

Members, therefore, are expected to interpret the requirement as regards independence much more strictly than what the law requires and should not place themselves in positions which would either compromise or jeopardise their independence. In view of the above, the Board, via a clarification, decided that the auditor of a Subsidiary Company can't be a Director of its Holding Company, as it will affect the independence of an auditor.

(b) **Promoter/Promoter Director** - There is no bar for a member to be a promoter/signatory to the Memorandum and Articles of Association of any company. There is also no bar for such a promoter / signatory to be a Director Simplicitor of that company irrespective of whether the object of the company include areas which fall within the scope of the profession of Chartered Accountants. Therefore, members are not required to obtain specific permission of the Council in such cases. It must be clarified that under Section 25 of the Chartered Accountants Act, no Company can practice as a Chartered Accountant.

(c) **Member in practice in a HUF doing business** - "A member of the Institute can acquire interest in family business in any of the following manner:

- (i) as a proprietary firm
- (ii) as a partnership firm
- (iii) in the name and style of Hindu Undivided Family as its Karta or a member.

It would be necessary for the members to provide evidence that interest in the family business concern devolved on him as a result of inheritance/succession/partition of the family business. It is also necessary for the member to show that he was not actively engaged in carrying on the said business and that the family business concern in question was not created by himself.

To establish his case, the member should furnish a declaration in the prescribed format and the documents evidencing above for consideration to the concerned Decentralized Office."

A member in practice engaged as Karta of a HUF doing family business, will be within the limit prescribed by Council if he makes investments from the funds pertaining to HUF only, provided, he is not actively engaged in the management of the said business.

The Council has passed a Resolution under Regulation 190A granting general permission (for private tutorship, and part-time tutorship under Coaching organization of the Institute) and specific permission (for part - time or full-time tutorship under any educational institution other than Coaching organization of the Institute). Such general and specific permission granted is subject to the condition that the direct teaching hours devoted to such activities taken together should not exceed 25 hours a week in order to be able to undertake attest functions.

TEST YOUR UNDERSTANDING 20

A chartered accountant holding certificate of practice and having four articled clerks registered under him accepts appointment as a full-time lecturer in a college. Also, he becomes a partner with his brother in a business. Examine his conduct in the light of Chartered Accountants Act, 1949 and the regulations thereunder.

SOLUTION

1711



Generally / special. . to appoint as full-time lecturer → special permission. Even to become partner in business → special perm.



Conclusion → Guilty under → since he has done special permission.

TEST YOUR UNDERSTANDING 21

Mr. A, a practicing Chartered Accountant, took over as the executive chairman of Software Company on 1.4.2023. On 10.4.2023 he applied to the Council for permission.

SOLUTION

→ 1711

Executive Chairman → Require prior permission



Mr. A Guilty

TEST YOUR UNDERSTANDING 22

CA. Prabhu is a leading income tax practitioner and consultant for derivative products. He resides in Mumbai near to the ABC commodity stock exchange and does trading in commodity derivatives. Every day, he invests nearly 50% of his time to settle the commodity transactions. Is C.A. Prabhu liable for professional misconduct?

SOLUTION

111

derivative → 50% → Specific permission

Commodity → If SP not taken

member + Partner.

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

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

The term 'financial statement' for the purposes of this clause would cover an examination of the accounts or of financial statements given under a statutory enactment or otherwise. A report, however, may cover a wider range of documents but in the context in which it is used in this clause, it would mean only a report

arising out of a professional assignment undertaken by him or his firm and submitted by him or his firm to the client(s) or where so required, to an outsider on behalf of himself or on behalf of the firm. The subject matter of report should be the expression of a professional opinion whether, financial or non-financial. The financial statements and the reports referred to in this clause obviously means the financial statements and reports as ultimately finalized and submitted to the outside authorities.

The Council has clarified that the power to sign routine documents on which a professional opinion or authentication is not required to be expressed may be delegated in the following instances and such delegation will not attract provisions of this clause:

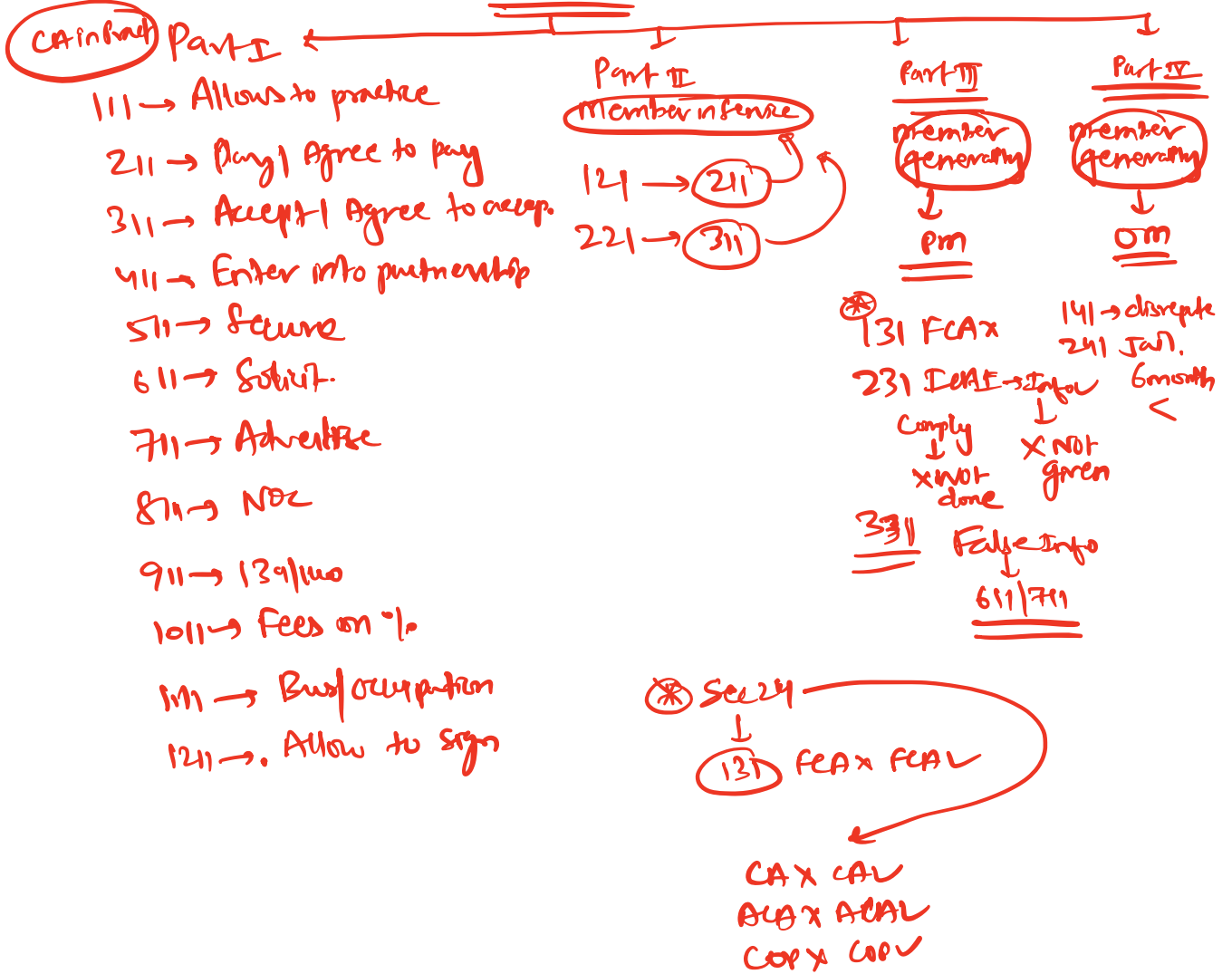
- (i) Issue of audit queries during the course of audit.
- (ii) Asking for information or issue of questionnaire.
- (iii) Letter forwarding draft observations/financial statements.
- (iv) Initiating and stamping of vouchers and of schedules prepared for the purpose of audit.
- (v) Acknowledging and carrying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

It is also clarified that where the authority to sign documents given above is delegated by a chartered accountant or by a firm of chartered accountants the fact that the documents have not been signed by a chartered accountant is not a defence to him or to the firm in an enquiry relating to professional misconduct.

TEST YOUR UNDERSTANDING 23

S, a practicing chartered accountant gives power of attorney to an employee chartered accountant to sign reports and financial statements on his behalf.

First Sch.



SOLUTION

1211

Guilty.

✓ **TEST YOUR UNDERSTANDING 24**

CA. Smart, a practicing Chartered Accountant was on Europe tour between 15-9-23 and 25-9-23. On 18-9-23 a message was received from one of his clients requesting for a stock certificate to be produced to the bank on or before 20-9-23. 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.

SOLUTION

Guilty

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

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

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

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

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

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

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

TEST YOUR UNDERSTANDING 25

Mr. 'C', a Chartered Accountant holds a certificate of practice while in employment

also, recommends a particular lawyer to his employer in respect of a case. The lawyer, out of the professional fee received from employer paid a particular sum as referral fee to Mr. 'C'.

SOLUTION

221

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

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

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

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

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

Where a Chartered Accountant had continued to train an articled clerk though his name was removed from the membership of the Institute and he had failed to send any reply to the Institute asking him to send his explanation as to how he was training

as his articled clerk when he was not a member of the Institute. Held that he was guilty under Clause (2) of Part III of the First Schedule.

TEST YOUR UNDERSTANDING 26

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.

SOLUTION

guilty 23/1

TEST YOUR UNDERSTANDING 27

Mr. X, a Chartered Accountant, employed as a paid Assistant with a Chartered Accountant firm, leaves the services of the firm on 31st December, 2023. Despite many reminders from ICAI he fails to reply regarding the date of leaving the services of the firm.

SOLUTION

23/1

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

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

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

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

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

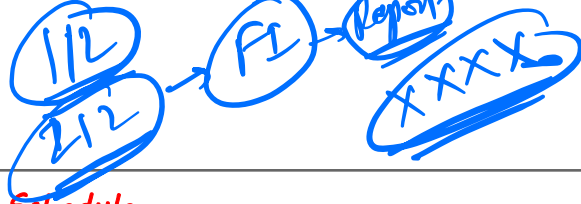
Clause (2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

TEST YOUR UNDERSTANDING 28

YKS & Co., a proprietary firm of Chartered Accountants was appointed as a concurrent auditor of a bank. YKS, the proprietor, used his influence to get a loan and thereafter failed to repay the loan.

SOLUTION

141



8.2 The Second Schedule

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

Part I - Professional Misconduct in relation to Chartered Accountants in Practice

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

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

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

If disclosure is required in other cases, it would be necessary to ensure that the consent of the client is given by a person who is competent to accord such consent. Thus, in the case of a sole proprietary concern, the consent may be given by the proprietor or his constituted attorney who is legally empowered to give such consent. In the case of partnership firm, since in turn, every partner has the authority to bind the firm by his acts, the consent may be given by any partner. In the case of a company, by virtue of section 179 of the Companies Act, 2013, the Board of Directors is empowered to do all that the company in a general meeting may do unless a resolution by the company in general meeting is required by the Act or by the Memorandum or Articles of the company. Hence, the consent may be sought from

Branch Vidya.

the Managing Director if the powers of the Board of Directors are delegated to him comprehensively enough to include the power to give such consent, but if the powers of the Board of Directors are not so delegated, the consent should be obtained by means of resolution of the Board of Directors of the Company.

An auditor is not required to provide the client or other auditors of the same enterprise or its related enterprise such as a parent or a subsidiary, access to his audit working papers. The main auditors of an enterprise do not have right of access to the audit working papers of the branch auditors. In the case of a company, the statutory auditor has to consider the report of the branch auditor and has a right to seek clarifications and/or to visit the branch if he deems it necessary to do so for the performance of the duties as auditor. An auditor can rely on the work of another auditor, without having any right of access to the audit working papers of the other auditor. For this purpose, the term 'auditor' includes 'internal auditor'.

