clause (1) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

RTP M-13

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

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

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

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

75. XY & Co., a firm of Chartered Accountant having 2 partners X & Y, one in charge of Head Office and another in charge of Branch at a distance of 80 kms, puts up a name-board of the firm in both premises and also in their respective residences.

Putting Name Board of the Firm at Residence: The council of the Institute has decided that with regard to the use of the name-board, there will be no bar to the putting up of a name-board in the place of residence of a member with the designation of chartered accountant, provided, it is a name-plate or board of an individual member and not of the firm.

In the given case, partners of XY & Co., put up a name board of the firm in both offices and also in their respective residences.

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

76. XYZ & Associates, a firm with 5 partners developed a website www.xyzassociates.com. The website also contained a link to “All India Chartered Accountants Association”, a voluntary association where X, a partner of the firm is currently the Vice-president.

Developing Website: As per the guidelines laid down under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 in respect of websites by chartered accountants in practice, it is permitted that website may provide a link to the website of ICAI, its Regional Councils, Branches and Government Departments and other professional Bodies like AICPA, ICAEW, CICA. In this case, M/s XYZ Associates provided a link to “All India Chartered Accountants Association” which is not permitted. Hence the firm would be liable for misconduct under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

77. M/s Lions, a firm of Chartered Accountants responded to a tender from a State Government for computerization of land revenue records. For this purpose, the firm also paid Rs.3,00,000 as earnest deposit as part of the terms of the tender.

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

In the instance case, since computerization of land revenue records does not fall within exclusive areas for chartered accountants, M/s Lions can respond to tender as well as deposit Rs.3,00,000 as earnest deposit and shall not have committed any professional misconduct.

RTP N-12

78. G & Co., a firm of Chartered Accountants, was appointed as the internal auditor of Easy Ltd., replacing H & Co., another firm of Chartered Accountants, which had expressed their inability to continue as internal auditor to the management through a resignation letter. G & Co. proceeded to conduct the internal audit without communicating with H & Co.

As per Clause 8 of Part I of the First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice will be deemed to be guilty of professional misconduct if he accepts a position as an 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. The Council has also laid down that the requirement for communicating with the previous auditor being a

Chartered Accountant in practice would apply to all types of audit viz., statutory audit, tax audit, internal audit, concurrent audit or any other kind of audit. Accordingly G & Co. will be deemed to be guilty professional misconduct.

79. Mr. I, a CA, had an account with a bank. The normal balance in this account remained at a level below Rs.25,000. The bank inadvertently credited this account with a cheque of Rs.2,50,000 belonging to another account holder. When Mr. I came to know about this he withdrew the amount of Rs.2,75,000 and closed the bank account. After 1 year the bank noticed the mistake and claimed Rs.2,75,000 with interest. Mr. I contested this claim. Can the bank approach the Institute of Chartered Accountants of India for disciplinary action against Mr. I?

As per Clause 2 of Part IV of First Schedule of The Chartered Accountant Act, 1949, a Chartered Accountant will be deemed to be guilty of other misconduct if he 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.

In the instant case, Mr. I, a CA, had an account with a bank from which he withdrew the amount of Rs.2,75,000 and closed the account. This amount of Rs.2,75,000 was pertaining to Rs.25,000 minimum balance and Rs.2,50,000 belonging to other account holder and inadvertently credited to his account by the bank. The act of Mr. I will certainly bring disrepute to the profession. Hence under this clause the bank can file a suitable complaint with The Institute of Chartered Accountants of India.

80. Ashok Mittal is the auditor of partnership firm consisting of Ram and Shyam as partners. In his audit report to the firm, he did not refer certain materially irregular transactions found in the books of the firm for the reason that Ram, the senior partner approved all such transactions.

As the transactions passed through the books of accounts are materially irregular, their non-disclosure makes the financial statements misleading. Clauses 5 and 6 of Part I of Second Schedule of The Chartered Accountant Act, 1949, states that a chartered accountant would be deemed to be held guilty of misconduct in case he fails to disclose a material fact known to him which is not disclosed in the financial statements or fails to report on a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity. Therefore as per both these clauses, the auditors would be deemed to be guilty of professional misconduct. In case of partnership firm partners are jointly and individually liable hence Ram and Shyam both are responsible

81. While taking Mr. Q as his articled clerk, Mr. R, a practicing Chartered Accountant proposed that the stipend as per regulations will be paid once a year calculated on the monthly rates prescribed by ICAI to which Mr. Q also agreed.

As per Clause 1 of Part 2 of Second Schedule of The Chartered Accountant Act, 1949, a chartered accountant shall be deemed to be guilty of professional misconduct, if he contravenes any of the provisions of the CA (Amendment) Act 2006 or the regulation; made thereunder or any guidelines issued by the Council:

As per Regulation 48 stipend to Articled Assistant should be paid on a monthly basis.

In the instant case, Mr. R, a practicing chartered accountant, proposed that the stipend as per regulations will be paid once a year calculated on the monthly rates prescribed by the ICAI, he will be deemed to be

guilty of professional misconduct because of non payment of stipend on monthly basis even though his article clerk also agreed to his proposal.

RTP M-12

82. Mr. R, a Chartered Accountant in practice has been elected as the treasurer of a Regional Council of the Institute. The Regional Council had organized an international tour through a tour operator during the year for its members. During the audit of the Regional Council, it was found that Mr. R had received a personal benefit of Rs. 50,000 from the tour operator.

Embezzlement of Funds: Section 21 of the Chartered Accountants Act, 1949 provides that a member is liable for disciplinary action if he is guilty of any professional or "Other Misconduct." Though the term "Other Misconduct" has not been defined in the said Act, this provision enables the Council to enquire into any misconduct of a member even if it does not arise out of his professional work. This is considered necessary because a chartered accountant is expected to maintain the highest standards of integrity even in his personal affairs and any deviation from these standards even in his non-professional work, would expose him to disciplinary action. The Council has also laid down that among other things "misappropriation by an office-bearer of a Regional Council of the Institute of a large amount and utilization thereof for his personal use" would amount to "other misconduct". Thus, in the instant case, Mr. R would be liable for disciplinary action.

