

Code of Ethics
&
Disciplinary Proceedings
(Under the Chartered Accountants Act, 1949)

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Purpose of the Ethical Code

- Provide framework for ethical behavior
- Set standards for practice
- Protect clients, communities and the profession

Code of Ethics - ICAI

Code of Conduct is essentially a set of professional ethical standards, regulating the relationship of CAs with clients, employers, employees, fellow members of the group and public generally.

Objectivity - Sub-Section 112 [Old Section 120]

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

Threats and Safeguards - Section 120.6 [Old Section 200.3]

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

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

The nature and significance of the threats may differ depending on whether they arise in relation to the provision of services to a financial statement audit client*, a non-financial statement audit assurance client* or a non-assurance client.

Self-Interest

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

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

Self Review

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

Advocacy Threats

Examples of circumstances that may create advocacy threats include, but are not limited to:

- Promoting shares in a listed entity* when that entity is a financial statement audit client.
- Acting as a representative on behalf of an assurance client in litigation or disputes with third parties.

Familiarity Threats

- A member of the engagement team is a relative of a director or officer of the client.
- A member of the engagement team is a relative of an employee of the client who is in a position to exert direct and significant influence over the subject matter of the engagement.
- A former partner of the firm being a director or officer of the client or an employee in a position to exert direct and significant influence over the subject matter of the engagement.
- Accepting gifts or preferential treatment from a client.
- Long association of senior personnel with the assurance client.

Intimidation Threats:

Examples of circumstances that may create intimidation threats include, but are not limited to:

- Being threatened with dismissal or replacement in relation to a client engagement.
- Being threatened with litigation.
- Being pressured to reduce inappropriately the extent of work performed in order to reduce fees.

Professional Appointment Client Acceptance - Section 320 [Old Section 210]:

- Before accepting a new client relationship, a professional accountant in public practice should consider whether acceptance would create any threats to compliance with the fundamental principles. Potential threats to integrity or professional behaviour may be created from, for example, questionable issues associated with the client (its owners, management and activities).
- Client issues that, if known, could threaten compliance with the fundamental principles include, for example, client involvement in illegal activities (such as money laundering), dishonesty or questionable financial reporting practices.

Client Acceptance:

- The significance of any threats should be evaluated. If identified threats are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level.
- Appropriate safeguards may include obtaining knowledge and understanding of the client, its owners, managers and those responsible for its governance and business activities, or securing the client's commitment to improve corporate governance practices or internal controls.
- Where it is not possible to reduce the threats to an acceptable level, a professional accountant in public practice should decline to enter into the client relationship.
- Acceptance decisions should be periodically reviewed for recurring client engagements.

INDUCEMENTS - Gifts and Hospitality

Section 340 [Old Section 260]

- A professional accountant in public practice, or a relative, may be offered gifts and hospitality from a client. Such an offer ordinarily gives rise to threats to compliance with the fundamental principles. For example, self-interest threats to objectivity may be created if a gift from a client is accepted; intimidation threats to objectivity may result from the possibility of such offers being made public.
- If evaluated threats are other than clearly insignificant, safeguards should be considered and applied as necessary to eliminate them or reduce them to an acceptable level. When the threats cannot be eliminated or reduced to an acceptable level through the application of safeguards, a professional accountant in public practice should not accept such an offer.

Gifts and Hospitality

- The significance of such threats will depend on the nature, value and intent behind the offer. Where gifts or hospitality, which a reasonable and informed third party, having knowledge of all relevant information, would consider clearly insignificant, are made, a professional accountant in public practice may conclude that the offer is made in the normal course of business without the specific intent to influence decision making or to obtain information. In such cases, the professional accountant in public practice may generally conclude that there is no significant threat to compliance with the fundamental principles.

Financial Interests - Section 240 [Section 340]

Professional accountants in service may have financial interests, or may know of financial interests of relative, that could, in certain circumstances, give rise to threats to compliance with the fundamental principles.

Examples of circumstances that might create a self-interest threat include situations in which the professional accountant or an immediate or close family member:

- Has a motive and opportunity to manipulate price-sensitive information in order to gain financially.
- Holds a direct or indirect financial interest in the employing organization and the value of that financial interest might be directly affected by decisions made by the accountant.