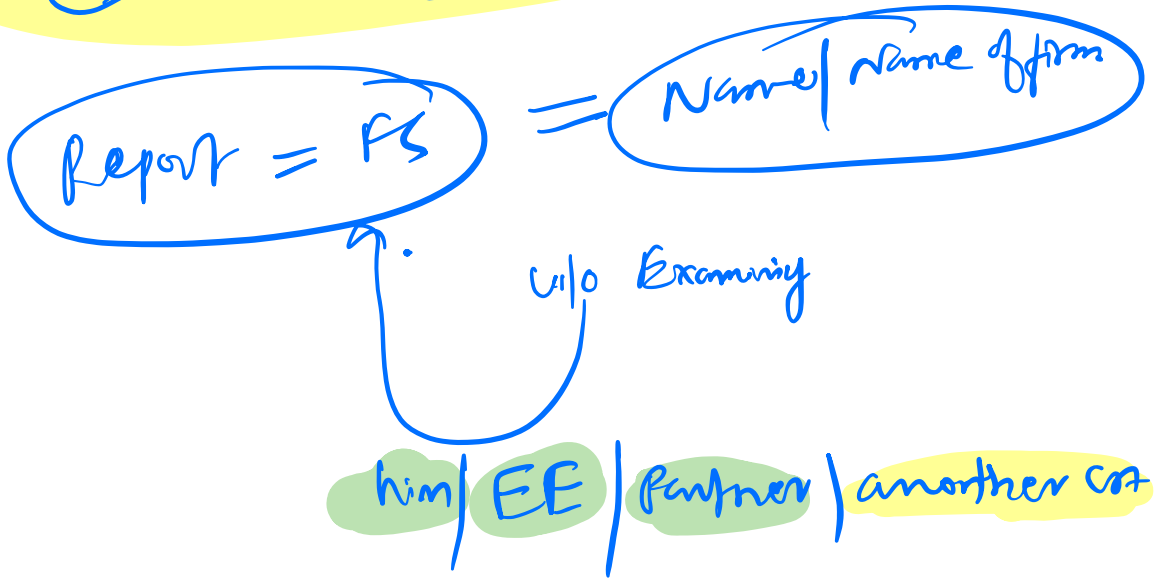
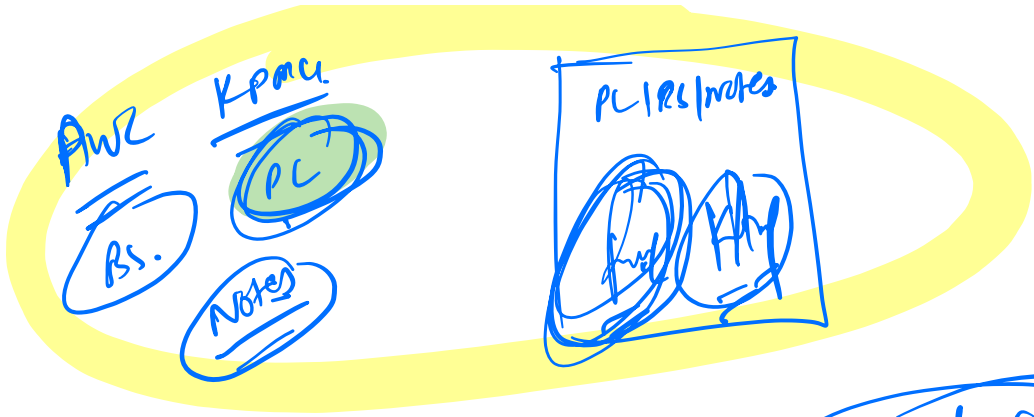
However, the auditor may, at his discretion, in cases considered appropriate by him, make portions of or extracts from his working papers available to the client.

There is a difference between sharing of working papers and sharing of information. So far as the information is concerned, he can provide the same to the client or to a Regulatory body after obtaining the consent of the client.

It is not possible to set out all the circumstances under which disclosure of information may be required by law. If under any legal compulsion and if it is not legally permissible to claim privilege under the Evidence Act, 1872 (Section 126), the disclosure made by a member of such information may not be considered as misconduct. However, such matters involve niceties of law and expert legal advice may be sought prior to such disclosure.

The only circumstance in which this duty of confidence may give rise to a difficulty is where the accountant has reason to believe that the client has been guilty of some unlawful act or default. This matter is of special significance in the case where the client is guilty of tax evasion.

Tax frauds → Auditor shall not inform IS Authority w/o seeking legal advice.



TEST YOUR UNDERSTANDING 29

Mr. P, 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.

SOLUTION

112

Confidential
[Signature]

Mr P is guilty of Pm

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

The above clause restrains a member from subscribing to the report on a financial statement so long as it has not been examined by him or by a partner or an employee of his firm or by another chartered accountant in practice. It has been introduced to ensure that the work entrusted to him has been carried out by the member either directly or under his supervision before he renders his report.

An exception however has been made in respect of an examination carried out by another chartered accountant in practice. This enables two or more members to accept a joint assignment or enables a member also to carry out the examination of financial statements by or with the assistance of all or either any chartered accountant in practice.

112
783
512
P.C.S.
CA AMIT TATED
SAE 3400
Accuracy
with
312

SAs

3400
3420

5400
PFZ
→ assuming
~ HFE

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

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

In respect of audit work divided among the joint auditors, each joint auditor is responsible only for the work allocated to him, whether or not he has prepared a separate report on the work performed by him. On the other hand, all the joint auditors are jointly and severally responsible in accordance with SA 299 "Joint Audit of Financial Statements":

Each joint auditor should decide for himself the appropriateness of using test checks or sampling, the nature, timing and extent of audit procedures to be applied in relation to the work allotted to him.

Obtaining and evaluating the information and explanations from the management is the joint responsibility of the joint auditors unless they agree upon a specific pattern of distribution of this responsibility. In case of distribution of the responsibility, the liability of the joint auditors is limited to the area allotted to that auditor.

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

As per the opinion of the Council while finalizing the Guidance Note on Accountant's Report on Profit Forecasts and/or Financial Forecasts at its 100th meeting held on 22nd through 24th July 1982, a chartered accountant can participate in the

88
299

preparation of profit or financial forecasts and can review them, provided he indicates clearly in his report the sources of information, the basis of forecasts and also the major assumptions made in arriving at the forecasts and so long as he does not vouch for the accuracy of the forecasts. The Council has further opined that the same opinion would also apply to projections made on the basis of hypothetical assumptions about future events and management actions which are not necessarily expected to take place so long as the auditor does not vouch for the accuracy of the projection.

Further, the attention of the members is drawn to "Guidance Note on Reports in Company Prospectuses (Revised 2019)" issued by the Council in January 2019. This Guidance Note provides guidance on compliance with the provisions of the Companies Act, 2013 and the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018 relating to the reports required to be issued by chartered accountants in prospectus issued by the companies for the offerings made in India.

⊗ A Chartered Accountant issued 97 Projection Statements for certain Individuals without verifying the basic documents and on the basis of which the Bank had extended the loan amount. Afterwards, the Bank revealed that persons for whom the Respondent had issued Financial Statements did not have any business/source for repayment of loan. Accordingly, Chartered Accountant will be held, guilty of professional misconduct falling within the meaning of Clauses (3), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

4/12 Clause (4) Expresses his opinion on financial statements of any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest

(i) If the opinions of auditors are to command respect and the confidence of the public, it is essential that it must be free of any interest which is likely to affect their independence.

(ii) For the purpose of this Clause, the expression "Substantial Interest" shall have meaning as is assigned thereto, under Appendix (9) of the Chartered Accountants Regulations,

1988. (see Clause 11 of Part I of First Schedule).

(iii) The words "financial statements" used in this clause would cover both reports and certificates usually given after an examination of the accounts or the financial statement or any attest function under any statutory enactment or for purposes of income-tax assessments. This would not, however, apply to cases where such statements are prepared by members in employment purely for the information of their respective employers in the normal course of their duties and not meant to be submitted to any outside authority.

(iv) Public conscience is expected to be ahead of the law. Members, therefore, are expected to interpret the requirement as regards independence much more strictly than what the law requires and should not place themselves in positions which would either compromise or jeopardise their independence.

(v) Member must take care to see that they do not land themselves in situations where there could be conflict of interest and duty.

(vi) In this connection, the Council has decided not to permit a Chartered Accountant in employment to certify the financial statements of the concern in which he is employed, or of a concern under the same management as the concern in which he is employed, even though he holds certificate of practice and that such certification can be done by any Chartered Accountant in practice. This restriction would not however apply where the certification is permitted by any law. The Council has also decided that a Chartered Accountant should not by himself or in his firm name:-

a. accept the Auditorship of a college, if he is working as a part-time lecturer in the college.

b. accept the Auditorship of a Trust where his partner is either an employee or a trustee of the Trust.

(vii) Many new areas of professional work have been added, e.g., Tax Audit, GST Audit, Concurrent Audit of Banks, Concurrent Audit of Borrowers of Financial institutions, Audit of non-corporate borrowers of Banks and Financial Institutions, Audit of Stock Exchange, Brokers, etc. The Council wishes to emphasize that the aforesaid requirement of Clause (4) are equally applicable while performing all types of attest functions by the members.

(viii) Some of the situations which may arise in the applicability of Clause (4) read with the definition of "Substantial Interest" (see Clause 11 of Part I of First Schedule) and other statutory prohibitions are discussed below for the guidance of members:-

1. Where the member, his firm or his partner or his relative has substantial interest in the business or enterprise (not being a company).
2. Where the member or his partner or relative is a director or in the employment of an Officer or an Employee of the Company.
- (a) Where the member is holding a position in the Company as Director, officer or employee Section 141(3)(b) of the Companies Act, 2013 specifically prohibits a member from auditing the accounts of a Company in which he is an officer or employee of the Company, or in the employment of an officer or an employee of the Company (irrespective of the question of substantial interest).

Moreover, in case the member who is Director *Simpliciter* (general permission) in a Company, the Council has prohibited such member from auditing the accounts of a Company, whether or not he holds substantial interest in the Company.

In case the member seeks specific permission of the Council to be Whole Time or Managing Director in a Company, he would, on grant of such permission, not be entitled either to engage in attest functions (which includes audit), or to hold substantial interest in the Company. Although the provisions of the aforesaid section are not specifically applicable in the context of audits performed under other statutes, e.g. Tax Audit yet the underlying principle of independence of mind is equally applicable in those situations also.

- (b) Where the member is not holding a position in the Company, but holding any security or interest
Section 141(3) (d)(i) of Companies Act, 2013 disqualifies a person from being Auditor of a Company, if he holds any security or interest in the Company, or its subsidiary, or holding or associate company or a subsidiary of such holding Company.

(c) Where the partner of the member is an officer or employee of a company Section 141(3)(c) of Companies Act, 2013 disqualifies a member from being the auditor of a Company, where the partner of such member is an officer or employee of the Company.

(d) Where the partner of the member is holding any security or interest in the Company Section 141(3) (d)(i) of Companies Act, 2013 bars a person from being auditor of a Company, if his partner holds any security or interest in the Company, or its subsidiary, or holding or associate company or a subsidiary of such holding Company.

(e) Where the relative of the member is a director or is in the employment of the Company as a director or key managerial person Section 141 (3) (f) of Companies Act, 2013 bars a person from accepting audit of a Company where the relative of the member is director or is in the employment of the Company as a director or key managerial person.

relative → Dir/emp Co.

(f) Where the relative of the member is holding any security or interest in the Company Section 141(3)(d) (i) of Companies Act, 2013, read with Rule 10 of Companies (Audit and Auditors) Rules, 2014 bars a person from being auditor of a Company, if his relative holds security or interest in the Company, or its subsidiary, or holding or associate company or a subsidiary of such holding Company of face value exceeding Rupees One Lakh.

(ix) It is not permissible for a member to undertake the assignment of certification, wherein the client is relative of the member. The "relative" for this purpose would refer to the definition mentioned in Accounting Standard (AS)-18.

(x) An accountant is expected to be no less independent in the discharge of his duties as a tax consultant or as a financial adviser than as auditor. In fact, it is necessary that he should bear the same degree of integrity and independence of mind in all spheres of his work.

SIM

(x)

(xi) **Members not to write Books of Account for auditee clients:** The Council has clarified that the members are not permitted to write the books of account of their auditee clients.

(xii) **Statutory auditor not to be the Internal Auditor simultaneously:** An Auditor appointed by an entity under the Companies Act or any other statute shall not be the Internal Auditor of the same entity.

(xiii) **Internal auditor not to be the Tax auditor simultaneously:** An Internal Auditor of an assessee, whether working with the organization or an independently practicing Chartered Accountant irrespective of being an individual Chartered Accountant or a firm of Chartered Accountants cannot be appointed as its Tax Auditor.

(xiv) **Internal Auditor not to be the GST Auditor simultaneously:** The Internal Auditor of an entity cannot undertake GST Audit of the same entity.

(x)

(xv) **Cooling off period after completion of tenure as Director:** A member shall not accept the assignment of audit of a Company for a period of two years from the date of completion of his tenure as Director, or resignation as Director of the said Company.

(xvi) **Members to satisfy whether appointment is as per the statute:** A member should satisfy himself before accepting an appointment as an auditor of an entity that his appointment is in accordance with the statute governing the entity. In case the entity is constituted under a trust deed/instrument, the member should satisfy whether his appointment is valid according to the instrument constituting the entity and rules and regulations made thereunder.

(xvii) In case the appointment is to be authorised by the regulatory authorities such as in the case of co-operative societies, trusts etc. then the member must satisfy whether such regulatory authorities have authorised the managing committee of the society/trust for appointment of the auditors. In a case where any entity is being managed by a Managing Committee or Board of Trustees or Board of Governors by

whatever name called he should ensure that his appointment is duly made by a resolution passed of such Managing Committee or Board of Trustees or Board of Governors. Even in case of partnership or sole proprietary concerns, the member must ensure that letter of appointment/engagement is given by the firm/sole proprietor before he accepts the appointment/ engagement.

(xviii) Section 288 of Income Tax Act, 1961 describe the disqualifications for the purpose of Tax Audit.

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

It may be observed that this clause refers to failure to disclose a material fact, which is known to him, in a financial statement reported on by the auditor. It is obvious, that before a member could be held guilty of misconduct, materiality has to be established. The determination of materiality has been provided in SA 320, "Materiality in Planning and Performing an Audit".

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

The word "financial statements" used in this clause would cover both reports and certificate usually given after an examination of the accounts or of financial statements under any statutory enactment, or/for purposes of income tax assessments. This would not however, apply to cases where such statements are prepared by members in employment purely for the information of their respective employers in the normal course of their duties and not meant to be submitted to any outside authority.

10%



5% change

5% -1r

Client

Disclose.

Non Disclose.

15% change

Disclose ✓

15% change

non Disclose

Mm's

X Reports

612

512

Material fact

disclose

1.4.2023 2cr

↓
1.11.2023 → 2cr
losses

→ 1.3.24
report

31.3.24 2cr

Deb. R.P.