83. Vijay, a Chartered Accountant in practice is a partner in 3 firms. While printing his personal letter heads, he gave the names of all the firms in which he is a partner.

Advertisement of Professional Attainments: Clause 7 of Part I of the First Schedule to the Chartered Accountants Act, 1949 prohibits advertising of professional attainments or services of a member. It also restrains a member from using any designation or expression other than that of a Chartered Accountant in documents through which the professional attainments of the member would come to the notice of the public. Even a member is not permitted to specify the date of setting up of practice or establishment of firm. However, there is no prohibition for printing names of all the 3 firms on the personal letterheads in which a member holding Certificate of Practice is a partner. Thus Vijay is not guilty of any misconduct under the Chartered Accountants Act, 1949.

84. ABC & Associates, a firm with 5 partners developed a website www.abcassociates.com. The website also contained a link to "All India Chartered Accountants Association", a voluntary association where X, a partner of the firm is currently the Vice-president.

Developing Website: As per the guidelines laid down under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 in respect of websites by chartered accountants in practice, it is permitted that website may provide a link to the website of ICAI, its Regional Councils, Branches and Government Departments and other professional Bodies like AICPA, ICAEW, CICA. In this case, M/s ABC Associates provided a link to "All India Chartered Accountants Association" which is not permitted. Hence the firm would be liable for misconduct under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949

85. M/s XYZ, a firm of Chartered Accountants responded to a tender from a State Government for computerization of land revenue records. For this purpose, the firm also paid ` 1,50,000 as earnest deposit as part of the terms of the tender.

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

In the instance case, since computerization of land revenue records does not fall within exclusive areas for chartered accountants, M/s XYZ can respond to tender as well as deposit Rs.1,50,000 as earnest deposit and shall not have committed any professional misconduct.

RTP N-11

86. CA Ravi was appointed as the Auditor of XYZ Ltd. for 2010-11. Since he declined to accept the appointment, the Board of Directors appointed CA Shree as the auditor in the place of CA Ravi, which was also accepted by CA Shree.

Board can appoint the auditor in the case of casual vacancy under Sections 224 (5) & 6(a) of the Companies Act, 1956 (Now 139 of the companies act 2013). The non-acceptance of appointment by CA. Ravi does not constitute a casual vacancy to be filled by the Board.

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

Clause 9 of Part-I of First Schedule states that a chartered accountant is deemed to be guilty of professional misconduct if he "Accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of section 225(140) of the Companies Act, 1956(2013) in respect of such appointment have been fully complied with".

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

87. CA Zeni who is a leading Income Tax Practitioner and consultant in Mumbai is also trading in derivatives.

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

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

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

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

88. CA Dev, a Chartered Accountant prepared a project report for one of his clients to obtain bank finance (long-term) of Rs.50 lakhs from a Commercial Bank. Consequent to the sanction of the loan by the bank CA Dev raised a bill for his services @ 2% of the loan sanctioned.

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

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

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

89. CA Vijay who conducted ABC audit of a marathi daily 'New Era' certified the circulation figures based on Management Information System Report (M.I.S Report) without examining the books of Account.

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

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

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

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

90. A Chartered Accountant practising in India enters into partnership with

(1) A Certified Public Accountant in New York.

(2) A Chartered Accountant from the Institute of Chartered Accountants in England and Wales in London, and in each case, the members concerned take the profits earned in their own country.

Will it make any difference, if an Indian Chartered Accountant is practising outside India and becomes a partner with the aforesaid accountants?

(1) Partnership with a CPA in New York: Clause (4) of Part I to the First Schedule to the Chartered Accountants Act, 1949 specifies that a chartered accountant in practice shall be deemed to be guilty of professional misconduct if he enters into partnership, in or outside India, with any person other than a chartered accountant in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad

would be entitled to be registered as a member or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships;

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

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

Chartered Accountants practising outside India: A member of the Institute of Chartered Accountants of India is governed by the Code of Ethics whether practicing in India or outside India. Accordingly, the question of professional misconduct would arise if an Indian chartered accountant practising outside India becomes a partner with aforesaid accountants and enters into partnership in that country with a member of the Institute of that country. There would be professional misconduct within the provisions of the Institute of Chartered Accountants Act, 1949 as the applicability of such provisions extend to members practicing outside India.

91. A practising Chartered Accountant uses a visiting card in which he designates himself, besides as Chartered Accountant, as

(1) Tax Consultant (2) Cost Accountant.

(1) Tax Consultant: Section 7 of the Chartered Accountants Act, 1949 read with Clause 7 of Part I of the First Schedule to the said Act prohibits advertising of professional attainments or services of a member. It also restrains a member from using any designation or expression other than that of a chartered accountant in documents through which the professional attainments of the member would come to the notice of the public. Under the clause, use of any designation or expression other than chartered accountant for a chartered accountant in practice, on professional documents, visiting cards, etc. amounts to a misconduct unless it be a degree of a university or a title indicating membership of any other professional body recognised by the Central Government or the Council. Thus, it is improper to use designation "Tax Consultant" since neither it is a degree of a University established by law in India or recognised by the Central Government nor it is a recognised professional membership by the Central Government or the Council.

(2) Cost Accountant: As stated in the preceding paragraph, this would also constitute misconduct under section 7 of the Act read with Clause (7) of Part I of the First Schedule to the Chartered Accountants Act,

1949. A chartered accountant in practice cannot use any other designation than that of a chartered accountant. Nevertheless, a member in practice may use any other letters or descriptions indicating membership of accountancy bodies which have been approved by the Council. Thus, it is improper for a chartered accountant to state in his documents that he is a "Cost Accountant". However as per Appendix 8 to the Chartered Accountants Act, 1949 the Council has resolved that the members are permitted to use letters indicating membership of the Institute of Cost Accountants but not the designation "Cost Accountant".