Financial Interests - Section 240 [Section 340]

- Is eligible for a profit-related bonus and the value of that bonus might be directly affected by decisions made by the accountant.
- Holds, directly or indirectly, deferred bonus share rights or share options in the employing organization, the value of which might be affected by decisions made by the accountant.
- Participates in compensation arrangements which provide incentives to achieve targets or to support efforts to maximize the value of the employing organization's shares. An example of such an arrangement might be through participation in incentive plans which are linked to certain performance conditions being met.

Members who are deemed to be in practice

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

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

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

Members who are deemed to be in practice

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

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

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

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

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

- (a) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) will process the same for its registration and shall form a prima facie opinion on the alleged misconduct.

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

- (b) After the prima facie opinion is formed, the Director (Discipline) shall place the matter before the Board of Discipline or Disciplinary Committee in respect of the cases relating to the First Schedule or the Second Schedule to the Act as the case may be. Where the matter relates to both the Schedules, it shall be placed before the Disciplinary Committee only. Where the Director (Discipline) is of the opinion that there is no prima facie case the Board of Discipline may, if agrees with the opinion of the Director (Discipline) close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter. Where the Director (Discipline) is of the opinion that there is a prima facie case, further action will be taken by the Board of Discipline or Disciplinary Committee, as the case may be.

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

- (c) The Board of Discipline (in respect of matters relating to First Schedule) has been empowered to pass the following orders:-
- (i) reprimand the member
 - (ii) remove the name of the member from Register upto a period of three months
 - (iii) impose such fine which may extend to rupees one lakh.
- (d) The Discipline Committee (in respect of matters relating to Second Schedule or Both Schedules when the misconducts are related to both the Schedules) has been empowered to pass the following orders:-
- (i) reprimand the member
 - (ii) remove the name of the member from the Register permanently or for such period as it may think fit.
 - (iii) impose such fine which may extend to rupees five lakhs.

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

- (e) The Director (Discipline), Board of Discipline and the Disciplinary Committee have powers of Civil Court under the Code of Civil Procedure, 1908 in respect of the following matters, namely,
 - (i) summoning and enforcing attendance of any person and examining him on oath;
 - (ii) discovery and production of any document; and
 - (iii) receiving evidence on affidavit.

- (f) Any member of the Institute aggrieved of any order of the Board of Discipline or the Disciplinary Committee may prefer an appeal under Section 22G to the authority constituted under the provisions of Section 22A – 22D of the Act.

Maintenance of Branch Offices

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

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

Maintenance of Branch Offices

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

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

- (1) Definition of Office – “A place where a name-board is fixed or where such place is mentioned in the letter-head or any other documents as a place of business.”

- (2) With regard to the use of the name-board, there will be no bar to putting up of a name-board in the place of residence of a member with the designation of Chartered Accountant, provided it is a name-plate or a name-board of an individual member and not of the Firm.
- (3) The requirement of Section 27 in regard to a member being in charge of an office of a Chartered Accountant in practice or a firm of such Chartered Accountants shall be satisfied only if the member is actively associated with such office. Such association shall be deemed to exist if the member resides in the place where the office is situated for a period of not less than 182 days in a year or if he attends the said office for a period of not less than 182 days in a year or in such other circumstances as, in the opinion of the Executive Committee, establish such active association.

(4) In view of the Council's decision, however, the exemption is granted under proviso to Section 27(1) of the Chartered Accountants Act, 1949 to a member or a firm of Chartered Accountants in practice to have a second office without such second office being under the separate charge of a member of the Institute, provided (a) the second office is located in the same premises, in which the first office is located or (b) the second office is located in the same city, in which the first office is located or (c) the second office is located within a distance of 50 km. from the municipal limits of a city, in which the first office is located. A member having two offices of the type referred to above, shall have to declare, which of the two offices is his main office, which would constitute his professional address.

(5) The expression “member” in the above context shall mean, where more than one member is designated as in charge of an office, then any such member and in other cases more than one member where a change in the designated member in charge of an office takes place during the year.

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

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

SCHEDULES TO THE ACT

Professional/other misconducts by the members as provided in Schedules

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

The First Schedule is divided into four parts.