↓
Deb. trustee

→ only for Redemption X

Report disclose

MM's X
612

512

Mat fact X

112 → Confidential

212 → Sign below verifying

312 → Projection → Accuracy

412 → Substantial → ~~opinion~~

512 → Mat. fact x

612 → mat m's x

712

812

912

1012

====

TEST YOUR UNDERSTANDING 30

Mr. J, a Chartered Accountant during the course of audit of M/s XYZ Ltd. came to know that the company has taken a loan of ₹ 10 lakhs from Employees Provident Fund. The said loan was not reflected in the books of account. However, the auditor ignored this information in his report.

SOLUTION

[5/2

[

Mr J is guilty of pm

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

This clause refers to failure on the part of a member to point out in his report a material misstatement appearing in a financial statement and he has knowledge of the same. Here also, it is obvious, that before a member could be held guilty of misconduct, materiality has to be established and the observations made under the preceding Clause (5), in this connection, will equally apply to this clause.

TEST YOUR UNDERSTANDING 31

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

SOLUTION

[5/2
[6/2



512 612

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

Though very simply worded, it is a vital clause which unusually gets attracted whenever it is necessary to judge whether the accountant has honestly and reasonably discharged his duties. The expression negligence covers a wide field and extends from the frontiers of fraud to collateral minor negligence. The meaning and significance of this clause is well contained in the following passage quoted from the Judgement of the Karnataka High Court in a disciplinary case which came before it in 1977:

"It is the duty of an auditor to bring to bear on the work he has to perform that skill, care and caution which a reasonably competent, careful, and cautious auditor would use. What is reasonable skill, care and caution must depend on the particular circumstances of each case. An auditor is not bound to be a detective, or, as was said, to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watchdog but not a bloodhound. If there is anything calculated to excite suspicion he should probe it to the bottom; but in the absence of anything of that kind he is only bound to be reasonably cautious and careful."

Professional misconduct is a term of fairly wide import but generally speaking, it implies fairly serious cases of misconduct of gross negligence. Negligence per se would not amount to gross negligence in the case of minor errors and lapses, which do not constitute professional misconduct and which, therefore, don't require a reference to the Disciplinary Committee, the Council would nevertheless bring the matter to the attention of its members so that greater care may be taken in the future in avoiding errors and lapses of a similar type.

210 (3)

212 → FS. report
↓
Examine

TEST YOUR UNDERSTANDING 32

Q. CA C who conducted statutory audit of a Haryana daily 'New Era' certified the circulation figures based on Management Information System Report (M-I-S Report) without examining the books of Account.

SOLUTION

Ans / Q12

712

252
STL / 612

812

TEST YOUR UNDERSTANDING 33

Mr. D, a practicing Chartered Accountant, did not complete his work relating to the audit of the accounts of a company and had not submitted his audit report in due time to enable the company to comply with the statutory requirements.

SOLUTION

712

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

SAAR → opinion
SAAR → ~~SAAR~~

It is expected of a Chartered Accountant to express his opinion on the truth and fairness of statements of accounts after examining their authenticity with reference to information and explanations given to him. A Chartered Accountant must determine the extent of information, which, should be obtained by him before he expresses an opinion on the financial statements submitted to him for report.

The chartered accountant should not express an opinion before obtaining the required data and information. The latter part of the clause enjoins that where due to inadequacy of information or data the report has to be circumscribed to an extent that it would cease to be of any expression of a categorical opinion, the auditor should clearly express his disclaimer in no uncertain terms.

812
712 →
Where a Chartered Accountant issued a certificate of circulation of a periodical without going into the most elementary details of how the circulation of a periodical was being maintained i.e. by not looking into the financial records, bank statements or bank pass books, by not examining evidence of actual payment of printers bills and by not caring to ascertain how many copies were sold and paid for. Held he was guilty under Clause (8). [Registrar of Newspapers for India vs K. Rajinder Singh (1971)].

“a certificate is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion.” A Chartered Accountant is required to clearly state his limitations/assumptions in his certificates, while in the said matter, the Respondent in none of the 12 certificates either mentioned his limitation or assumptions. Though, in his written statements he submitted that his job was not to verify the assets physically or verification of original bills or whether promoters contribution have come in actually in the Bank account etc. If his assignment did not include the same, he ought to have disclosed or mentioned in the certificates that while issuing the certificate he had relied upon the following documents, so as not to mislead the users of the said certificate(s). In the instant matter, the Respondent did not disclose any assumptions/limitations whatsoever while issuing the certificates. Moreover, the Respondent in none of the certificates issued by him had mentioned

the basis/papers relied upon by him. Consequently, the same misled the IDBI Bank in approving the loan based on such certificates which did not mention the basis of issuance.

The Respondent while issuing the Certificates ought to have exercised diligence but he failed to do so. Accordingly, the Committee is of the view that the Respondent was grossly negligent in conduct of his professional duties and also failed to obtain sufficient information while issuing the aforesaid certificates. Thus, he was guilty under clause (7) and (8).

The Committee noted that since the transaction of land took place between the Shivdarshan Firm i.e., a partnership firm and Siddheshwari Developers, the same should have been reflected in the books of Shivdarshan Firm and not in the books of Shivdarshan Construction which was a proprietary concern. The Respondent being the auditor of Shivdarshan Construction failed to report the said discrepancy in his audit report. Since, the amount of loan was material and the Respondent failed to submit any evidence based on which he had chosen not to qualify the appearance of housing loan from Navsarjan Industrial Co. Op. Bank Ltd in the financial statements, hence, the Committee is of the view that the Respondent is guilty of professional misconduct falling within the meaning of Clauses (6), (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 [Shri Mukesh M. Kelawala vs. CA- Sukhdev Manilal Soni (2013)]

Where the Respondent had failed to report on the Bank Account which was opened by the client in the capacity as a proprietor which included lot of variations, i.e., Account Number was different and the capacity in which Account was opened was also different. As a Professional, the Respondent ought to have copies of Bank Account which could easily establish the fact that the Bank Account was opened and operated proprietary name but he could not do that. Hence, it was observed that the

Respondent was not only negligent in his duties in respect of auditing of bank transactions but also, failed to obtain sufficient information for expressing an opinion.

The Respondent was held guilty of professional misconduct falling within the meaning of Clauses (7) & (8) of Part I of the Second Schedule to the Chartered Accountants Act 1949. [P. Arun vs. N. Raja Ganesh, (2014)]

TEST YOUR UNDERSTANDING 34

Mr. A, a Chartered Accountant was the auditor of 'A Limited'. During the financial year 2022-23, the investment appeared in the Balance Sheet of the company of ₹ 12 lakh and was the same amount as in the last year. Later on, it was found that the company's investments were only ₹ 25,000, but the value of investments was inflated for the purpose of obtaining higher amount of Bank loan.

SOLUTION

812

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

What constitutes "generally accepted audit procedure" would depend upon the facts and circumstances of each case but guidance is available in general terms from the various pronouncements of the Institute is issued by way of Engagement and Quality Control Standards, Statements General Clarifications, Guidance Notes Technical Guides, Practice Manuals, Studies and Other Papers. (ref.)

Audit of Listed Companies: Pursuant to SEBI Notification, Statutory Audit of Listed Companies under the Companies Act, 2013 shall be done by only those auditors who

have subjected themselves to the Peer Review process of the Institute, and hold a valid certificate issued by the Peer Review Board of the ICAI.

FRN and Membership No.: The members are required to mention the Membership number and Firm registration number to all reports issued pursuant to any attestation engagements, including certificates, issued by them as proprietor of/ partner in the said firm.

Refer Guidance Note
Unique Document Identification Number (UDIN): The members may note that UDIN is mandatory from 1st July, 2019 on all Corporate/ Non-Corporate Audit, Attest and Assurance Functions. Thus, a member of the Institute in practice shall generate Unique Document Identification Number (UDIN) for all kinds of the certification, GST and Tax Audit Reports and other Audit, Assurance and Attestation functions undertaken/signed by him.

An auditor of a company is appointed by the shareholders to perform certain statutory functions and duties and it is expected of him that he will in fact, perform these functions and duties. The failure to perform a statutory duty in the manner required is not excused merely by giving a qualification or reservation in auditor's report.

It is not possible to exhaustively deal with instances or accepted procedure of audit applicable to special cases. Two instances of an audit requiring a special procedure are given below:

Certifying figures of circulation of Newspapers etc.: Very often members are required to certify the figures of circulation of newspapers, magazines etc. by their clients on behalf of the Audit Bureau of Circulations Ltd. Members are normally supplied by the ABC with the Rules and Regulations under which the certification of circulation is to be carried out. Members are also asked to give their acceptance in writing that they will observe the rules of procedure envisaged to report upon any lapse of such special requirements, even of an insignificant nature.

LFAR → RBC ← Sub.

Verification on behalf of Banks: Similarly, in the case of verification on behalf of banks, the rules or procedure for conducting such audit are different from the normal rules applicable to audits under the Companies Act. Members are required to be very familiar with the special procedure required in these matters and act accordingly.

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

In the course of his engagement as a professional accountant, a member may be entrusted with moneys belonging to his client. If he should receive such funds, it would be his duty to deposit them in a separate banking account, and to utilize such funds only in accordance with the instructions of the client or for the purposes intended by the client. In this connection the Council has considered some practical difficulties of the members and the following suggestions have been made to remove these difficulties:

- (i) An advance received by a Chartered Accountant against services to be rendered does not fall under Clause (10) of Part I of the Second Schedule.
- (ii) Moneys received for expenses to be incurred, for example, payment of prescribed statutory fees, purchase of stamp paper etc., which are intended to be spent within a reasonably short time need not be put in a separate bank account. For this purpose, the expression; "reasonably short time", would depend upon the circumstances of each case.
- (iii) Moneys received for expenses to be incurred which are not intended to be spent within a reasonably short time as aforesaid, should be put in a separate bank account immediately.
- (iv) Moneys received by a Chartered Accountant, in his capacity as trustee, executor, liquidator, etc. must be put in a separate bank account immediately.

TEST YOUR UNDERSTANDING 35

A charitable institution entrusted ₹ 10 lakhs with its auditors M/s R & Co., a Chartered Accountant firm, to invest in a specified securities. The auditors deposited it in their savings bank account and no investment was made in the next three months.

SOLUTION

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

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

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

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

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

Regulation 43	Engagement of Articled Assistant
Regulation 46	Registration of Articled Assistant
Regulation 47	Premium from Articled Assistant
Regulation 48	Stipend to Articled Assistant
Regulation 56	Termination or assignment of Articles
Regulation 65	Articled Assistant not to engage in any other occupation
Regulation 67	Complaint against the employer (from Articled Assistant)
Regulation 68 to 80	Audit Assistant

Regulation 190

Register of offices and firms

Regulation 190-A

Chartered Accountants not to engage in any other business or occupation

Regulation 191

Part time employment's a Chartered Accountant may accept

Regulation 192

Restriction on fees

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

This is an adaptation of the well-accepted principle of the law of agency. A member in the forthcoming circumstance would be guilty of misconduct regardless of the fact that he was in whole time or part-time employment or that he was carrying on practice of accountancy along with his employment. Since as employee, a member may have access to a confidential information, hence for maintaining the status and dignity of the profession in general, he should treat such information as having been provided to him only to facilitate the performance of his duties as an employee. In order to keep the confidence of the people, Chartered Accountants, should take special care not to divulge such information.

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

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

Where a Chartered Accountant who was employed as a manager of a firm of Registered Accountants, applied for admission as Fellow of the Institute stating that he was a partner, while he was not. Held that the Chartered Accountant was guilty of

misconduct as he had made the statement that he was a partner knowing it to be false. [J.R. Chatrath, (1952)]

A Member had during the course of the hearing before Disciplinary Committee given a wrong statement duly verified and also a statement on oath knowing it to be false. He was found guilty in terms of this clause. [K.S. Dugar, (1987)]

In spite of repeated reminders a Chartered Accountant failed to reply to the letters of the Institute asking him to confirm the date of leaving the services by the Paid Assistant. Held, the Chartered Accountant was guilty of professional misconduct under the Clause. [A. Umanath Rao, [1965]]

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

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

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

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

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

9. COUNCIL GUIDELINES

The relevant extracts of the Council General Guidelines, 2008 (issued under Clause (1) of Part-II of Second Schedule to The Chartered Accountants Act, 1949) are given below:

Chapter I

Preliminary

1.0 Short title, commencement, etc.

- (a) These Guidelines have been issued by the Council of the Institute of Chartered Accountants of India under the provisions of The Chartered Accountants Act, 1949, as amended by The Chartered Accountants (Amendment) Act 2006, These Guidelines be called the 'Council General Guidelines, 2008'.
- (b) These guidelines shall be applicable to all the Members of the Institute whether in practice or not wherever the context so requires.

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Chapter II

Conduct of a Member being an employee

A member of the Institute who is an employee shall exercise due diligence and shall not be grossly negligent in the conduct of his duties.

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Chapter III

Appointment of a Member as Cost auditor

This Chapter is being omitted.

Chapter IV

Opinion on financial statements when there is substantial interest

This Chapter is being omitted.

Chapter V

Maintenance of books of account

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

- (i) a Cash Book;
- (ii) a Ledger.

122

TEST YOUR UNDERSTANDING 36

L, a chartered accountant did not maintain books of account for his professional

earnings on the ground that his income is less than the limits prescribed u/s 44AA of the Income Tax Act, 1961.