RTP M-11

92. Mr. Ravi, a practicing Chartered Accountant agreed to select and recruit personnel, conduct training programmes for and on behalf of a client. (ASKED IN MAY-15 EXAMS)

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

The definition of the expression "Management Consultancy and other Services" includes Personnel recruitment and selection. Personnel Recruitment and selection includes, development of human resources including designing and conduct of training programmes, work study, job description, job evaluation and evaluations of workloads. So Mr. Ravi is not guilty of professional misconduct.

93. A practicing Chartered Accountant was appointed to represent a company before the tax authorities. He submitted on behalf of his clients certain information and explanations to the authorities, which were found to be false and misleading.

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

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

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

94. XY & Co., a firm of Chartered Accountants, included the name of P as a partner while filing an application for empanelment as auditor for Public Sector bank branches. It was subsequently noticed that on the date of application, P was not a partner with AB & Co.

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

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

95. M/s ASKS, a firm of Chartered Accountants, having three partners accepts an audit assignment of a private limited company for a fee of Rs. 4,000 only. Comment. (NOV-15 EXAMS) (ASKED IN JUNE 2009)

Minimum Audit Fee: Prescribed minimum audit fee is recommendatory, not mandatory in nature. Therefore, acceptance of audit assignment by M/s ASKS, a firm of Chartered Accountants having 3 partners, of a private limited company for audit fees of rupees 4,000 is not violation of any provisions.

Therefore M/s ASKS will not be held liable for guilty of misconduct.

96. Mr. S, a practicing Chartered Accountant agreed to provide “Portfolio Management Services” to his client M/s. D Limited. Comment with reference to the Chartered Accountants Act, 1949. (NOV-15 EXAMS)

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

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

97. Mr. SP, a Chartered Accountant obtains registration as Category IV Merchant Banker under the SEBI’s Rules and Regulations and act as Advisor to a Capital Issue of MB Co. Ltd. He designated himself under the caption “Merchant Banker” in Client Offer Documents and ‘Advisor to issue’ in his own Letterheads, visiting Cards and Professional Documents. (MAY-15 EXAMS)

Use of Designation other than Chartered Accountant: Clause (7) of Part I of First Schedule to the Chartered Accountants Act, 1949 restrains a Chartered Accountant in practice from advertising his professional attainments or services. It also prohibits a member from using 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.

It may be noted that, in Client Companies' offer documents and advertisements regarding capital issue, name and address of the Chartered Accountant acting as Advisor or Consultant to the Issue could be indicated under the caption "Advisor/ Consultant to the Issue". Further, such members should not use the designation of either 'Merchant Banker' or 'Advisor/Consultant to Issue' in their own letterheads, visiting cards, professional documents, etc.

In the given case, Mr. SP, a Chartered Accountant, has obtained registration as category IV Merchant banker and acted as advisor to a capital issue of MB Co. Ltd. He has designated himself under the caption "Merchant Banker" in client offer documents and "advisor to issue" in his own letterheads, visiting cards and professional documents.

Therefore, Mr. SP shall be held guilty of professional misconduct as per Clause (7) of Part I of First Schedule to the Chartered Accountants Act, 1949.

98. A Chartered Accountant having COP entered into Partnership with persons, who are 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. (MAY -15 EXAMS)

Practicing CA Entering into Partnership and Carrying on Business: As per Clause (4) of Part I of First Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice is deemed to be guilty of professional misconduct if he 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.

It may be noted that the Council has prescribed the list of person qualified and the professional bodies for the purpose of entering into partnership under the Chartered Accountants Regulations, 1988.

Further, according to Clause (11) of Part I of First Schedule to the said Act, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he engages in any business or occupation other than the profession of chartered accountant unless permitted by the Council so to engage.

It may also be noted that a member in practice is required to apply for specific and prior approval of the Council for entering into any business.

In the given case, a chartered accountant in practice has entered into partnership with persons who were not the members of the Institute, for the purpose of carrying on business.

The question is silent about with whom the partnership has been entered into and whether the prior permission for entering into such business has been obtained.

Conclusion: It is assumed that the persons with whom the partnership has been entered into has not been allowed under the Regulations and the prior approval of the Council has not been obtained for entering into such business. Hence, the Chartered Accountant shall be held guilty of professional misconduct under Clause (4) and Clause (11).

99. Mr. 'E', a practicing Chartered Accountant, was requested by one of his client to prepare a projection for next five years and also a report on the same. Mr. 'E' after having prepared the same stated in his report 'The sources of information, the basis of forecasts and also the major assumptions made in arriving at the forecasts. He also stated that he does not vouch for the accuracy of the forecasts. (MAY 14 EXAM)

Certification of Financial Forecast: As per Clause (3) of Part I of Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice is deemed to be guilty of professional misconduct if he permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast.

Accuracy does not refer to arithmetical accuracy. All forecasts are estimates based on certain assumptions duly evaluated on a consideration of various relevant factors and cannot be ascertained with accuracy. The Guidance Note on Accountants Report on Profit Forecasts and/or Financial forecast considered the implications of this clause and made it clear that the chartered accountant can participate in the preparation of profit or financial forecasts and review them. But, first of all, he should clearly indicate in his report the sources of information, the basis of forecasts and also the major assumptions made in arriving at the forecasts and, secondly, he should not vouch for the accuracy of the forecasts.

In the instant case, Mr. E after having prepared the projections for next five years stated in his report, "the sources of information, the basis of forecasts and also the major assumptions made in arriving at the forecasts." He also stated that he does not vouch for the accuracy of the forecasts. Therefore there is no violation of the Chartered Accountants Act, 1949 and its Regulations.