Part I of the First Schedule deals with the professional misconduct of a member in practice which would have the effect generally of compromising his position as an independent person. Part II deals with professional misconduct of members of the Institute in service. Part III deals with the professional misconduct of members of the Institute generally and Part IV deals with other misconduct of Members of the Institute generally.

The Second Schedule is divided into three parts.

Part I deals with professional misconduct in relation to a member in practice and Part II deals with professional misconduct of members of the Institute generally and Part III deals with other misconduct of Members of the Institute generally.

Schedules to the Act

FIRST SCHEDULE

Part I: Professional Misconduct in relation to CA in Practice
(No. of Clauses : 12)

Part II: Professional Misconduct in relation to Members of the Institute in Service
(No. of Clauses : 2)

Part III: Professional Misconduct in relation to Members of the Institute generally
(No. of Clauses : 3)

Part IV: Other Misconduct in relation to Members of the Institute generally
(No. of Clauses : 2)

SECOND SCHEDULE

Part I: Professional Misconduct in relation to CA in Practice
(No. of Clauses : 10)

Part II: Professional Misconduct in relation to members of the Institute generally
(No. of Clauses : 4)

Part III: Other Misconduct in relation to members of the Institute generally
(No. of Clauses : 1)

THE FIRST SCHEDULE

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

PART - I :

**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	Description
1.	Allows any person to practice in his name as a chartered accountant unless such person is also a chartered accountant in practice and is in partnership with or employed by him;

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

Part 'I' of Schedule '1' Cont..

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

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

Part 'I' of Schedule '1' Cont..

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

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

Percentage of Audit Fee to the Govt.

The Institute came across certain Circulars/Orders issued by the Registrars of various State Co-operative Societies wherein it has been mentioned that certain amount of audit fee is payable to the concerned State Government and the auditor has to deposit a percentage of his audit fee in the state Treasury by a prescribed challan within a prescribed time of the receipt of Audit fee. The Council decided that as such there is no bar in the Code of Ethics to accept such assignment wherein a percentage of professional fee is deducted by the Government to meet the administrative and other expenditure.

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

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

1. An application in writing should be forwarded by a member, holding Certificate of Practice, intimating his intention to purchase goodwill.
2. The application should be made within 1 year from the date of death of the member or date of settlement of dispute, if information of dispute received by the Institute within a year of death of proprietor.
3. The application should be sent along with the following details:-
 - a. "Death Certificate" of the deceased member; and
 - b. (i) A draft sale deed for sale/transfer of goodwill entered into between the legal heir/s of the deceased and the member intending to purchase goodwill.
(ii) The sale of goodwill deed must be very clear as to the amount of consideration and payment thereof in one or more installment(s) to be paid within a specified period. The consideration should not be contingent upon future profits.

Part 'I' of Schedule '1' Cont..

4. Documents, such as, succession certificate or will, Legal Heir Certificate or an affidavit sworn by all legal heir/s stating that there is/are no other legal heir to the deceased member.
5. Legal heir, in this context, means spouse, child/children and parents.
6. If the agreement is entered into by one of the legal heirs, 'No Objection' from the other legal heirs, except those minor, are also required to be submitted. In case of minor, 'No Objection' is to be obtained from the guardian.

Part 'I' of Schedule '1' Cont..

7. The member intending to purchase the goodwill should give an advertisement about his intention to purchase such goodwill, and the advertisement should spell out that anyone having objection thereto should send the objection directly to the respective Regional Office/Decentralised office (address of which shall be indicated in the advertisement). A copy of the advertisement so published should be sent by the intending purchaser to the concerned Regional Office/Decentralised office.

8. Within 30 days of the receipt of the approval, for transfer of goodwill, Form '18' is required to be filed by the member purchasing the goodwill.

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

Proposed Provisions

[as per ICAI Code of Ethics, 2019 Volume – II]

Scope of Profit in Partnership Firm after death of a Partner/Legal Representative

When there are two or more partners and one of them dies, the widow of the deceased partner can continue to receive a share of the profit of the firm. But only where the partnership agreement contains a provision that on the death of the partner his widow or legal representative would be entitled to such payment for goodwill by way of sharing of fees or otherwise for some specified period.