SOLUTION

122

Chapter VI

Tax Audit assignments under Section 44 AB of the Income-tax Act, 1961

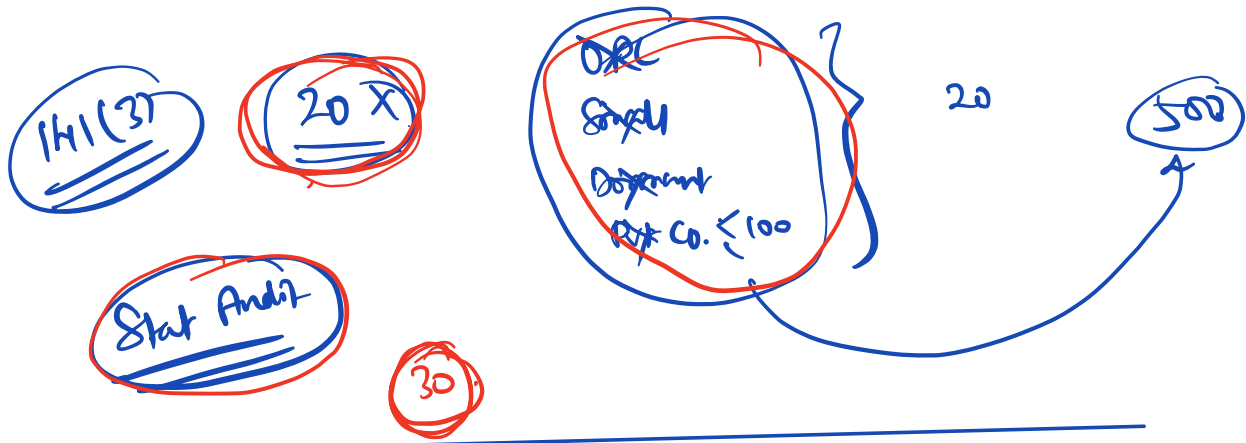
A member of the Institute in practice shall not accept, in a financial year more than the specified number of tax audit assignments under Section 44AB of the Income-tax Act, 1961.

Provided that in the case of a firm of Chartered Accountants in practice, the "specified number of tax audit assignments" shall be construed as the specified number of tax audit assignments for every partner of the firm.

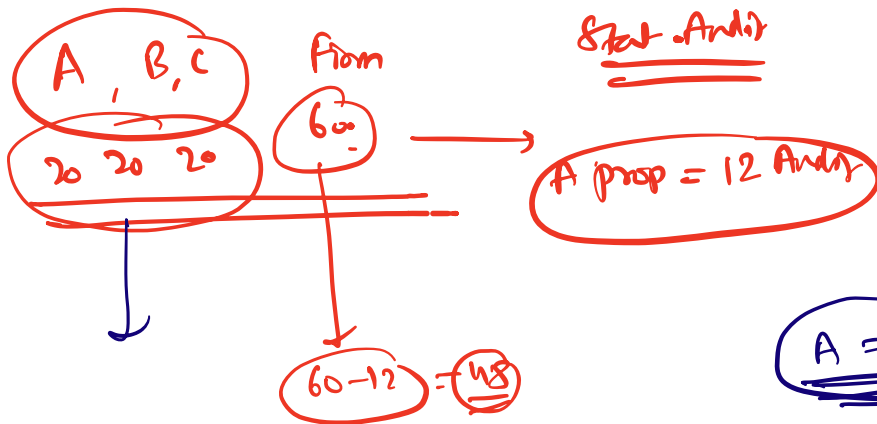
Provided further that where any partner of the firm is also a partner of any other firm or firms of Chartered Accountants in practice, the number of tax audit assignments which may be taken for all the firms together in relation to such partner shall not exceed the "specified number of tax audit assignments" in the aggregate.

Provided further that where any partner of a firm of Chartered Accountants in practice accepts one or more tax audit assignments in his individual capacity, the total number of such assignments which may be accepted by him shall not exceed the "specified number of tax audit assignments" in the aggregate.

Provided also that the audits conducted under Section 44AD, 44ADA and 44AE of



Tax Audit ⇒ 60 limit



A	B	C	From
60	60	60	180

180 Tax Audit Report = can be signed
 A

the Income Tax Act, 1961 shall not be taken into account for the purpose of reckoning the "specified number of tax audit assignments".

Explanation:

For the above purpose, "the specified number of tax audit assignments" means -

- (a) in the case of a Chartered Accountant in practice or a proprietary firm of Chartered Accountant, **60 tax audit assignments, in a financial year, whether in respect of corporate or non-corporate assesses.
- (b) in the case of firm of Chartered Accountants in practice, **60 tax audit assignments per partner in the firm, in a financial year, whether in respect of corporate or non-corporate assesses.

According to a clarification on Tax Audit Assignments by Committee on Ethical Standards Board) of the Institute, if there are 10 partners in a firm of Chartered Accountants in practice, then all the partners of the firm can collectively sign 600 tax audit reports. This maximum limit of 600 tax audit assignments may be distributed between the partners in any manner whatsoever. For instance, 1 partner can individually sign 600 tax audit reports in case remaining 9 partners are not signing any tax audit report.

In computing the "specified number of tax audit assignments" each year's audit would be taken as a separate assignment.

In computing the "specified number of tax audit assignments", the number of such assignments, which he or any partner of his firm has accepted whether singly or in combination with any other Chartered Accountant in practice or firm of such Chartered Accountants, shall be taken into account.

The audit of the head office and branch offices of a concern shall be regarded as one tax audit assignment.

The audit of the head office and branch offices of a concern shall be regarded as one tax audit assignment.

The audit of one or more branches of the same concern by one Chartered Accountant in practice shall be construed as only one tax audit assignment.

Part time A Chartered Accountant being a part time practicing partner of a firm shall not be taken into account for the purpose of reckoning the tax audit assignments of the firm.

A Chartered Accountant in practice shall maintain a record of the tax audit assignments accepted by him in each assessment year in the format as may be prescribed by the Council.

The limit on number of tax audit assignments per partner in a CA Firm may be distributed between the partners in any manner whatsoever. However, it should be in accordance with the Standard on Quality Control (SQC) 1: Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements.

TEST YOUR UNDERSTANDING 37

A member of the institute shall not accept in a year more than the specified number of tax audits under section 44AB of the Income Tax Act.

Mr. G is a partner in M/s. XYZ & Co., a firm of Chartered Accountants with 6 partners.

During the assessment year 2022-23, Mr. G alone had signed 290 tax audit reports consisting of both corporate and non-corporate assesses.

SOLUTION

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Chapter VII

Appointment of an Auditor in case of non-payment of undisputed fees

A member of the Institute in practice shall not accept the appointment as auditor of an entity in case the undisputed audit fee of another Chartered Accountant for carrying out the statutory audit under the Companies Act, 2013 or various other statutes has not been paid:

Provided that in the case of sick unit the above prohibition of acceptance shall not apply.

Explanation 1: For this purpose, the provision for audit fee in accounts signed by both - the auditee and the auditor along with other expenses, if any, incurred by the auditor in connection with the audit, shall be considered as "undisputed audit fees".

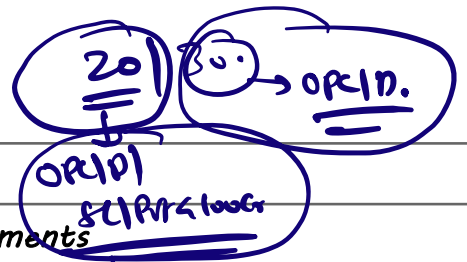
Explanation 2: For this purpose, "sick unit" shall mean a unit registered for not less than five years, which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth.

TEST YOUR UNDERSTANDING 38

Mr. C accepted the statutory audit of M/s PSU Ltd., whose net worth is negative for the year 2021-22. The audit was to be conducted for the year 2022-23. The audited accounts for the year 2022-23 showed liability for payment of tax audit fees of ₹ 15,000 in favour of Mr. E, the previous auditor.

SOLUTION

122



Chapter VIII

Specified number of audit assignments

A member of the Institute in practice shall not hold at any time appointment of more than the "specified number of audit assignments" of Companies under Section 141 of the Companies Act 2013.

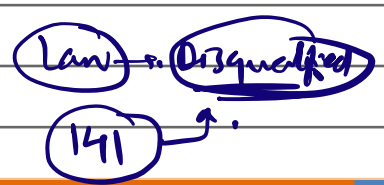
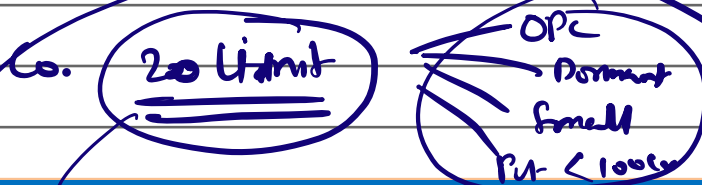
Provided that in the case of a firm of Chartered Accountants in practice, the "specified number of audit assignments" shall be construed as the specific number of audit assignments for every partner of the firm.

Provided further that where any partner of the firm of Chartered Accountants in practice is also a partner of any other firm or firms of Chartered Accountants in practice, the number of audit assignments which may be taken for all the firms together in relation to such partner shall not exceed the "specified number of audit assignments" in the aggregate.

Provided further where any partner of a firm or firms of Chartered Accountants in practice accepts one or more audit of Companies in his individual capacity, or in the name of his proprietary firm, the total number of such assignments which may be accepted by all firms in relation to such Chartered Accountant and by him shall not exceed the "specified number of audit assignments" in the aggregate.

Explanation:

1. For the above purpose, the "specified number of audit assignments" means -
 - (a) in the case of a Chartered Accountant in practice or a proprietary firm of Chartered Accountant, 30 audit assignments whether in respect of private Companies or other Companies, with the exception of one person Companies and dormant companies.
 - (b) in the case of Chartered Accountants in practice, 30 audit assignments per partner in the firm, whether in respect of private Companies or other Companies, with the exception of One person Companies and dormant companies.



2. In computing the "specified number of audit assignments"-

- (a) the number of audit of such Companies, which he or any partner of his firm has accepted whether singly or in combination with any other Chartered Accountant in practice or firm of such Chartered Accountants, shall be taken into account.
- (b) the audit of the head office and branch offices of a Company by one Chartered Accountant or firm of such Chartered Accountants in practice shall be regarded as one audit assignment.
- (c) the audit of one or more branches of the same Company by one Chartered Accountant in practice or by firm of Chartered Accountants in practice in which he is a partner shall be construed as one audit assignment only.
- (d) the number of partners of a firm on the date of acceptance of audit assignment shall be taken into account.

A Chartered Accountant in practice, whether in full-time or part time employment elsewhere, shall not be counted for the purpose of determination of "specified number of audit of Companies" by firms of Chartered Accountants.

A Chartered Accountant being a part time practicing partner of a firm shall not be taken into account for the purpose of reckoning the audit assignments of the firm.

A Chartered Accountant in practice as well as firm of Chartered Accountants in practice shall maintain a record of the audit assignments accepted by him or by the firm of Chartered Accountants, or by any of the partners of the firm in his individual name or as a partner of any other firm, as far as possible in the prescribed format.

Chapter IX

Appointment as Statutory auditor

A member of the Institute in practice shall not accept the appointment as statutory auditor of Public Sector Undertaking(s)/ Government Company(ies)/Listed Company(ies) and other Public Company(ies) having turnover of ₹ 50 crores or more in a year where he accepts any other work(s) or assignment(s) or service(s) in regard to the same

Undertaking(s)/ Company(ies) on a remuneration which in total exceeds the fee payable for carrying out the statutory audit of the same Undertaking/company.

Provided that in case appointing authority(ies)/regulatory body(ies) specify(ies) more stringent condition(s)/restriction(s), the same shall apply instead of the conditions/restrictions specified under these Guidelines.

The above restrictions shall apply in respect of fees for other work(s) or service(s) or assignment(s) payable to the statutory auditors and their associate concern(s) put together.

For the above purpose,

(i) the term "other work(s)" or "service(s)" or "assignment(s)" shall include Management Consultancy and all other professional services permitted by the Council pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949 but shall not include:-

(a) audit under any other statute.

(b) certification work required to be done by the statutory auditors; and

(c) any representation before an authority;

(ii) the term "associate concern" means any corporate body or partnership firm which renders the Management Consultancy and all other professional services permitted by the Council wherein the proprietor and/or partner(s) of the statutory auditor firm and/or their "relative(s)" is/are Director/s or partner/s and/or jointly or severally hold "substantial interest" in the said corporate body or partnership;

(iii) the terms "relative" and "substantial interest" shall have the same meaning as are assigned thereto under Appendix (9) to the Chartered Accountants Regulations, 1988.

In regard to taking up other work(s) or service(s) or assignment(s) of the undertaking/company referred to above, it shall be open to such associate concern or corporate body to render such work(s) or service(s) or assignment(s) so long as aggregate remuneration for such other work(s) or service(s) or assignment(s) payable to the statutory auditor/s together with fees payable to its associate concern(s) or

corporate body(ies) do/does not exceed the aggregate of fee payable for carrying out the statutory audit.

TEST YOUR UNDERSTANDING 39

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

SOLUTION

(No) 122 x.

→ PSEU G. | United | Unlisted
25 Cr.
Sub Part 7 Consultant

Chapter X

Appointment of an auditor when he is indebted to a concern

A member of the Institute in practice or a partner of a firm in practice or a firm or a relative of such member or partner 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 ₹ 100,000/-.