100. Mr. 'A' is a practicing Chartered Accountant working as proprietor of M/s A & Co. He went abroad for 3 months. He delegated the authority to Mr. 'Y' a Chartered Accountant his employee for taking care of routine matters of his office. During his absence Mr. 'Y' has conducted the under mentioned jobs in the name of M/s A & Co.

- (i) He issued the audit queries to client which were raised during the course of audit.
- (ii) He issued production certificate to a client under Central Excise Act, 1944.
- (iii) He attended the Income Tax proceedings for a client as authorized representative before Income Tax Authorities.

Please comment on eligibility of Mr. 'Y' for conducting such jobs in name of M/s A & Co. and liability of Mr. 'A' under the Chartered Accountants Act, 1949. (MAY-14 EXAM)

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

In this case CA 'A' proprietor of M/s A & Co., went to abroad and delegated the authority to another Chartered Accountant Mr. Y, his employee, for taking care of routine matters of his office who is not a partner but a member of the Institute of Chartered Accountants

The Council has clarified that the power to sign routine documents on which a professional opinion or authentication is not required to be expressed may be delegated in the following instances and such delegation will not attract provisions of this clause like issue of audit queries during the course of audit, asking for information or issue of questionnaire, attending to routing matters in tax practice, subject to provisions of Section 288 of Income Tax Act etc.

(i) In the given case, Mr. 'Y', a chartered accountant being employee of M/s A & Co has issued audit queries which were raised during the course of audit. Here "Y" is right in issuing the query, since the same falls under routine work which can be delegated by the auditor. Therefore, there is no misconduct in this case as per clause 12 of Part 1 of First schedule to the Act.

(ii) Further, issuance of production certificate to a client under Central Excise Act, 1944 by Mr. "Y" being an employee of M/s A & Co. (an audit firm), is not a routine work and it is outside his authorities. Thus, CA 'A' is guilty of professional misconduct under clause 12 of Part I of First Schedule of the Chartered Accountants Act, 1949.

(iii) In this instance, Mr. "Y", CA employee of the audit firm M/s A & Co. has attended the Income tax proceedings for a client as authorized representative before Income Tax Authorities. Since the council has allowed the delegation of such work, the chartered accountant employee can attend to routine matter in tax practice as decided by the council, subject to provisions of Section 288 of the Income Tax Act. Therefore, there is no misconduct in this case as per clause 12 of Part 1 of First schedule to the Act.

101. Mr. 'G', while applying for a certificate of practice, did not fill in the columns which solicit information about his engagement in other occupation or business, while he was indeed engaged in a business. (MAY-14 EXAM)

Disclosure of Information: As per Clause 2 of Part III of First Schedule to the Chartered Accountants Act, 1949 a member shall be held guilty if a Chartered Accountant, in practice or not, 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;

In the given case, Mr. "G", a Chartered Accountant while applying for a certificate of practice, did not fill in the columns which solicit information about his engagement in other occupation or business, while he was indeed engaged in a business. Details of engagement in business need to be disclosed while applying for the certificate of practice as it was the information called for in the application, by the Institute.

Thus, Mr. G will be held guilty for professional misconduct under the clause 2 of Part III of First Schedule of the Chartered Accountants Act, 1949.

102. Mr. X who passed his CA examination of ICAI on 18th July, 2015 and started his practice from August 15, 2015. On 16th August 2015, one female candidate approached him for articleship. In addition to monthly stipend, Mr. X also offered her 1 % profits of his CA firm. She agreed to take both 1 % profits of the CA firm and stipend as per the rate prescribed by the ICAI. The Institute of Chartered Accountants

of India sent a letter to Mr. X objecting the payment of 1 % profits. Mr. X replies to the ICAI stating that he is paying 1 % profits of his firm over and above the stipend to help the articled clerk as the financial position of the articled clerk is very weak. Is Mr. X Liable to professional misconduct ? (NOV-13 EXAM) (MAY-16 EXAM)

Sharing fees with an Articled clerk: As per Clause (2) of Part-1 of First Schedule of the Chartered Accountants act 1949, a Chartered Accountants in practice shall be deemed to be guilty of professional misconduct if he pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualification as may be prescribed, for the purpose of rendering such professional services to time in or outside India.

In view of the above, the objections of the Institute of Chartered Accountants of India are correct and reply of Mr. X, stating that he is paying 1 % profits of his firm over and above the stipend to help the articled clerk as the position of the articled clerk is weak is not tenable. Hence, Mr. X is liable to professional misconduct in terms of Clause (2) as explained above.

103. Mr. Honest, a Chartered Accountant in practice, wrote two letters to M/s XY Chartered Accountants a firm of CAs; requesting them to allot him some professional work. As he did not have a significant practice or clients he also wrote a letter to M/s ABC, a firm of Chartered Accountants for securing professional work. Mr. Clever, an another CA, informed ICAI regarding Mr. Honest's approach to secure the professional work. Is Mr. Honest wrong in soliciting professional work? (NOV-13 EXAM)

Clause 6 of Part I of the First Schedule to the Chartered Accountants Act, 1949 states that a Chartered Accountant in practice shall be deemed to be guilty of misconduct if he solicits clients or professional work either directly or indirectly by a circular, advertisement, personal communication or interview or by any other means. Provided that nothing herein contained shall be construed as preventing or prohibiting any Chartered Accountant from applying or requesting for or inviting or securing professional work from another chartered accountant in practice.

Such a restraint has been put so that the members maintain their independence of judgment and may be able to command respect from their prospective clients.

In the given case, Mr. Honest wrote letters only to other Chartered Accountants, M/s XY and M/s ABC requesting them to allot some professional work to him, which is not prohibited under clause (6) as explained above. Thus, Mr. Honest is not wrong in soliciting professional work.

104. Mr. B, a practicing Chartered Accountant as well as a qualified lawyer, was permitted by the bar council to practice as a lawyer also. He printed his visiting card where he mentioned his designation as Chartered Accountant and Advocate. (ASKED IN MAY-13)

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

Government or a title indicating membership of the ICAI or of any other institution that has been recognized by the Central Government or may be recognized by the council.