Proposed Provision as per ICAI Code of Ethics, 2019 Volume – II

Sharing of Fees after Death of a Partner of a Partnership Firm

There could not be any sharing of fees between the widow or the legal representative of the proprietor of a single member firm and the purchaser of the goodwill of the firm on the death of the Sole proprietor of the firm. Payment of goodwill to the widow is permissible in such cases only for the goodwill of the firm and to enable such payments to be made in installments provided the agreement of the sale of goodwill contains such a provision. These payments even if they are spread over the specified period should not be linked up with participation in the earnings of the firm.

Proposed Provision as per ICAI Code of Ethics, 2019 Volume – II

The Widow of an IT Representative Member

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

Part 'I' of Schedule '1' Cont..

Clause	Description
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3.

Accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute:

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

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

Referral Fees is not prohibited.

Part 'I' of Schedule '1' Cont..

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

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

Part 'I' of Schedule '1' Cont..

- ❑ A Chartered Accountant in practice is not permitted to enter into partnership with any person other than a Chartered Accountant in practice or such other persons as may be prescribed by the Council from time to time.
- ❑ The members may however take note of the fact that they cannot form Multi-Disciplinary partnerships till such time that Regulators of such other professionals also permit partnership with chartered accountants, and guidelines in this regard are issued by the Council. **[Proposed]**
- ❑ member in practice allowed to be Director Simplicitor in a company (simultaneously with Directors who are non CAs or non-practicing CA.
- ❑ As of now, a member in practice cannot become a partner/ designated partner (non-working and non-remuneration drawing) in an LLP not carrying out professional work.
- ❑ However, partnership between members of the Institute and members of foreign professional bodies are permissible provided members of such bodies are eligible for the membership of the Institute.

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

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

Part 'I' of Schedule '1' Cont..

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

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

Part 'I' of Schedule '1' Cont..

Clause	Description
5.	<p>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:</p> <p>Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this Part;</p>

Part 'I' of Schedule '1' Cont..

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

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

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

Clause	Description
6.	<p>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–</p> <ul style="list-style-type: none"><li data-bbox="510 762 2080 986">(I) any Chartered Accountant from applying or requesting for or inviting or securing professional work from another chartered accountant in practice;<li data-bbox="510 1018 2080 1385">or (II) a member from responding to tenders or enquiries issued by various users of professional services or organisations from time to time and securing professional work as a consequence;

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

(a) Advertisement and Notes in the press

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

Exceptions:

1. A member may request another Chartered Accountant in practice.
2. A member may advertise changes in partnerships/dissolution of a firm/change in the address of practice and telephone numbers.
3. A member is permitted to issue a classified advertisement in the Journal/Newsletter of the Institute.

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

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

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

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

Chartered Accountant to have entries made in a Telephone Directory either by making a special request or by means of an additional payment. The Council has also considered the question of permitting entries in respect of Chartered Accountants and their firms under specified groups in telephone/trade directories brought out by government and non-government agencies. ***It has decided to permit such entries subject to the following restrictions:-***

1. The entry should appear in the section/category of 'Chartered Accountants'.
2. The member/firm should belong to the town/city in respect of which the directory is being published.
3. The entry should be in normal type of letters. Entry in bolder type or abnormal type of letters or in a box is not permissible.

Part 'I' of Schedule '1' Cont..

4. The order of the entries should be alphabetical and logical.
5. The entry should not appear in a manner giving the impression of publicity/advertisement. Entry should not be given in a manner which gives prominence to it as compared to other entries.
6. The payment, if any, for the entry should not be unreasonable.
7. The entries should not be restricted and should be open to all the Chartered Accountants/firms of Chartered Accountants in the particular city/town in respect whereof the directory is published.
8. Subject to the above conditions, the members can also include their names in trade directories which are published and/or otherwise available such as electronic media e.g. internet, telephone services like "Ask Me Services" etc.
9. It is not permissible for members to list themselves with online Application based service provider Aggregators, wherein other businessmen, technicians, maintenance workers, event organizers etc. are also listed.

(d) Responding to Tenders, Advertisements and Circulars

- It is not prohibited to the members to respond to tenders and requests made by users of professional work.
- But ***as per the Notification CA(7)/03/2016 issued on 7th April, 2016,*** 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.

Part 'I' of Schedule '1' Cont..