TEST YOUR UNDERSTANDING 40

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 ₹ 2,50,000 on progressive basis in respect of the tax audit for the year ended 31.3.2023. The audit report was, however, signed on 25.5.2023.

SOLUTION

Chapter XI

Directions in case of unjustified removal of auditors

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

Chapter XIII

Guidelines on Tenders

A member of the Institute in practice shall not respond to any tender issued by an organization or user of professional services in areas of services which are exclusively reserved for chartered accountants, such as audit and attestation services. However, such restriction shall not be applicable where minimum fee of the assignment is prescribed in the tender document itself or where the areas are open to other professionals along with the Chartered Accountants.

Chapter XIV

Unique Document Identification Number (UDIN) Guidelines

Whereas, to curb the malpractice of false certification/attestation by the unauthorized persons & to eradicate the practice of bogus certificates and to save various regulators,



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banks, stakeholders etc. from being misled, the Council of the Institute decided to implement an innovative concept to generate Unique Document Identification Number (UDIN) mandatorily for all kinds of the certificates/GST and Tax Audit Reports and other attest function in phased manner, for which members of the ICAI were notified through the various announcements published on the website of ICAI www.icaai.org at the relevant times.

A member of the Institute in practice shall generate Unique Document Identification Number (UDIN) for all kinds of the certification, GST and Tax Audit Reports and other Audit, Assurance and Attestation functions undertaken/signed by him which made mandatory from the following dates through announcements published on the website of the ICAI www.icaai.org at the relevant time: -

- For all Certificates w.e.f. 1st February, 2019.
- For all GST and Tax Audit Reports w.e.f. 1st April, 2019.
- For all other Audit, Assurance and Attestation functions w.e.f. 1st July, 2019.

Chapter XV

Guidelines for Networking

Concept: To enhance their ability to provide professional services, firms frequently form larger structures with other firms and entities. Whether these larger structures create a network depends on the particular facts and circumstances and does not depend on whether the firms and entities are legally separate and distinct.

For example, a larger structure may be aimed only at facilitating the referral of work which in itself does not meet the criteria necessary to constitute a network. Alternatively, a larger structure might be such that it is aimed at co-operation and the firms share a common brand name, a common system of quality control, or significant professional resources and consequently is deemed to be a network.

The judgment as to whether the larger structure is a network shall be made in light of whether a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that the entities are associated in such a way

that a network exists. This judgment shall be applied consistently throughout the network.

Where the larger structure is aimed at co-operation and it is clearly aimed at profit or cost sharing among the entities within the structure, it is deemed to be a network. However, the sharing of immaterial costs does not in itself create a network. In addition, if the sharing of costs is limited only to those costs related to the development of audit methodologies, manuals, or training courses, this would not in itself create a network. Further, an association between a firm and an otherwise unrelated entity to jointly provide a service or develop a product does not in itself create a network.

Where the larger structure is aimed at cooperation and the entities within the structure share common ownership, control or management, it is deemed to be a network. This could be achieved by contract or other means.

Where the larger structure is aimed at co-operation and the entities within the structure share common quality control policies and procedures, it is deemed to be a network. For this purpose, common quality control policies and procedures are those designed, implemented and monitored across the larger structure.

Where the larger structure is aimed at co-operation and the entities within the structure share a common business strategy, it is deemed to be a network. Sharing a common business strategy involves an agreement by the entities to achieve common strategic objectives. An entity is not deemed to be a network firm merely because it co-operates with another entity solely to respond jointly to a request for a proposal for the provision.

Where the larger structure is aimed at co-operation and the entities within the structure share the use of a common brand name, it is deemed to be a network. A common brand name includes common initials or a common name. A firm is deemed

to be using a common brand name if it includes, for example, the common brand name as part of, or along with, its firm name, when a partner of the firm signs an audit report.

Even though a firm does not belong to a network and does not use a common brand name as part of its firm name, it may give the appearance that it belongs to a network if it makes reference in its stationery or promotional materials to being a member of an association of firms. Accordingly, if care is not taken in how a firm describes such memberships, a perception may be created that the firm belongs to a network.

Where the larger structure is aimed at co-operation and the entities within the structure share a significant part of professional resources, it is deemed to be a network. Professional resources include:

- Common systems that enable firms to exchange information such as client data, billing and time records;
- Partners and staff;
- Technical departments that consult on technical or industry specific issues, transactions or events for assurance engagements;
- Audit methodology or audit manuals; and
- Training courses and facilities.

The determination of whether the professional resources shared are significant and therefore the firms are network firms, shall be made based on the relevant facts and circumstances. Where the shared resources are limited to common audit methodology or audit manuals, with no exchange of personnel or client or market information, it is unlikely that the shared resources would be significant. The same applies to a common training endeavor. Where, however, the shared resources involve the exchange of people or information, such as where staff are drawn from a shared pool, or a common technical department is created within the larger structure to provide participating firms with technical advice that the firms are required to follow, a reasonable and informed third party is more likely to conclude that the shared resources are significant.

Forms of the Network:

- ◆ The different forms of Network can be as under:-
- ◆ A network can be constituted as a mutual entity which will act as a facilitator for the constituents of the Network. In such a case the Network itself will not carry out any professional practice.
- ◆ A network can be constituted as a partnership firm subject to the condition that the total number of partners does not exceed twenty.
- ◆ A network can be constituted as a Limited Liability Partnership subject to the provision of the Chartered Accountant Act and Rules and such other laws as may be applicable.
- ◆ A network can be constituted as company subject to the guidelines prescribed by Institute for corporate form of practice and formation of management consultancy services company.
- ◆ Network Firms shall consist of sole Practitioner/proprietor, partnership or any such entity of professional accountants as may be permitted by the Act.
- ◆ A firm is allowed to join only one network.
- ◆ Firms having common partners shall join only one Network.

Approval of Name of Network amongst firms registered with Institute:

1. The Network may have distinct name which should be approved by the Institute. To distinguish a "Network" from a "firm" of Chartered Accountants, the words "& Affiliates" shall be used after the name of the network and the words "& Co." / "& Associates" shall not be used. The prescribed format of application for approval of Name for Network is at Form 'A' (enclosed). The names of the network may be as mentioned in Appendix II.
2. Provisions of Regulation 190 of the Chartered Accountants Regulations, 1988 shall be applicable to the name of Network. However, even if a name is approved and subsequently it is found that the same is undesirable then, the said name may be withdrawn at any time by the Institute. The Institute shall reject any undesirable name and the provisions in respect of names of companies as prescribed in the Companies Act, 1956 shall be applicable in spirit.
3. The Institute shall approve or reject the name of the Network and intimate the same

Form A

Application

B

Registration

C

Changes

D

outside India.

to the Network at its address mentioned in Form 'A' within a period which shall not be later than 30 days from the date of receipt of the said Form.

- 4. Mere approval of the name of the Network shall not entitle the Network to carry on practice in its own name.

Registration of Network with entities in India

- 1. After the name of a Network is approved as per provision under Guideline 5, the Institute shall reserve such name for a period of three (3) months from the date of approval.
- 2. The Network shall get itself registered with the Institute by applying in Form B within the period of 3 months, failing which the name assigned shall stand cancelled on the expiry of the said period.
- 3. Registration of Network with Institute is mandatory.
- 4. If different Indian firms are networked with a common Multinational Accounting Firm, they shall be considered as a part of network.

Listing of Network with entities outside India

- 1. The duly authorized representative(s) of the Indian Member firm (s)/Member constituting the Network with entities outside India shall file a declaration with the Institute in Form 'D' for Listing of such Network within 30 days from the date of entering into the Network arrangement.
- 2. Proprietary/individual members, partnership firms as well as members in LLP or any such other entity of members as may be permitted by the Act, shall be permitted to join such network with entities outside India provided that the proprietary/individual members, partnership firms as well as members in LLP or any such other entity of members are allowed to join only one network and firms having common partners shall join only one such network.

Change in constitution of registered Network:

In case of change in the constitution of registered Network on account of any entry into or exit from the Network, the network shall communicate the same to the

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AT & Co

AT, Raj, Teh

PSU → NM Stat Audit fees

Institute by filing Form 'C' within a period of thirty (30) days from the date of change in the constitution.

Ethical Compliance:

Once the relationship of network arises, it will be necessary for such a network to comply with all applicable ethical requirements prescribed by the Institute from time to time in general and the following requirements in particular: -

1. If one firm of the network is the statutory auditor of an entity then the associate [including the networked firm(s)] or the said firm directly/indirectly shall not accept the internal audit or book-keeping or such other professional assignments which are prohibited for the statutory auditor firm.
2. The guidelines of ceiling on Non-audit fees is applicable in relation to a Network as follows: -
 - i) For a Network firm who is doing statutory audit (including its associate concern and/or firm(s) having common partnership), it shall be the same as mentioned in the said notification; and
 - ii) For other firms of the same Network collectively, it shall be 3 times of the fee payable for carrying out the statutory audit of the same undertaking/ company.
3. In those cases where rotation of firms is prescribed by any regulatory authority, no member firm of the network can accept appointment as an auditor in place of any member firm of the network which is retiring.
4. The Network may advertise the Network to the extent permitted by the Advertisement Guidelines issued by Institute. The firms constituting the network are permitted to use the words "Network Firms" on their professional stationery.
5. The constituent member firms of a Network and the Network shall comply with all the Ethical Standards prescribed by the Council from time to time.

Consent of Client:

The effect of registration of network with Institute will be deemed to be a public notice of the network and therefore consent of client will be deemed to be obtained.

Framework of Internal Byelaws of Network:

To streamline the networking, a network shall formulate operational bye-laws. Bye-laws may contain the following clauses on which the affiliates of the network may enter into a written agreement among themselves:

- (i) Appointment of a **Managing Committee**, from among the **managing partners of the member firms of the network** and the **terms and conditions** under which it should function. The **minimum and maximum number of members of the Managing Committee** shall also be agreed upon.
- (ii) **Administration** of the network
- (iii) **Contribution of membership fees** to meet the cost of the administration of the network.
- (iv) **Identifying a partner of any of the member firms of the network to be responsible for the assignment (engagement partner)**
- (v) **Dispute settlement procedures** through arbitration and conciliation
- (vi) **Development of training materials** for members of the network
- (vii) **Issue of News-letters** for staff and clients
- (viii) **Development of software** for different types of assignments
- (ix) **Development and maintenance of data bases relevant** for different types of assignments
- (x) **Library**
- (xi) **Appointment of a technical director** to whom references can be made
- (xii) **Determining the methodology for drawing resources** from each member firm
- (xiii) **Determining compensation to member firms for resources** to be drawn from them
- (xiv) **Peer review** of the member firms

Chapter XVI

Logo Guidelines

The logo consists of letter 'CA' with a tick mark inside a rounded rectangle with white background. The letters CA have been put in blue, the corporate colour which not only stands out on the background but also denotes creativity, innovativeness, knowledge, integrity, trust, truth, stability and depth. The upside down tick mark typically used by Chartered Accountants, has been used to symbolize the wisdom and

value of the professional. The green colour in the tick mark signifies growth, prosperity, harmony and freshness.

Members are encouraged to use the new logo, as published here as it is. Do not change the design and colours, including the white background. Refrain from rotating or tilting the logo. The correct and incorrect usage of the logo is explained as under:



Chapter XVII

Guidelines for Corporate Form of Practice

The Council decided to allow members in practice to hold the office of Managing Director, Whole-time Director or Manager of a body corporate within the meaning of the Companies Act provided that the body corporate is engaged exclusively in rendering Management Consultancy and Other Services permitted by the Council in pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949 and complies with the conditions(s) as specified by the Council from time to time in this regard.

The members can retain full time Certificate of Practice besides being the Managing Director, Whole-time Director or Manager of such Management Consultancy Company. There will be no restriction on the quantum of the equity holding of the members, either individually and/ or along with the relatives, in such Company. Such members shall be regarded as being in full-time practice and therefore can continue to do attest function either in individual capacity or in Proprietorship/Partnership firm in which capacity they practice and wherein they are also entitled to train articled/audit assistants.

The name of the Management Consultancy Company is required to be approved by the Institute and such Company has to be registered with the Institute. The guidelines alongwith the prescribed application forms for approval of name and registration, provisions of ethical compliance and other details have been issued and the same will come into force w.e.f 1-10-2006.

On abundant caution, it may be clarified that no audit practice can be done in Corporate Form. The consultancy practice hitherto done in Individual or Firm Status alone is now intended to be permitted in Corporate Form also.

Ethical Compliance:

- (i) Once the Management Consultancy Company is Registered with the Institute as per the Guidelines, it will be necessary for such a Company to comply with the following requirements: -
- (a) If the individual practitioner/sole-proprietorship firm/partnership firm is the statutory auditor of an entity then the Management Consultancy Company should not accept the internal audit or book-keeping or such other professional assignments, which are prohibited for the statutory auditor firm.
- (b) The Notification No. 1-CA(7)/60/2002 dated 8th March, 2002 (enclosed) in respect of ceiling on Non-audit fees is applicable in relation to a Management Consultancy Company.
- (c) The Management Consultancy Company shall comply with clauses (6) & (7) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 and such other directives as may be issued by the Institute from time to time.
- (ii) The Management Consultancy Company shall give an undertaking that it shall comply with clauses (6) & (7) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 and such other directives as may be issued by the Institute from time to time.

Object of Management Consultancy Company: The Management Consultancy Company shall engage itself only in Management Consultancy & Other Services. The Management

Consultancy Company shall give an undertaking that it shall render only Management Consultancy & Other Services prescribed by the Council pursuant to powers under section 2 (2)(iv) of the Chartered Accountants Act, 1949.