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

Members of the Institute in practice who are otherwise eligible may practice as advocates subject to the permission of the Bar Council but in such case, they should not use designation 'chartered accountant' in respect of the matters involving the practice as an advocate. In respect of other matters they should use the designation 'chartered accountant' but they should not use the designation 'chartered accountant' and 'advocate' simultaneously. Since Mr. B has printed his visiting card where he mentioned his designation as Chartered Accountant and Advocate which is prohibited under the above clause and hence Mr. B is guilty of professional misconduct.

105. Mr. C, a practicing Chartered Accountant, in the course of the audit of a listed company discovered serious violations of the provisions of the Companies Act 2013, informed the Registrar of Companies out of public interest. (ASKED IN MAY-13 EXAMS)

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

In the given case, Mr. C has disclosed serious violations of the provisions of the Companies Act, 2013 to Registrar of Companies without the consent of the client under the impression that it would be in public interest. Instead of disclosing the violations to the Registrar of Companies directly, he should impress on the client that while disclosure may entail only monetary penalties, nondisclosure and subsequent discovery thereof may entail imprisonment and fine, in addition to penalties. He should mention the violations in his report instead of informing the Registrar of Companies. Thus it is a professional misconduct covered by clause (1) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

106. Mr. A has been appointed statutory auditor of a private limited company where his spouses' sisters' husband is having 75% ownership. (ASKED IN NOV-12 EXAM)

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

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

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

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

107. Mr. E, proprietor of M/s. E & Co. is the statutory auditor of a Company which owns a store dealing in computer equipments. During the year 2014-15, E purchased a computer from the store costing Rs.50,000 for his son. He did not make any payment for the same, but asked the company to adjust the same against the audit fees payable of Rs.1,00,000. (NOV-12)

Independence of Auditor: The guidance note on "Independence of Auditors" issued by the ICAI in this context recommends that "a question of indebtedness may also be raised where an auditor of a company purchases goods or services from the company audited by him. In such a case, if the amount outstanding exceeds Rs.1,000, irrespective of the nature of the purchase or period of credit allowed to other customers, the provisions concerning disqualification of auditor as contained in sec 226 (3) of the Companies Act, 1956 will be attracted." Now this limit has been increased from Rs.1,000 to Rs.5,00,000 as per the provisions of the Section 141(3)(d)(ii) of the Companies Act, 2013.

This provision will be applicable in the case of purchase of Computer for his son or for personal work by the auditor of a company on normal terms and conditions of the business of the company if the amount outstanding at the end of the year exceeded the prescribed limit which is Rs.5,00,000.

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

Therefore, the contention of Mr. E that he does not incur disqualification is correct as he has purchased a computer of the value of Rs.50,000 which is not exceeding the prescribed limit and asked the company to adjust the same against the audit fees payable of Rs.1,00,000.

Accordingly, Mr. E is not disqualified to be appointed as auditor of the company as he is indebted to the company for an amount not exceeding Rs.5,00,000. Thus, Mr. E will not be held liable for guilty of professional misconduct.

108. Z, a practicing Chartered Accountant issued a certificate of circulation of a periodical without going into the most elementary details of how the circulation of a periodical was being maintained i.e. by not looking into the financial records, bank statements or bank pass books, by not examining evidence of actual payment of printers bills and by not caring to ascertain how many copies were sold and paid for. (MAY-12 EXAM)

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

In the instant case Mr. Z, a practicing Chartered Accountant issued a certificate of circulation of a periodical without going into the most elementary details of how the circulation of a periodical was being maintained i.e, by not looking into the financial records, bank statements or bank pass books, by not examining evidence of actual payment of printers bills and by not caring to ascertain how many copies were sold and paid for.

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

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

Alternative Solution is possible on the basis of clause 7 of Part-I of Second Schedule of The Chartered Accountants Act, 1949.

109. X, a practicing Chartered Accountant in an application for permission to study submitted by his Articled Assistant to the council had confirmed that the normal working hours of his office were from 11 A.M. to 6 P.M. and the hours during which the Articled Assistant was required to attend classes were 7.00 A.M. to 9.30 A.M. According to the information from College, the Articled Assistant attended the College from 10 A.M. to 1.55 P.M. on all week days. About the Articled Assistant attending the classes even during office hours, X pleaded ignorance. (ASKED IN MAY-12 EXAM)

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

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

In the instant case, the articled clerk must have not been attending office on a regular basis and the explanation of the Chartered Accountant cannot be accepted. It is also quite likely that the articled clerk would be availing leave quite often and coming late to the office.

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

Note: Alternative Solution is possible as per Schedule II, Part II, Clause (3), a member is deemed to be guilty of professional misconduct if he includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false. In the instant case, X knew about the college timing of his articled assistant and he had given false information to the institute knowing them to be false and hence he will be deemed to be guilty of professional misconduct.

110. M, a practicing Chartered Accountant sent a letter to another firm of Chartered Accountants, claiming himself to be a pioneer in liasoning with Central Government Ministries and its allied

Departments for getting various Government clearances for which he had claimed to have expertise and had given a list of his existing clients and details of his staff etc. (ASKED IN MAY-12 EXAM)

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

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

In the present case, Mr. M, a practicing Chartered Accountant sent the letter to another firm of Chartered Accountants, claiming himself to be a pioneer in liasoning with Central Government Ministries and its allied Departments for getting various Government clearances for which he had claimed to have expertise and had also given a list of his existing clients and details of his staff etc. which seems to be indirect methods to adventure their professional practice with a view to gain publicity and thereby solicit clients or professional work.