- A member can respond to assignments where quotations have been called for from practicing members/firms through individual letters.
- A member can respond to tenders where only technical bid has been asked for, followed by financial quotations request from the shortlisted members through individual letters.

(e) Publication of Books, Articles or presentation

It is permissible for a member indicate in a book, or an article, published by him or a presentation made by him, association with any firm of Chartered Accountants, provided any professional attainment(s) are not mentioned therein.

(f) Issue of greeting cards or invitations

The Council does not approve of the issue of greeting cards or personal invitations by members indicating their professional designation, status and qualifications etc. However, the Council is of the view that the designation "Chartered Accountant" as well as the name of the firm may be used in greeting cards, invitations for marriages and religious ceremonies and any invitations for opening or inauguration of office of the members, change in office premises and change in telephone numbers, provided that such greeting cards or invitations etc. are sent only to clients, relatives and friends of the members concerned.

(g) Advertisement for Silver, platinum, Centenary celebrations [Proposed]

the advertisement for Silver, Diamond, Platinum and Centenary celebrations of the chartered accountants firms is permissible to be published in any newspaper or in the newsletters.

(h) Sponsoring Activities [Proposed]

It is not permissible for a Firm of Chartered Accountants to sponsor a Conference. However, an individual member can be a knowledge partner to such conference. Members sponsoring activities relating to Corporate Social Responsibility may mention their individual name with the prefix —CAI. However, the mention of Firm name or CA Logo is not allowed.

(i) Sharing Firm Profile with prospective Client [Proposed]

It is not permitted to share Firm profile with a prospective Client unless it is in response to a proposed client's specific query, and otherwise not prohibited to be used by the client.

(j) Television or Movie Credits [Proposed]

While giving name of the member or Firm of Chartered Accountants for inclusion in Television or Movie Credits , it must be taken care of that exhibition of name is not made differently as compared to other entries in the credits.

(k) Soliciting professional work by making roving enquiries

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

(l) Seeking work from professional colleagues

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

Part 'I' of Schedule '1' Cont..

(m) Scope of representation which an auditor is entitled to make under Section 225(3) (corresponding Sub-Section 140(4) of the companies Act 2013) of the Companies Act, 1956

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

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

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

(o) Giving public interviews

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

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

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

(q) Educational videos [Proposed]

Educational videos may be uploaded by members; however, no reference should be made to the Chartered Accountants Firm wherein he may be a partner/proprietor.

(r) Members in practice, engaged in Coaching/teaching activities in accordance with general and specific permission of the Council, may advertise such Coaching /teaching activities

A member in practice, engaged in Coaching/teaching activities in accordance with general and specific permission of the Council should abstain from advertisement of such Coaching /teaching activities, as it may amount to indirect solicitation, as well as solicitation by any other means, and may therefore be violative of the provisions of Clause (6) of Part I of the First Schedule.

Resolution under Regulation 190A

- I. In view of the above, such members in practice are advised to abstain from advertising their association with Coaching /teaching activities through hoardings, posters, banners and by any other means, failing which they may be liable for disciplinary action, as per the provisions of Chartered Accountants Act, 1949 and Rules /Regulations framed thereunder .
- II. Subject to the above prohibition, such members may put, outside their Coaching /teaching premises, sign board mentioning the name of Coaching/teaching Institute, contact details and subjects taught therein only.
- III. Also, 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.

Part 'I' of Schedule '1' Cont..

(s) Website

The guidelines for posting the particulars on Website by Chartered Accountant(s) in practice and firm(s) of Chartered Accountants in practice are as under:

(1) The Chartered Accountants and/or CAs' Firms would be free to create their own Website subject to the overall guidelines laid down by the Council hereunder. The actual format of the Website is not being prescribed nor any standard format of the Website is being given to provide independence to the Members. There is no restriction on the colours which may be used in the Website.

(2) Individual Members would also be permitted to have their Webpages in their trade name or individual name.

(3) The Chartered Accountants and/or CAs' 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 CAs' 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.

Part 'I' of Schedule '1' Cont..