9.7 Council Guidelines for Advertisement, 2008

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1. Write up -

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

The Member(s)/Firm(s) should ensure that the contents of the Write up are true to the best of their knowledge and belief and are in conformity with these Guidelines and be aware that the Institute of Chartered Accountants of India will neither approve a propose write-up, nor owns any responsibility whatsoever for such contents or claims by the writer Member(s)/ Firm(s).

The write-up shall comply with the following conditions:-

- A. It shall be honest and truthful.
- B. There shall be no exaggerated claims for the services offered by the member or the Firm, or the qualifications or experience of the member or any of the partners or any other person associated with the Firm.
- C. It must not make any disparaging references or unsubstantiated comparisons to the work of others.
- D. It should not be of a nature that may bring the profession into disrepute.
- E. It should not contain testimonials or endorsements concerning Member(s) or names of clients (both the past and present) or the fees charged.
- F. It should not contain any information about achievements /awards (except the awards given by the Central or State Governments or Regulatory bodies) or any other position held, or accreditation(s) granted by any organisation.
- G. Monogram of any kind or use of any kind of catch words is not permissible.
- H. The Membership No./FRN (as may be applicable) is mandatory to be mentioned in

the write - up.

I. It should not be of font size exceeding 14.

J. It must not be violative of any provisions of Chartered Accountants Act, 1949, Chartered Accountants Regulations, 1988, Code of Ethics, 2020 or any Guideline of the Council

The Institute of Chartered Accountants of India may issue a reasoned directive for removal or withdrawal of the whole write-up or of any part(s) thereof.

Advertisement through write-up

While advertising the services or details of Firms, the write-up may include only the following information:

(A) For Members

(i) CAName

(ii) Membership No. with Institute

(iii) Age

(iv) Date of becoming ACA

(v) Date of becoming FCA

(vi) Date from which COP held

(vii) Recognized qualifications

(viii) Languages known

(ix) Telephone/Mobile/Fax No.

(x) Professional Address

(xi) Website

(xii) E-mail

(xiii) CA Logo

(xiv) Passport style3 photograph

(xv) Details of Employees (Nos. -)

(a) Chartered Accountants -

(b) Other Professionals -

(c) Articles/Audit Assistants

(d)	<i>Other Employees</i>
(xvi)	<i>Names of the employees and their particulars on the lines allowed for a member as stated above.</i>
(xvii)	<i>Services provided</i>
(a)
(b)
(c)
(xviii)	<i>Position held as Director or Managing Director in a Management Consultancy Company registered with the Institute⁴.</i>
(B)	<i>For Firms</i>
(i)	<i>Name of the Firm Chartered Accountants</i>
(ii)	<i>Firm Registration No. with Institute</i>
(iii)	<i>Year of establishment.</i>
(iv)	<i>Professional Address(s) registered with the Institute (both Head Office and Branches)</i>
(v)	<i>Working Hours</i>
(vi)	<i>Tel. No(s)/Mobile No./Fax No(s)</i>
(vii)	<i>E-mail</i>
(viii)	<i>No. of partners</i>
(ix)	<i>Name of the proprietor/partners and their particulars on the lines allowed for a member as stated above including passport style⁵ photograph.</i>
(x)	<i>CA Logo</i>
(xi)	<i>Details of Employees (Nos. -)</i>
(a)	<i>Chartered Accountants -</i>
(b)	<i>Other professionals -</i>
(c)	<i>Articles/Audit Assistants</i>
(d)	<i>Other employees</i>
(xii)	<i>Names of the employees of the firm and their particulars on the lines allowed for a member as stated above.</i>
(xiii)	<i>Services provided:</i>
(a)
(b)

(c)

(xiv) Affiliation with a Network registered with the Institute

The write-up may have the Signature, Name of the Member/ Name of the Partner signing on behalf of the firm, Place and Date.

2. Website of the CA Firms

The Council has approved the detailed guidelines for posting the particulars on Website by Chartered Accountant(s) in practice and firm(s) of Chartered Accountants in practice: -

1. The Chartered Accountants and/or Chartered Accountants' Firms would be free to create their own Website. The following stipulations will be applicable on such websites:-
2. The actual format of the Website is not being prescribed nor any standard format of the Website is being given to provide independence to the Members.
3. The Chartered Accountants and/or Chartered Accountants' Firms would ensure that their Websites are run on a "pull" model and not a "push" model of the technology to ensure that any person who wishes to locate the Chartered Accountants or Chartered Accountants' firms would only have access to the information and the information should be provided only on the basis of specific "pull" request.
4. The Chartered Accountants and/or Chartered Accountants' Firms should ensure that none of the information contained in the Website be circulated on their own or through E-mail or by any other mode or technique except on a specific "pull" request.
5. The Chartered Accountants would also not issue any circular or any other advertisement or any other material of any kind whatsoever by virtue of which they solicit people to visit their Website. The Chartered Accountants would, however, be permitted to mention their Website address on their professional stationery and email.
6. The following information may be allowed to be displayed on the Firms/Members' Websites:
 - (i) Member/Trade/Firm name.
 - (ii) Year of establishment.
 - (iii) Member/Firm's Address (both Head Office and Branches)

Visiting card X

Tel. No(s)

Fax No(s)

E-mail ID(s)

(iv) Nature of services rendered (to be displayable only on specific "pull" request)

(v) Partners

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

Professional	Others	Name	Designation	Area of experience (to be displayable only on specific "pull" request)
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(vii) Job vacancies for the Chartered Accountant/firm of Chartered Accountants (including articleship).

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

(ix) Nature of assignments handled (to be displayable only on specific "pull" request).

Names of clients and fee charged cannot be given. While the mention of names of clients is not permissible, members may take note of the following with regard to website of the Firm:-

Note: Disclosure of names of clients and/or fees charged, on the website is permissible only where it is required by a regulator, whether or not constituted under a statute, in India or outside India, provided that such disclosure is only to the extent of requirement of the regulator and is made only till such period that the member works under the purview of such Regulator/ such requirements of the Regulator are in force.

Where such disclosure of names of clients and/or fees charged is made on the website, the member/ firm shall ensure that it is mentioned on the website [in italics], below such disclosure itself, that "This disclosure is in terms of the requirement of [name of the regulator] having jurisdiction in [name of the country/ area where such regulator

has jurisdiction] vide [Rule/ Directive etc. under which the disclosure is required by the Regulator].

7. Display of Passport style photograph is permitted.
8. The members may include articles, professional information, bulletin boards, professional updation and other matters of larger importance or of professional interest on the website. Educational videos on topics of professional relevance are permissible.
9. The chat rooms can be provided which permit chatting amongst members of the ICAI and between Firms and its clients. The confidentiality protocol would have to be observed. The Firms can provide document management facility with distinct log in and password facility to the clients to access copies of their documents on the Firm website.
10. The Firm can provide link of its page on Social Networking site. However, the members should not solicit people to visit or like their respective page(s) on such social Networking site.
11. The members/firms can provide on line advice to their clients who specifically request for the advice whether free of charge or on payment.
12. The details in the Website should be so designed that it does not amount to soliciting client or professional work. In case any content or technical feature of Website is against the professional Code of Conduct and Ethics as well as the restrictions contained in the schedules to the Chartered Accountants Act, 1949 or against the guidelines or directions issued by ICAI from time to time, appropriate action will be initiated by the ICAI in terms of its disciplinary mechanism either suo moto or on complaint as provided under the Chartered Accountants Act, 1949.
13. The Website should ensure adequate secrecy of the matters of the clients handled through Website.
14. No Advertisement in the nature of banner or any other nature will be permitted on the Website.
15. The Website should be befitting the profession of Chartered Accountants and should not contain any information or material which is unbecoming of a Chartered Accountant.
16. The Website may provide a link to the Website of ICAI, its Regional Councils and Branches and also the Website of Govt./Govt. Departments/Regulatory authorities/other Professional Bodies.

17. The Website address should be as near as possible to the individual name trade name, firm name of the Chartered Accountant in practice or firm of Chartered Accountants in practice. But it should not amount to soliciting clients or professional work or advertisement of professional attainments or services. The Ethical Standards Board (ESB) of ICAI will decide in case there is any difficulty.
18. The Website should mention the information which is not at material variance from the information as per the ICAI's records.

3. Online Third Party Platforms

A number of non-Chartered Accountants' firms, corporates including banks finance Companies and newspapers have set up their own Websites providing advisory services on taxation and other areas where Chartered Accountants are rendering professional service. Some of such Websites may request Chartered Accountants or Chartered Accountants' firms to provide consultation and advice through their Websites. No other service, besides consultancy and advice can be rendered through such websites, This would be permitted subject to the condition that on the Website, contact address of the Chartered Accountant concerned is not provided nor such Website will contain any material which advertises professional achievements or status of such Chartered Accountant except making a statement that they are Chartered Accountants. The name of Chartered Accountants' firm with suffix "Chartered Accountants" would not be permitted.

4. Publication of Name or Firm Name by Chartered Accountants in the Telephone or other Directories published by Telephone Authorities or Private Bodies

The Chartered Accountants and Chartered Accountants Firms may have entries made in a Telephone Directory (in printed and electronic form) either by making a special request or by means of an additional payment. The Council has also considered the question of permitting entries in respect of Chartered Accountants and their firms under specified groups in telephone/trade directories subject to the following additional restrictions :-

- (i) The entry should not appear in any other section/category except that of 'Chartered Accountants'.
- (ii) The member/firm should belong to the town/city in respect of which the directory is

being published.

- (iii) The order of the entries should not be in any manner other than alphabetical.
- (iv) The entry should not be made in a differential or prominent manner giving the impression of publicity/advertisement.
- (v) The entries should not be restricted and should be open to all the Chartered Accountants/firms of Chartered Accountants in the particular city/town in respect whereof the directory is published.
- (vi) The members can also include their names in trade/ social directories

6. Application based Service provider Aggregators

It is not permissible for members to list themselves with online Application based service provider Aggregators, wherein other categories like businessmen, technicians, maintenance workers, event organizers etc. are also listed.

7. Specialised Directories for limited circulation

The name, description and address of member (or firm) may appear in any directory or list of members of a particular body in which the names are listed alphabetically. For a specialised directory or a publication such as a "Who's Who" (including those compiled on purely local basis), a member should use his discretion in supplying information, bearing in mind the nature and purpose of the publications. In addition to his name, description and address and those of his firm, a member may give where appropriate, directorships held and reasonable personal details and may state his outside interests. He should not, however, give the names of any of his clients.

8. Exemptions

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

- (a) Advertisement for recruiting staff in the member's own office.
 - (b) Advertisement inserted on behalf of clients requiring staff or wishing to acquire or dispose of business or property.
 - (c) Advertisement for the sale of a business or property by a member acting in a professional capacity as trustee, liquidator or receiver.
2. When advertising for staff, it is desirable that members should avoid the expression such as "a well-known firm", since this would savour of advertisement. Similar considerations apply to advertisements for articled assistants. The advertisements should not contain any promotional element nor should there be any suggestion that the services offered by the Chartered Accountant or his firm are superior to those offered by other accountants.

10. RECOMMENDED SELF-REGULATORY MEASURES

As the members are aware, the Council has decided upon certain self-regulatory measures in order to ensure a healthy growth of the profession and an equitable flow of professional work among the members. These measures are reviewed from time to time and are published in the Journal of the Institute for observance by the members. The self-regulatory measures are recommendatory. However, considering the spirit underlying these measures, the Council expects that each and every member will effectively implement them. The Council earnestly believes that implementation of these measures would go a long way in ensuring equitable flow of work among the members and would also further enhance the prestige of the profession in the society. The more important of these recommendations are as under:

10.1 Branch Audits

The branch audits of a company should not be conducted by its statutory auditors consisting of ten or more members, but should be conducted by the local firms of auditors consisting of less than ten members. This should not be understood to mean any restriction on the right of the statutory auditors to have access over branch accounts conferred under the Companies Act, 2013. This restriction may not apply in the following cases:

- (i) where the accounting records of the branches are maintained at the head office of the

respective companies, and

- (ii) where significant operations of an undertaking or a company are carried out at its branch office.

10.2 Joint Audit

In the case of large companies, the practice of associating a practicing firm with less than five members as Joint auditors should be encouraged. Where a client desires to appoint such a firm as joint auditor, the senior firm should not object to the same.

10.3 Ratio Between Qualified and Unqualified Staff

In the Council's view, a practicing firm of Chartered Accountants engaged in audit work should have at least one member for every five non-qualified members of the staff, excluding articled and audit assistants, typists, peons and other persons not engaged directly in such professional work.

10.4 Disclosure of Interest by Auditors in other Firms

The Council has decided that as a good and healthy practice, auditors should make a disclosure of the payments received by them for other services through the medium of a different firm or firms in which the said auditor may be either a partner or proprietor.

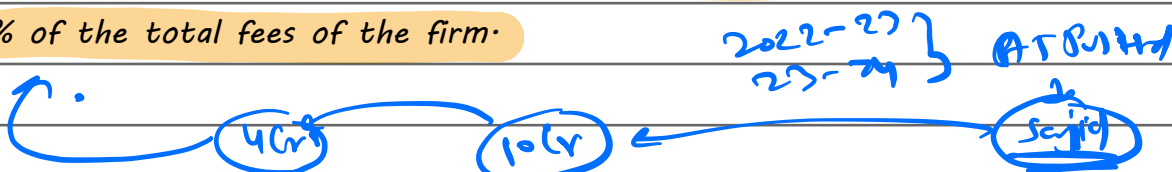
10.5 *Recommended Minimum Scale of Fees

The Institute has issued revised Minimum scale of Fees for the professional assignments of the members of ICAI. The recommended scale of Fees is to be charged as per the work performed for various professional assignments. The Fees has been recommended separately for Class-A, B and C cities.