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

111. A Chartered Accountant in practice has been suspended from practice for a period of 6 months. During the said period, though he did not undertake the audit assignment since he had surrendered certificate of practice, he had appeared before Income Tax authorities in his capacity as a Chartered Accountant. (ASKED IN NOV-11)

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

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

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

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

112. Mr. J, a Chartered Accountant has identified that ABC Ltd. has taken a loan of Rs.15 lakhs from Provident Fund Account, during the course of audit. The said loan was not reflected in the books of accounts and statements were prepared ignoring the same.(ASKED IN NOV-11)

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

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

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

113. Mr. K, a Chartered Accountant certified the circulation of a weekly magazine without examining the records and relevant documents. (ASKED IN NOV-11)

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

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

Thus, in the present case, Mr. K will be held guilty of professional misconduct under Clause (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

114. CA. Smart, a practicing Chartered Accountant was on Europe tour between 15-9-15 and 25-9-15. On 18-9-15 a message was received from one of his clients requesting for a stock certificate to be produced to the bank on or before 20-9-15. Due to urgency, CA. Smart directed his assistant, who is also a Chartered Accountant, to sign and issue the stock certificate after due verification, on his behalf. (ASKED IN MAY-11)

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

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

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

115. A letter is sent by a Chartered Accountant in practice to the Ministry of Finance inquiring whether a panel of auditors is being maintained by the Ministry and if so to include his name in the panel (CV enclosed). (ASKED IN MAY-11)

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

In case of making an application for the empanelment for the allotment of audit and other professional work, the Council has opined that, “where the existence of such a panel is within the knowledge of the member, he is free to write to the concerned organization with a request to place his name on the panel. However, it would not be proper for the member to make roving inquiries by applying to any such organization for having his name included in any such panel.”

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

Important Notes:

Section 25 of the Chartered Accountants Act, 1949 provides that:

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

Here, the term “**company**” shall include any limited liability partnership which has **company as its partner** for the purpose of this section.

As per section 141(2) of the Companies Act, 2013, where a firm (including a limited liability partnership) is appointed as an auditor of a company, then, only the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

On thoroughly studying the provisions of both the Acts, the LLPs, though allowed to be appointed as an auditor in accordance with the Companies Act, 2013, however, it can't be engaged into practice, if it has company as its partner, as per the Chartered Accountants Act, 1949.

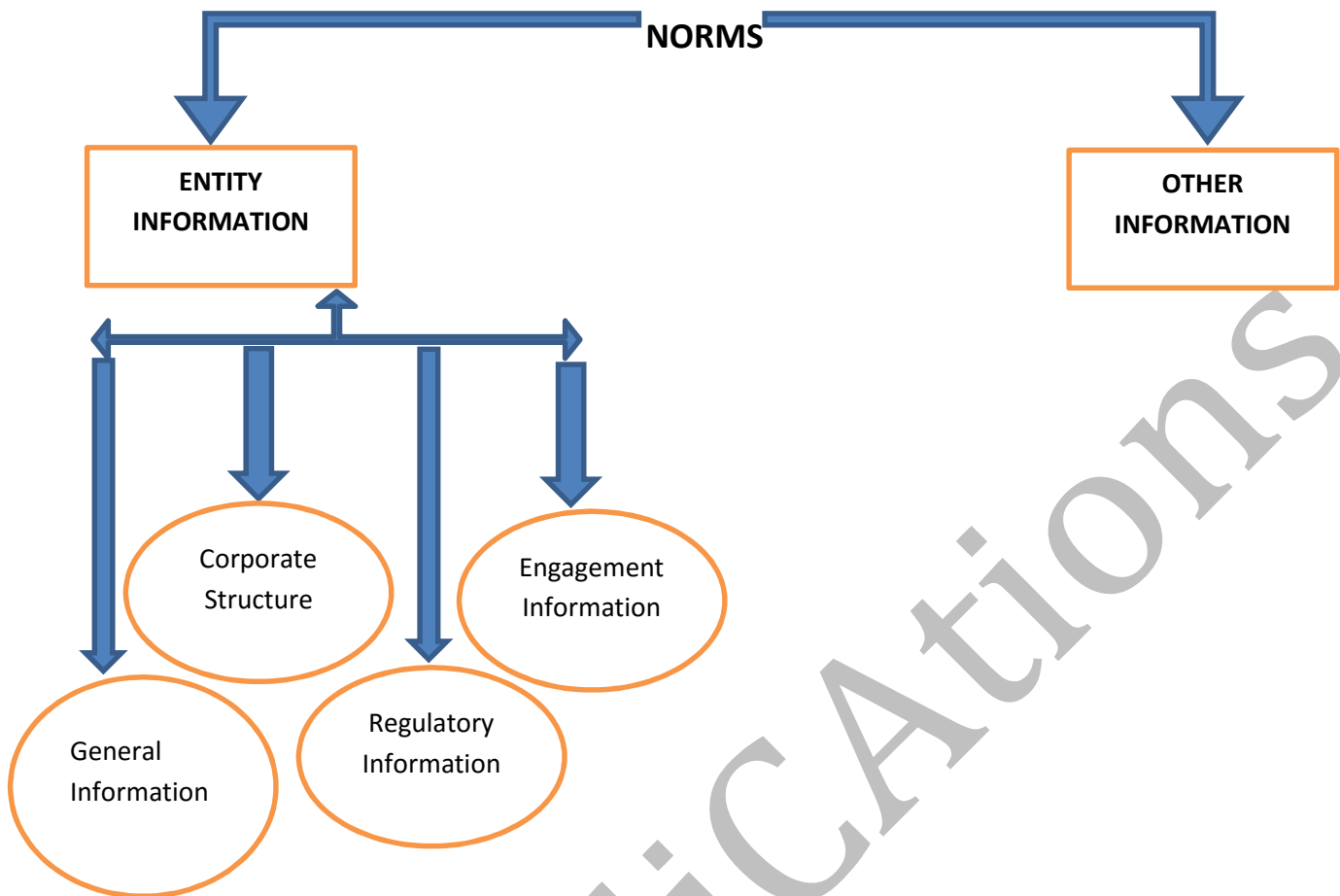
In short, the LLP not having any company as its partner, can be engaged into practicing and thus take audit assignments.