(6) The following information may be allowed to be displayed on the Firms/Members' Websites:

- (i) Member/Trade/Firm name.
- (ii) Year of establishment.
- (iii) Member/Firm's Address (both Head Office and Branches)
Tel. No(s) Fax No(s) E-mail ID(s)
- (iv) Nature of services rendered (to be displayable only on specific "pull" request)
- (v) Partners
- vi) Details of Employees
- (vii) Job vacancies for the Chartered Accountant/firm of Chartered Accountants (including articleship).
- (viii) No. of articled clerks. (to be displayable only on specific "pull" request).
- (ix) Nature of assignments handled (to be displayable only on specific "pull" request). Names of clients and fee charged cannot be given.

Part 'I' of Schedule '1' Cont..

- (7) Since Chartered Accountants in practice/firms of Chartered Accountants are not permitted to use logo with effect from 1st July, 1998, they cannot use logo on Website also.
- (8) Display of Passport size photograph is permitted.
- (9) The members may include articles, professional information, professional updation and other matters of larger importance or of professional interest.
- (10) The bulletin boards can be provided.
- (11) The chat rooms can be provided which permit chatting amongst members of the ICAI and between Firms and its clients. The confidentiality protocol would have to be observed.
- (12) The members/firms can provide on line advice to their clients who specifically request for the advice whether free of charge or on payment.

Part 'I' of Schedule '1' Cont..

(13) The listing on suitable search engine should be permitted. However, the field of search should be restricted only to the field of “Chartered Accountants” or “CA” or “Indian CA”, “Indian CPA”, “Indian Chartered Accountant” or any permutation or combination related thereto. The Websites would be subjected to the guidelines contained herein and normally would not be vetted by the Institute of Chartered Accountants of India (ICAI). ICAI at its sole discretion may vet any of the Websites created by its members or individual Chartered Accountant or firms of Chartered Accountants and would have powers to direct deletion of certain portions and/or issue specific directions. In addition, necessary action can be taken in accordance with the Chartered Accountants Act, 1949 and the Regulations framed thereunder, in case there is any violation of the above guidelines.

Part 'I' of Schedule '1' Cont..

- (14) The details in the Website should be so designed that it does not amount to soliciting client or professional work. In case any content or technical feature of Website is against the professional Code of Conduct and Ethics as well as the restrictions contained in the schedules to the Chartered Accountants Act, 1949 or against the guidelines or directions issued by ICAI from time to time, appropriate action will be initiated by the ICAI in terms of its disciplinary mechanism either Suo-motto or on complaint as provided under the Chartered Accountants Act, 1949.
- (15) The Website should ensure adequate secrecy of the matters of the clients handled through Website.
- (16) A number of Chartered Accountants Societies or other bodies are creating data-bases of Chartered Accountants or Chartered Accountants' Firms and are offering listing to Chartered Accountants. Such listing would be permitted with or without payment. In case a Chartered Accountant or Chartered Accountants' Firm is a member of a professional body or association or Chamber of Commerce and they offer listing to the members or firm, the same would be permitted.

Part 'I' of Schedule '1' Cont..

- (17) The Institute of Chartered Accountants of India will regularly inform the aforesaid guidelines to the members and the Chartered Accountants' Firms to ensure the strict compliance of the guidelines. The guidelines may be revised from time to time.
- (18) No Advertisement in the nature of banner or any other nature will be permitted on the Website.
- (19) The Website should be befitting the profession of Chartered Accountants and should not contain any information or material which is unbecoming of a Chartered Accountant.
- (20) The Website may provide a link to the Website of ICAI, its Regional Councils and Branches and also the Website of Govt./Govt. Departments/Regulatory authorities/other Professional Bodies, such as, American Institute of Certified Public Accountants (AICPA), the Institute of Chartered Accountants of England & Wales (ICAEW) and The Canadian Institute of Chartered Accountants (CICA).

Part 'I' of Schedule '1' Cont..

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

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

Part 'I' of Schedule '1' Cont..

A number of non-Chartered Accountants' firms, corporates including banks, finance Companies and newspapers have set up their own **Websites providing advisory services** on taxation and other areas where Chartered Accountants are rendering professional service. Some of such Websites may request Chartered Accountants or Chartered Accountants' firms to provide consultation and advice through their Websites.

This would be permitted subject to the condition that on the Website, contact address of the Chartered Accountant concerned is not provided nor such Website will contain any material which advertises professional achievements or status of such Chartered Accountant except making a statement that they are Chartered Accountants. **The name of Chartered Accountants' firm with suffix "Chartered Accountants" would not be permitted.**

Part 'I' of Schedule '1' Cont..