10.5.1 Fees - Relative Size:

Differentiated disclosure requirements for non-public interest entities and public interest entities are following:-

1. For non-Public Interest Entities (PIE)-Disclosure is required where for two consecutive years, the gross annual professional fees from an audit client represent more than 40% of the total fees of the firm.



2. For **public interest entities** - Disclosure is required where for two consecutive years, the gross annual professional fees from an audit client represent more than 20% of the total fees of the firm.

Exemption from applicability of the above provision will be in case where total Fees received by Firm does not exceed 20 lacs of rupees.

In addition, exemption from applicability of the above provision is also given in the case of audit of **government Companies, public undertakings, nationalised banks, public financial institutions, regulators** or where appointments of auditors are made by **the Government**.

11. CASE SCENARIO

Synopsis: The case scenario underscores ethical and quality requirements to be complied with by statutory auditor of a listed company. Failure to perform audit of financial statements in accordance with Standards on Auditing can result in breakdown of trust of investors and public at large. The case involves issue of non-adherence to requirements of SA 501, SA 550 and SA 505 by statutory auditor of a listed company.

Only major lapses have been considered for developing this case scenario for the sake of brevity.

The case scenario is presented in the following manner: -

- I. Relevant provisions of Companies Act, 2013 and requirements of relevant Standards on Auditing
- II. Relevant Clauses of Part I of Second Schedule to Chartered Accountants Act, 1949
- III. Facts of the case
- IV. Major lapses pointed out by NFRA, engagement partner's submissions and NFRA's contentions/findings
- V. Conclusion including its basis

- I. **Relevant provisions of Companies Act, 2013 and requirements of relevant Standards on Auditing**

[1] Section 132(4) of Companies Act, 2013

NFRA has power to investigate into matters of professional or other misconduct committed by any member or firm of chartered accountants registered under Chartered

Accountants Act, 1949 for certain classes of bodies corporate. By virtue of this section, it has also got power to impose penalty on erring members and debarring members of firm from undertaking audit work.

[2] Relevant requirements of Standards on Auditing

- ◆ SA 501 requires that when inventory is material to the financial statements, the auditor shall obtain sufficient appropriate audit evidence regarding the existence and condition of inventory by attendance at physical inventory counting unless impracticable. It further requires that if attendance at physical inventory counting is impracticable, the auditor shall perform alternative audit procedures to obtain sufficient appropriate audit evidence regarding the existence and condition of inventory. If it is not possible to do so, the auditor shall modify the opinion in the auditor's report in accordance with SA 705.
- ◆ SA 550 requires auditor to obtain sufficient appropriate audit evidence about whether related party relationships and transactions have been appropriately identified, accounted for and disclosed in the financial statements in accordance with the applicable financial reporting framework.
- ◆ SA 505 requires that in case management refuses to allow the auditor to send a confirmation request, reasons adduced by management need to be inquired and audit evidence has to be sought for as to validity and reasonableness of reasons. Further, implications of such refusal on risks of material misstatement including risk of fraud and on nature, timing and extent of other audit procedures are to be evaluated. It further requires auditor to perform alternative audit procedures designed to obtain relevant and reliable audit evidence.

II. Relevant clauses of Part I of Second Schedule to Chartered Accountants Act, 1949

- ◆ Under clause 7 of Part I of Second Schedule to 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.
- ◆ Under clause 8 of Part I of Second Schedule to Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct,

if he fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion

- ◆ Under clause 9 of Part I of Second Schedule to Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances.

III. **Facts of the case**

NFRA initiated action u/s 132(4) of Companies Act, 2013 for investigating into professional misconduct of engagement partner of an audit firm pursuant to information received from ROC, Mumbai regarding investigation conducted by Regional Director into affairs of WNLL, listed on SME segment of BSE. The key financial data for company for financial year 2016-17 was as under: -

Particulars	Amount (in ₹crores)
Revenue from Operations	51.77
PBT	1.44
Inventory	20.60
Trade receivables	14.93
Trade payables	13.78

The engagement partner had issued an unmodified opinion for financial year 2016 -17. The engagement partner was requested on 18.02.2022 to submit audit file and SQCI policy of firm which was submitted by him vide email dated 18.03.2022. Subsequently, a show-cause notice was issued to engagement partner charging him with professional misconduct for failure to perform his duties as engagement partner.

IV. **Major lapses pointed out by NFRA, engagement partner's submissions and NFRA's contentions/findings**

[1] **Failure to obtain audit evidence regarding existence and condition of inventory**

The EP was charged with failure to obtain sufficient appropriate audit evidence regarding existence and condition of inventory by not attending physical inventory counting in accordance with SA 501.

	<i>EP's submissions</i>	<i>NFRA's contentions/findings</i>
1.	<i>The appointment as statutory auditor was made on 18.4.2017. Therefore, it was not possible to attend physical verification of inventories as on 31.3.2017.</i>	<i>SA 501 requires if attendance at physical inventory count is impracticable, alternative audit procedures shall be performed to obtain sufficient appropriate audit evidence regarding existence and condition of inventories. If it is not possible to so, the auditor shall modify opinion in accordance with SA 705. There was no documentation in audit file of audit procedures having been performed in this respect. Reliance was also placed on decision of PCAOB, US regulator in a similar case.</i>
2.	<i>Inventory holding level was in accordance with past trends. Stock records were cross verified in respect of selected items and reconciled with entries of receipts and issue in books of accounts.</i>	<i>There was no documentation in audit file of audit procedures having been performed in this respect.</i>

[2] Failure to identify related party and related party transactions

The EP was charged with failure to identify related parties and transactions with them. The company made almost 100% of sales to a related party which was not identified as such in annual report of the company for FY 2016-17.

	<i>EP's submissions</i>	<i>NFRA's contentions/findings</i>
1.	<i>It was tried to be ascertained from management regarding existence of related parties and previous audit reports were also relied upon in this regard.</i>	<i>The related party to whom 100% of sales was made was previously identified as related party in financial statements for FY 2013-14. Since almost 100% of sales were to this party, EP should have applied professional skepticism to probe further into antecedents of the party.</i>

There is no evidence in audit file regarding this. Reliance was also placed on similar decision of PCAOB where it was held that auditor must evaluate whether related party transactions have been properly accounted for and disclosed in financial statements.

[3] Failure to obtain external confirmations for Trade receivables and Trade payables

The EP was charged with gross negligence for not obtaining direct confirmations of balances from debtors and creditors and with failure to perform any alternative audit procedure in absence of confirmations from debtors and creditors in accordance with SA 505.

	<i>EP's submissions</i>	<i>NFRA's contentions/findings</i>
1.	The company management had denied contact details of parties due to fear of losing the business information. Further, all debtors and creditors were outstanding for less than 6 months.	It shows that management had imposed a limitation on scope of audit. Limitations imposed by management may have other implications for audit such as evaluation of fraud risks and continuance of engagement as per SA 705. No assessment of fraud risk having been evaluated is available in audit file and there is no evidence of additional procedures being performed by EP in absence of external confirmations. Reliance was also placed on PCAOB order in <i>Satyam</i> case in which failure during audit to obtain external confirmation of bank balances was highlighted.

V. Conclusion including its basis

The engagement partner did not comply with provisions of Chartered Accountants Act,

1949 and showed gross negligence and lack of due diligence in performing statutory audit. He didn't ensure audit quality and was grossly negligent of professional duties by not adhering to requirements laid down in relevant Standards on Auditing as discussed above. It led to issuance of audit report that was not backed by valid audit evidence and was lacking in audit quality.

The engagement partner was held guilty of professional misconduct under clauses 7, 8 and 9 of Part I of Second Schedule to Chartered Accountants Act, 1949. He was also penalized and debarred for a period of two years from undertaking any audit of financial statements or internal audit of the functions and activities of any company or body corporate.

12. THEORETICAL QUESTIONS

1. P, a Chartered Accountant in practice provides management consultancy and other services to his clients. During 2023, 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. Is P guilty of professional misconduct?
2. Mr. G, a Chartered Accountant in practice as a sole proprietor has an office in Mumbai near Church Gate. Due to increase in professional work, he opens another office in a suburb of Mumbai which is approximately 80 kilometers away from the municipal limits of the city. For running the new office, he employs three retired Income-tax Officers. Is Mr. G guilty of professional misconduct?

3. Write a short note on Other Misconduct.

4. Mr. K, a practicing Chartered Accountant gave 50% of the audit fees received by him to a non-Chartered Accountant, Mr. L, under the nomenclature of office allowance and such an arrangement continued for a number of years. Discuss this in the light of Professional Ethics issued by ICAI.

5. Mr. X who passed his CA examination of ICAI on 18th July, 2022 and started his practice from August 15, 2022. On 16th August 2022, one female candidate approached him for article ship. 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?

6. M/s XYZ, a firm in practice, develops a website "xyz.com". The colour chosen for the website was a very bright green and the web-site was to run on a "push" technology where the names of the partners of the firm and the major clients were to be displayed on the web-site without any disclosure obligation from any regulator. Is this website in compliance with guidelines issued by ICAI in this regard?

7. A partner of a firm of chartered accountants during a T.V. interview handed over a bio-data of his firm to the chairperson. Such bio-data detailed the standing of the international firm with which the firm was associated. It also detailed the achievements of the concerned partner and his recognition as an expert in the field of taxation in

the country. The chairperson read out the said bio-data during the interview. Discuss whether this action by the Chartered Accountant would amount to misconduct or not.

8. (a) An advertisement was published in a Newspaper containing the photograph of Mr. X, a member of the institute wherein he was congratulated on the occasion of the opening ceremony of his office.

(b) Mr. X, a Chartered Accountant and the proprietor of X & Co., wrote several letters to the Assistant Registrar of Co-operative Societies stating that though his firm was on the panel of auditors, no audit work was allotted to the firm and further requested him to look into the matter.

9. *A practising Chartered Accountant uses a visiting card in which he designates himself, besides as Chartered Accountant, Cost Accountant. Is this a misconduct?*

10. *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.*

11. *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 the GST Act.
- (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.

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

13. Mr. A, a newly qualified Chartered Accountant, started his practice and sought clients through telephone calls from his family and friends, almost all of them employed in one or the other retail trade business. One of his friends Mr. X gave him an idea to start online services and give stock certifications to traders with Cash Credit Limits in Banks. Mr. A started a website with colorful catchy designs and shared the website address on his all social media posts and stories and tagged 30 traders of his local community with the caption "Easy Online Stock Certification Services". Besides, Mr. A entered in an agreement with a Digital Marketer to give him 5% commission on each service procured through him. Discuss if the actions of Mr. A are valid in the light of the Professional Ethics and various pronouncements and guidelines issued by ICAI.

14. Mr. D, a practicing CA, is appointed as a Director Simplicitor in XYZ Pvt. Ltd. After one year of appointment, Mr. D resigned as the Director and accepted the Statutory Auditor position of the company. Is Mr. D right in accepting the auditor position?

15. *Mr. F, a Chartered Accountant, gave advisory services to PQR Pvt. Ltd. Further, he gave them GST consultancy, compilation engagement for historical financial information and helped in ERP set up. Later, the company turned out to be a part of a group of companies involved in money laundering. Mr. F was asked to provide details of the companies. Mr. F refused on the grounds that he gave only consultancy services to the company and wasn't supposed to keep any information about the company. Is Mr. F right as per the guidelines issued by the ICAI?*

16. Mr. S, the auditor of ABC Pvt. Ltd. has delegated following works to his articles and staff:

- i. Issue of audit queries during the course of audit.
- ii. Issue of memorandum of cash verification and other physical verification.
- iii. Letter forwarding draft observations/financial statements.
- iv. Issuing acknowledgements for records produced.
- v. Signing financial statements of the company.

Is this correct as per the Professional Ethics and ICAI's guidelines and pronouncements?

17. Mr. S is a practising chartered accountant based out of Chennai. During the weekends, he involved himself in equity research and used to advise his friends, relatives and other known people who are not his clients. Apart from this, he was also involved as a paper-setter for Accountancy subject in the school in which he studied. He also owned agricultural land and was doing agriculture during his free time. During the year 20X1, heavy losses were incurred in agricultural activity due to natural calamities and

misfortune, and he lost almost all of his wealth and became undischarged insolvent. After a few court hearings, finally, in the year 20X3, he was declared discharged insolvent and obtained a certificate from the court stating that his insolvency was caused by misfortune without any misconduct on his part. You are required to comment on the above situation with reference to the Chartered Accountants Act, 1949 and Schedules thereto, (especially from the point of section 8: Entry of name in Register of Members).

CHP. 2 CODE OF ETHICS SUMMARY

ANNEXURE - 1

The Chartered Accountants Act, 1949

The Chartered Accountants Act, 1949 (No. 38 of 1949) came into force on the 1st day of July, 1949. Later in the year 1959, certain amendments were made therein through the Chartered Accountants (Amendment) Act, 1959 (No. 15 of 1959). After about 47 years extensive changes have been made in the Act through the Chartered Accountants (Amendment) Act, 2006 (No. 9 of 2006) which have been notified by the Central Government in the Gazette of India (Extra Ordinary) dated 23rd March, 2006. Further, few insertions were made to the principle Act through the Chartered Accountants (Amendment) Act, 2011 (No. 3 of 2012).