KYC Norms for CA in Practice

The self-regulatory measures are recommendatory. However, considering the spirit underlying these measures, it is expected that every Chartered Accountant carrying out attest function is encouraged to follow them and implementation of these measures would go a long way

- in order to ensure a healthy growth of the profession and an
- ensuring equitable flow of work among the members and
- would also further enhance the prestige of the profession in the society.

The following Norms have been approved by the Council of ICAI:



Clarity on clause 2 and 4 of part 1 of 1st schedule

Clause (2) read with regulation 53A

pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person **other than** a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body **(53A(1))** or with such other persons having such qualification as may be prescribed **(53A(3))**, for the purpose of rendering such professional services from time to time in or outside India.

Clause (4) read with regulation 53A(3) + 53B

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 **(53A(3))**, 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 **(53B)**.

Section 4(1)(v) any person who has passed such other examination and completed such other training without India as is recognised by the Central Government or the Council as being equivalent to the examination and training prescribed for members of the Institute:

Provided that in the case of any person who is not permanently residing in India, the Central Government or the Council, as the case may be, may impose such further conditions⁶ as it may deem fit

REGULATION 53A. Other professional bodies

(1) For the purposes of **items(clauses) (2), (3) and (5)** of Part I of the First Schedule to the Act, a person has to be a member of any of the following professional bodies, namely: -

- (a) The Institute of Company Secretaries of India
- (b) The Institute of Cost and Works Accountants of India
- (c) Bar Council of India established under the Advocates Act, 1961
- (d) The Indian Institute of Architects established under the Architects Act, 1972
- (e) The Institute of Actuaries of India established under the Actuaries Act, 2006

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

Section 29(2) deals with Reciprocity

Subject to the provisions of sub-section (1), the Council may prescribe the conditions, if any, subject to which foreign qualifications relating to accountancy shall be recognised for the purposes of entry in the Register.

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

- (i) Company Secretary within the meaning of the Company Secretaries Act, 1980;
- (ii) Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959;
- (iii) Actuary within the meaning of the Actuaries Act, 2006;
- (iv) Bachelor in Engineering from a University established by law or an Institution recognised by law;
- (v) Bachelor in Technology from a University established by law or an institution recognised by law;
- (vi) Bachelor in Architecture from a University established by law or an institution recognised by law;
- (vii) Bachelor in Law from a University established by law or an institution recognised by law;
- (viii) Master in Business Administration from Universities established by law or technical institutions recognised by All India Council for Technical Education.

53B. Membership of professional bodies for partnership

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

- (a) Company Secretary, member, The Institute of Company Secretaries of India, established under the Company Secretaries Act, 1980;
- (b) Cost Accountant, member, The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959;
- (c) Advocate, member, Bar Council of India established under the Advocates Act, 1961;

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

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

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

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

116. D, who conducts the tax audit u/s 44AB of the Income Tax Act, 1961 of M/s ABC, a partnership firm, has received the audit fees of ` 25,000 on progressive basis in respect of the tax audit for the year ended 31.3.2015. The audit report was, however, signed on 25.5.2015.

Entire Audit Fees Received in Advance: As per Chapter X of Council General Guidelines, 2008 a member of the Institute in practice or a partner of a firm in practice or a firm shall not accept appointment as auditor of a concern while indebted to the concern or given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding Rs.10,000/-.

However, the Research Committee of the ICAI has expressed the opinion that where in accordance with the terms of engagement of auditor by a client, the auditor recovers his fees on a progressive basis as and when a part of the work is done without waiting for the completion of the whole job, he cannot be said to be indebted to the company at any stage.

In the instant case, Mr. D is appointed to conduct a tax audit u/s 44AB of the Income Tax Act, 1961. He has received the audit fees of Rs.25,000 in respect of the tax audit for the year ended 31.3.2015 which is on progressive basis. Therefore, Mr. D will not be held guilty for misconduct.

117. P, a Chartered Accountant in practice, accepts appointment as statutory auditor for LMN Pvt. Ltd. Q, brother of P has substantial interest in LMN Pvt. Ltd.

Accepting Appointment as an Auditor where Relative Holding Substantial Interest: As per Clause (4) of Part I of Second Schedule, a CA in practice is deemed to be guilty of professional misconduct if he 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. As per Council General Guidelines, 2008, the above restriction is also made applicable for relatives of the members.

Further, as per Section 141(3)(f) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor of a company whose relative is a director or is in the employment of the company as a director or key managerial personnel.

In the instant case, since Q, a relative has a substantial interest in LMN Pvt. Ltd., P cannot conduct the audit and needs to vacate the office. Thus, P will be guilty of misconduct in terms of above clause.

118. Mrs. Fair is a Director of XYZ Private Limited, having 15% share-holdings in the company. During 2014, the company appointed C.A. Mr. Lovely, Mrs. Fair's spouse, as its statutory auditor. On Mr. Lovely's advice, the company issued fresh equity shares in 2014-15, in the ratio of one share for every two shares held by the shareholders of the company. Mr. Lovely used to deliver audit report for subsequent years without any comments or disclosures, thereupon.

Expressing an Opinion on Financial Statements where Director is a Relative: Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949, provides that a member in practice shall be deemed to be guilty of professional misconduct if he accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Sections 224 and 225 of the Companies Act, 1956 (now Section 139 and 140 read with Section 141 of the Companies Act, 2013), in respect of such appointment have been duly complied with.

As per Section 141(3)(f) of the Companies Act, 2013, a person shall not be eligible for appointment as an auditor of a company whose relative is a director or is in the employment of the company as a director or key managerial personnel. The definition of 'Relative' includes husband and wife.

In this case Mrs. Fair is a Director of XYZ Private Limited and the company has appointed Mr. Lovely, Chartered Accountant, Mrs. Fair's spouse, as its statutory auditor. Mr. Lovely should not accept the appointment as statutory auditor of the company, where his wife Mrs. Fair is director. This is contravention of section 141(3)(f) of the Companies Act, 2013.