Clause	Description
7.	<p>Advertises his professional attainments or services, or uses any designation or expressions other than chartered accountant on professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognized by the Central Government or a title indicating membership of the Institute of Chartered Accountants of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council:</p> <p>Provided that a member in practice may advertise through a write up setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council;</p>

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

Part 'I' of Schedule '1' Cont..

- It is improper for a Chartered Accountant to state on his professional documents that he is an Income-tax Consultant, Cost Accountant, Company Secretary, Cost Consultant or a Management Consultant.
- While noting that it had already allowed its members to appear before the various authorities including Company Law Board, Income Tax Appellate Tribunal, Sales Tax Tribunal where the law has permitted the same, so far as the designation “Corporate Lawyer” is concerned, the Council was of the view that as per the existing provisions of law, a Chartered Accountant in practice is not entitled to use the designation “Corporate Lawyer”.
- A member empanelled as Insolvency Professional can mention —Insolvency Professional" on his visiting cards and letter head.
- The date of setting up the practice by a member or the date of establishment of the firm on the letter heads and other professional documents etc. should not be mentioned. However in the Website, the year of establishment can be given on the specific “pull” request.

Part 'I' of Schedule '1' Cont..

- Members of the Institute in practice who are otherwise eligible may practise as advocates subject to the permission of the Bar Council but in such case, they should not use designation 'Chartered Accountant' in respect of the matters involving the practice as an advocate. In respect of other matters they should use the designation 'Chartered Accountant' but they should not use the designation 'Chartered Accountant' and 'Advocate' simultaneously.
- Members of the Institute in practice who are otherwise eligible may also practice as Company Secretaries and/or Cost Accountants. Such members shall, however, not use designation/s of the aforesaid Institute/s simultaneously with the designation "Chartered Accountant".
- It is clarified that in the event of the permission being granted to a member in practice to also hold COP of sister Institute(s)/Bar Council, such a member be treated as a member in full-time practice.
- It is not proper for a Chartered Accountant to use the designation 'Chartered Accountant' except on professional documents, visiting cards, letter heads or sign boards and under the circumstances clarified under para (f) of Clause (6).
- Detailed directions of the Council in regard to publication of Name or Firm Name by Chartered Accountants in the Telephone or other Directories published by Telephone Authorities or Private Bodies are published under Clause (6).

Part 'I' of Schedule '1' Cont..

- A member must not use the designation such as 'Member of Parliament', 'Municipal Councilor' nor any other functionary in addition to that of Chartered Accountant.
- The members are not permitted to use the initials 'CPA' (standing for Certified Public Accountant) on their visiting cards.
- For a specialised directory or a publication a Member may give his name, description and address; directorships held and reasonable personal details and may state his outside interests. He should not, however, give the names of any of his clients.
- There should be no objection to the publication of photographs and brief particulars of members in magazines provided no payment is made for such publication and there is no advertisement of professional attainments.

Part 'I' of Schedule '1' Cont..

- Advertisement through press release is permitted for
 - 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.

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.

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

Part 'I' of Schedule '1' Cont..

- Members may appear on television and films and agree to broadcast in the Radio or give lectures at forums and may give their names and describe themselves as Chartered Accountants. Special qualifications or specialised knowledge directly relevant to the subject matter mention. But no reference should be made, in the case of practicing member to the name and address or services of his firm.
- A Chartered Accountant in practice holding training courses, seminars etc. for his staff may also invite the staff of other Chartered Accountants and clients to attend the same. However, undue prominence should not be given to the name of the Chartered Accountant in any booklet or document issued in connection therewith.
- Use of glow signs or lights on large-sized signboards as is used by traders or shop-keepers is not permissible. A member can have a name board at the place of his residence with the designation of a Chartered Accountant, provided it is a name plate or name board of an individual member and not of the firm.

Part 'I' of Schedule '1' Cont..