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

The Complete enumeration of Contents is given below:

Chapter I - Preliminary

1. Short title, Extent and Commencement
2. Interpretation

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

Chapter II - The Institute of Chartered Accountants of India

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

This chapter deals with various things like who shall be entitled to have his name entered in the register of members of the Institute, who shall be deemed to have

become an associate member of the Institute, who shall be entered in the Register as a fellow of the Institute. This Chapter also deals with issues relating to certificate of practice and disabilities of a person for having his name entered in the Register.

Chapter III - Council of the Institute

9. Constitution of the Council of the Institute
10. Re-election or re-nomination to Council [Substituted by Chartered Accountants (Amendment) Act, 2006]
- 10A. Settlement of dispute regarding election [Inserted by Chartered Accountants (Amendment) Act, 2006]
- 10B. Establishment of Tribunal [Inserted by Chartered Accountants (Amendment) Act, 2006]
11. Nomination in default of election or nomination
12. President and Vice-President
13. Resignation of Membership and casual vacancies
14. Duration and dissolution of the Council
15. Function of the Council
- 15A. Imparting education by Universities and Other bodies [Inserted by Chartered Accountants (Amendment) Act, 2006]
16. Officers and employees, salary, allowances etc. [substituted by Chartered Accountants (Amendment) Act, 2006]
17. Committees of the Council
18. Finances of the Council

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

Chapter IV - Register of Members

19.	<i>Register of Members</i>
20.	<i>Removal from the Register</i>
	<i>This chapter deals with the matters relating to register of members and removal from the register the name of any member. The Council has to maintain a Register of Members of the Institute. This Register shall include name, date of birth, domicile, residential and professional address, qualification etc. Also, the Council may remove from the Register the name of any member in certain circumstances like in case of death of the member or if the member does not pay the prescribed fees, or when a member has become subject to any of the disabilities mentioned in section 8.</i>
	Chapter V - Misconduct
21.	<i>Disciplinary Directorate [Substituted by Chartered Accountants (Amendment) Act, 2006]</i>
21A.	<i>Board of Discipline [Inserted by Chartered Accountants (Amendment) Act, 2006]</i>
21B.	<i>Disciplinary Committee [Inserted by Chartered Accountants (Amendment) Act, 2006]</i>
21C.	<i>Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court [Inserted by Chartered Accountants (Amendment) Act, 2006]</i>
21D.	<i>Transitional provisions [Inserted by Chartered Accountants (Amendment) Act, 2006]</i>
22.	<i>Professional or other misconduct defined [Substituted by Chartered Accountants (Amendment) Act, 2006]</i>
22A.	<i>Constitution of Appellate Authority [Substituted by Chartered Accountants (Amendment) Act, 2006]</i>
22B.	<i>Term of office of Chairperson and members of Authority [Inserted by Chartered Accountants (Amendment) Act, 2006].</i>
22C.	<i>Allowances and conditions of service of Chairperson and Members of Authority (Inserted by Chartered Accountants (Amendment) Act, 2006)</i>
22D.	<i>Procedure to be regulated by Authority [Inserted by Chartered Accountants (Amendment) Act, 2006]</i>
22E.	<i>Officers and other staff of Authority [Inserted by Chartered Accountants (Amendment) Act, 2006]</i>
22F.	<i>Resignation and removal of Chairperson and Members [Inserted by Chartered</i>

Accountants (Amendment) Act, 2006)]

22G. *Appeal to Authority [Inserted by Chartered Accountants (Amendment) Act, 2006]*

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

Chapter VI - Regional Councils

23. *Constitution and Functions of Regional Councils*

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

Chapter VII - Penalties

24. *Penalty for falsely claiming to be a member etc.*

24A. *Penalty for using name of the Council, awarding degree of Chartered Accountancy etc.*

25. *Companies not to engage in accountancy*

26. *Unqualified persons not to sign documents*

27. *Maintenance of branch offices*

28. *Sanction to prosecute*

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

this chapter provide that a Company (Incorporated in or outside India) shall not practice as Chartered Accountant, a person other than a member of the Institute shall not sign any document on behalf of a Chartered Accountant in practice or a firm of such Chartered Accountants in his or its professional capacity, etc.

Chapter VII A Quality Review Board

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

28A. Establishment of Quality Review Board

28B. Functions of Board

28C. Procedure of Board

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

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

Chapter VIII - Miscellaneous

29. Reciprocity

29A. Power of Central Government to make rules.

30. Power to make regulations

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

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

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

- 30D. Protection of action taken in good faith [Inserted by Chartered Accountants (Amendment) Act, 2006)]
- 30E. Members etc. to be public servants [Inserted by Chartered Accountants (Amendment) Act, 2006)]
- 31. Construction of References
- 32. Act not to affect right of accountants to practice as such in Acceding States.
- 33. [Repealed]

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

ANNEXURE - 2

SCHEDULES TO THE ACT

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

The First Schedule is divided into four parts, Part I of the First Schedule deals with

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

The First Schedule

PART I -

Professional misconduct in relation to Chartered Accountants in practice

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

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

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

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

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

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

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

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

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

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

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

However, as per the guideline issued by the Council of the Institute of Chartered Accountants of India, a member of the Institute in practice shall not respond to any tender issued by an organization or user of professional services in areas of services which are exclusively reserved for chartered accountants, such as audit and attestation services. However, such restriction shall not be applicable where minimum fee of the assignment is prescribed in the tender document itself or where the areas are open to other professionals along with the Chartered Accountants.

Clause (7) Advertises his professional attainments or services, or uses any designation or expressions other than the Chartered Accountant on professional documents, visiting

cards, letter heads or sign boards unless it be a degree of a University established by law in India or recognized by the Central Government or a title indicating membership of the Institute of Chartered Accountants or of any other institution that has been recognized by the Central Government or may be recognized by the Council.

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

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

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

(Now Section 139 and 140 read with Section 141 of the Companies Act, 2013. Students may note that till the time Code of Ethics etc. bare documents get updated from Ethical Standard Board of ICAI in pursuance of the Companies Act, 2013, students are required to understand the basic nature of the provision and quote the same along with the new corresponding provisions.)

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

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

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

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

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

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

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

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

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

[Note: A member in the foregoing circumstances would be guilty of misconduct regardless of the fact that he was in whole-time or part-time employment or that he was holding Certificate of Practice along with his employment.]

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

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

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

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

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

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

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

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

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

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

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

The Second Schedule

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

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

Clause (1) Discloses Information acquired in the course of his professional engagement

to any person other than his client so engaging him without the consent of his client or otherwise than as required by any law for the time being in force.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recent Decisions of Ethical Standards Board

1. *It is permissible for a practicing Chartered Accountant holding Certificate of Practice to become a member of the 'Board of Management' in Primary (Urban) Co-operative Banks. The Ethical Standards Board noted that the position of a member of 'Board of Management' in Primary (Urban) Co-operative banks (UCBs) and the role attached to that position is similar to that of a Director-Simplicitor; where there is no involvement of a member in the day-to-day functioning/operations and not signatory etc. and only sitting fees for the services rendered are provided.*
2. *Member in practice cannot act as Trademark or Patent Attorney. However, Professional advice in relation to Intellectual Property Rights (IPR) is a routine professional work for a Chartered Accountants in practice and same is permissible under the provisions of the Chartered Accountants Act, 1949.*
3. *It is not permissible for a member in practice to accept the appointment of statutory audit of the society wherein immediate family member i.e., spouse or dependent, of member hold honorary position of one of the managing committee of the institutes governed by the society.*
4. *The Council decided that for the purpose of Appointment of an auditor when he is indebted to a concern, as dealt with under Chapter X of the Council General Guidelines, 2008, the term "auditor" shall not include internal auditor, concurrent auditor or an auditor giving report to the Management. In other words, the provision relating to criteria/limit of indebtedness shall apply only to statutory audits.*
5. *A CA Firm may register itself on Udyog Aadhar, a web portal of Ministry Micro, Small and Medium Enterprises.*
6. *There is no prohibition for internal auditor of a company to acquire/purchase shares of the said Company.*
7. *It is not permissible for a member to use Messaging Applications to send messages to make people aware about his practice, and mention the services provided therein.*
8. *A Chartered Accountant in practice being Director Simplicitor in a Company cannot sign ROC Forms of the Company as it is a direct conflict of role.*
9. *A Chartered Accountant in practice can act as Authorized Representative of a Foreign Company, provided he is not the auditor of the said Company.*

10. It is permissible for two or more Chartered Accountants in practice collectively to have joint training session for their clients on GST, and share the fees collected from the clients thereof.
11. A chartered accountant in practice can provide services through kiosk only if the services provided are professional activities of a practicing chartered accountant, permitted under the Act.
12. A Chartered Accountant in service is allowed to take e-return registration if it does not conflict with employment obligation. However, he cannot certify the return.
13. In case where Chartered Accountant in practice is a non-executive director in a company, he or a Firm in which he is a partner, should not accept the appointment as a statutory auditor of a Company which is a joint venture of the original Company, as it would impact independence.
14. A Chartered Accountant in practice may be an equity research adviser, but he cannot publish retail report, as it would amount to other business or occupation.
15. There is no conflict of interest in a Chartered Accountant, who is a member of a Trust, being the auditor of the said trust. It is subject to the exception where a particular statute governing a Trust prescribes prohibition on the member of the Trust to be its Auditor or otherwise where there is conflict of interest as per the provisions of Code of Ethics.
16. A Chartered Accountant in practice may engage himself as Registration Authority (RA) for obtaining digital signatures for clients.
17. A Chartered accountant can hold the credit card of a bank when he is also the auditor of the bank, provided the outstanding balance on the said card does not exceed Rs 100,000* beyond the prescribed credit period limit on credit card given to him. (*As per the limit of indebtedness existing as on date.)
18. A Chartered Accountant in practice can act as mediator in Court, since acting as a “mediator” would be deemed to be covered within the meaning of “arbitrator”; which is inter-alia permitted to members in practice as per Regulation 191 of the Chartered Accountants Regulations, 1988.
19. A Chartered Accountant in practice is not permitted to accept audit assignment of a bank in case he has taken loan against a Fixed Deposit held by him in that bank.

20.	<i>The Ethical Standards Board in 2013 generally apply the stipulations contained in the then amended Rule 11U of Income Tax generally, wherein statutory auditor /tax auditor cannot be the valuer of unquoted equity shares of the same entity. The Board has at its recent Meeting (January, 2017) has reviewed the above, and decided that where law prohibits for instance in the Income Tax Act and the rules framed thereunder, such prohibition on statutory auditor/tax auditor to be the valuer will continue, but where there is no specific restriction under any law, the said eventuality will be permissible, subject to compliance with the provisions, as contained in the Code of Ethics relating to independence.</i>
21.	<i>The Ethical Standards Board had in 2011 decided that it is not permissible for a member who has been Director of a Company, upon resignation from the Company to be appointed as an auditor of the said Company, and the cooling period for the same may be 2 years. The Board has at its recent Meeting (January, 2017) has reviewed the above, and noted that the Section 141 of Companies Act, 2013 on disqualification of auditors does not mention such prohibition; though threats pertaining to the said eventuality have been mentioned in Code of Ethics. Further, the Board was of the view that a member may take decision in such situation based on the provisions of Companies Act, 2013 and provisions of Code of Ethics.</i>
22.	<i>A chartered accountant in practice cannot become Financial Advisors and receive fees/commission from Financial Institutions such as Mutual Funds, Insurance Companies, NBFCs etc.</i>
23.	<i>A chartered accountant cannot exercise lien over the client documents/records for non-payment of his fees.</i>
24.	<i>It is not permissible for CA Firm to print its vision and values behind the visiting cards, as it would result in solicitation and therefore would be violative of the provisions of Clause (6) of Part-I of First Schedule to the Chartered Accountants Act, 1949.</i>
25.	<i>It is not permissible for chartered accountants in practice to take agencies of UTI, GIC or NSDL.</i>
26.	<i>It is permissible for a member in practice to be a settlor of a trust.</i>
27.	<i>A member in practice cannot hold Customs Brokers Licence under section 146 of the Customs Act, 1962 read with Customs Brokers Licensing Regulations, 2013 in terms</i>

of the provisions of Code of Ethics.

28. A Chartered accountant in service may appear as tax representative before tax authorities on behalf of his employer, but not on behalf of other employees of the employer.
29. A chartered accountant who is the statutory auditor of a bank cannot for the same financial year accept stock audit/inspection Audit of the same branch of the bank or any of the branches of the same bank or sister concern of the bank, for the same financial year.
30. A CA Firm which has been appointed as the internal auditor of a PF Trust by a Government Company cannot be appointed as its Statutory Auditor.
31. A concurrent auditor of a bank 'X' cannot be appointed as statutory auditor of bank 'Y', which is sponsored by 'X'.
32. A CA/CA Firm can act as the internal auditor of a company & statutory auditor of its employees PF Fund under the new Companies Act (2013).
33. The Ethical Standards Board while noting that there is requirement for a Director u/s 149(3) of the Companies Act, 2013 to reside in India for a minimum period of 182 days in the previous calendar year, decided that such a Director would be within the scope of Director Simplicitor (which is generally permitted as per ICAI norms), if he is non -executive director, required in the Board Meetings only , and not paid any remuneration except for attending such Board Meetings.