Therefore, Mr. Lovely is liable for misconduct as per Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

119. Mr. A, a Chartered Accountant was the auditor of 'A Limited'. During the financial year 2014-15, the investment appeared in the Balance Sheet of the company of Rs.10 lakhs and was the same amount as in the last year. Later on, it was found that the company's investments were only Rs.25,000, but the value of investments was inflated for the purpose of obtaining higher amount of Bank loan.

Grossly Negligent in Conduct of Duties: As per Part I of Second Schedule to the Chartered Accountants Act, 1949, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, 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, under Clause (2); does not exercise due diligence, or is grossly negligent in the conduct of his professional duties, under Clause (7); or 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, under Clause (8).

The primary duty of physical verification and valuation of investments is of the management. However, the auditor's duty is also to verify the physical existence and valuation of investments placed, at least on the last day of the accounting year. The auditor should verify the documentary evidence for the cost/value and physical existence of the investments at the end of the year. He should not blindly rely upon the Management's representation.

In the instant case, such non-verification happened for two years. It also appears that auditors failed to confirm the value of investments from any proper source. In case auditor has simply relied on the management's representation, the auditor has failed to perform his duty.

Accordingly, Mr. A, will be held liable for professional misconduct under Clauses (2), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

120. Mr. B is a practising Chartered Accountant holding a valid certificate of practice. He accepted the appointment as Director of the Green World Co. Ltd. Mr. C, a partner of Mr. B is statutory auditor of the said company.

Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949 prohibits a member to engage in any business or occupation other than the profession of chartered accountants unless permitted by the Council so to engage. It does not prohibit a Chartered Accountant from being a director of a company, except managing director or a whole time director. But if any of the partners is interested in such company as an auditor then he cannot be director of the said company.

In the present case Mr. B has accepted the directorship in a Company, where his partner Mr. C is an auditor, without obtaining specific permission of the council. Hence, Mr. B will be held guilty for professional misconduct under Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949.

Further, the Council of the Institute of Chartered Accountants of India has categorically stated that in cases where a member is a director of a company, the firm, in which the said member is a partner, should not express any opinion on its financial statements. Clause (4) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 states that expressing an opinion on financial statements of any business or enterprise in which he, his firm or a partner of his firm has a substantial interest would constitute misconduct.

Additionally, Section 141(3)(c) of the Companies Act, 2013 also disqualifies a person to be appointed as an auditor if he is a partner of an officer of the company. Furthermore, section 141(4) of the Companies Act, 2013 requires the appointed auditor to vacate his office if he incurs any of the disqualifications mentioned under sub-section (3).

Therefore, in cases, where a member of the Institute is a director of a company or a firm in which said member is a partner should not express any opinion on its financial statements. Hence Mr. C, a partner of Mr. B, should vacate the office.

121. Mr. Nigal, a Chartered Accountant in practice, delivered a speech in the national conference organized by the Ministry of Textiles. While delivering the speech, he told to the audience that he is a management expert and his firm provides services of taxation and audit at reasonable rates. He also requested the audience to approach his firm of chartered accountants for these services and at the request of audience he also distributed his business cards and telephone number of his firm to those in the audience. Comment.

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

Section 7 of the Chartered Accountants Act, 1949 read with Clause (7) of Part I of the First Schedule to the said Act prohibits advertising of professional attainments or services of a member. It also restrains a member from using any designation or expression other than that of a chartered accountant in documents

through which the professional attainments of the member would come to the notice of the public. Under the clause, use of any designation or expression other than chartered accountant for a chartered accountant in practice, on professional documents, visiting cards, etc. amounts to a misconduct unless it be a degree of a university or a title indicating membership of any other professional body recognised by the Central Government or the Council.

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

Thus, it is improper to use designation "Management Expert" since neither it is a degree of a University established by law in India or recognised by the Central Government nor it is a recognised professional membership by the Central Government or the Council. Therefore, he is deemed to be guilty of professional misconduct under both Clause (6) and Clause (7) as he has used the designation "Management Expert" in his speech and also he has made reference to the services provided by his firm of Chartered Accountants at reasonable rates. Distribution of cards to audience is also a misconduct in terms of Clause (6).

122. A is the auditor of Z Ltd., which has a turnover of Rs.200 crore. The audit fee for the year is fixed at Rs.50 lakhs. During the year, the company offers A an assignment of management consultancy within the meaning of Section 2(2)(iv) of the CA Act, 1949 for a remuneration of Rs.1 crore. A seeks your advice on accepting the assignment.

Appointment as a Statutory Auditor of a PSUs'/Govt Company(ies)/Listed Company(ies) and Other Public Company(ies): As per the Council General Guidelines 2008, under Chapter IX on appointment as statutory auditor a member of the Institute in practice shall not accept the appointment as a statutory auditor of a PSUs'/Govt company(ies)/Listed company(ies) and other public company(ies) having a turnover of Rs.50 crores or more in a year and where he accepts any other work(s) or assignment(s) or service(s) in regard to same undertaking(s) on a remuneration which in total exceeds the fee payable for carrying out the statutory audit of the same undertaking. For this purpose the other work/services includes Management Consultancy and all other professional services permitted by Council excluding audit under any other statute, Certification work required to be done by the statutory auditor and any representation before an authority.

In view of the above position it would be a misconduct on A's part if he accepts the management consultancy assignment for a fee of Rs.1 crore.

123. Write a short note on Other Misconduct.

Other Misconduct:

(i) A member is liable to disciplinary action under Section 21 of the Chartered Accountant Act if he is found guilty of any professional or 'other misconduct'.

(ii) Other misconduct has been defined in Part IV of First Schedule and Part III of Second Schedule in the CA (Amendment Act) 2006.

(iii) As per Part IV of First Schedule of the CA Act, a member of the Institute whether in practice or not, shall be deemed to be guilty of other misconduct if he –

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

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

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

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

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