- In case of public announcement with details of Directors, who are CAs, the use of the expression “Chartered Accountant” is permissible. However, the member must ensure that descriptions about his expertise, specialisation and knowledge in any particular field or other appellations or adjectives are not published with his name. Particulars about directorships held by the member in other Companies can, however, be given, but the name of the firm of Chartered Accountants in which the member is a partner, should not be given.
- The firms constituting a Network are permitted to use the words “Network Firms” on their professional stationery.
- The Council has decided that the logos unconnected with the first letter of the name of the firm or its partners or proprietors would not be permitted for use by members in practice/firms of Chartered Accountants on their letter heads, visiting cards etc. as the same would have amounted to advertisement or smacking of publicity.
- ICAI came up with a unique logo which could be used by all members, whether in practice or not. Further, it has been decided that use of CA logo in the stamp is permissible, subject to CA logo guidelines .

Part 'I' of Schedule '1' Cont..

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

It is important to remember that every client has an inherent right to choose his accountant; also that he may, subject to compliance with the statutory requirements in the case of limited Companies, make a change whenever he chooses, whether or not the reasons which had impelled him to do so are good and valid. The change normally occurs where there has been a change of venue of business and a local accountant is preferred or where the partner who has been dealing with the clients affairs retires or dies; or where temperaments clash or the client has some good reasons to feel dissatisfied. In such cases, the retiring auditor should always accept the situation with good grace.

Grounds for non-acceptance of audit

The existence of a dispute as regards the fees may be root cause of an auditor being changed. This would not constitute valid professional reasons on account of which an audit should not be accepted by the member to whom it is offered. However, in the case of an undisputed audit fees for carrying out the statutory audit under the Companies Act, 1956 or various other statutes having not been paid, the incoming auditor should not accept the appointment unless such fees are paid. In respect of other dues, the incoming auditor should in appropriate circumstances use his influence in favour of his predecessor to have the dispute as regards the fees settled. The professional reasons for not accepting an audit would be:

- (i) Non-compliance of the provisions of Sections 224 and 225 of the Companies Act 1956 (**Corresponding section 139 and 140 of the Companies Act 2013**), as mentioned in Clause (9);
- (ii) Non-payment of undisputed audit fees by auditees other than in case of sick units for carrying out the statutory audit under the Companies Act, 1956 /2013 or various other statutes; and
- (iii) Issuance of a qualified report.

Part 'I' of Schedule '1' Cont..

In the first two cases, an auditor who accepts the audit would be guilty of professional misconduct. In this connection, attention of members is invited to the Council Guidelines No. 1-CA/(7)/02/2008 dated 08.08.08. In the said guidelines, Council has explained that the provision for audit fee in accounts signed by both the auditee or the auditor shall be considered as “undisputed” audit fee and “sick unit” shall mean where the net worth is negative.

In the last case, however, he may accept the audit if he is satisfied that the attitude of the retiring auditor was not proper and justified. If, on the other hand, he feels that the retiring auditor had qualified the report for good and valid reasons, he should refuse to accept the audit. There is no rule, written or unwritten, which would prevent an auditor from accepting the appointment offered to him in these circumstances. However, before accepting the audit, he should ascertain the full facts of the case. For nothing will bring the profession to disrepute so much as the knowledge amongst the public that if an auditor is found to be “inconvenient” by the client, he could readily be replaced by another who would not displease the client and this point cannot be too over-emphasised.

Part 'I' of Schedule '1' Cont..

- ❑ Members should communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the delivery of the communication to the addressee. In the opinion of the Council, communication by a letter sent against a written acknowledgement would in the normal course provide such evidence:
 - a) by Registered Acknowledgement due
 - b) by hand
 - c) via email address registered with the Institute **[Proposed]**
 - d) through Unique Identification Number (UDIN) generated on UDIN portal **[Proposed]**
- ❑ The Council is of the opinion that it would be a healthy practice to communicate with the member who had done the work previously in every case where a Chartered Accountant is required to give a certificate or in respect of a verification of the books of account for special purpose as well as in cases where he is appointed as a Liquidator, Trustee, or Receiver and his predecessor was a Chartered Accountant.
- ❑ It would also be a healthy practice if a tax auditor appointed for conducting special audit under the Income-tax Act, communicates with the member who has conducted the statutory audit.

Part 'I' of Schedule '1' Cont..

- ❑ The Council has taken the view that it is not obligatory for the auditor appointed to conduct a Special Audit under Section 233A of Companies Act, 1956 to communicate with the previous auditor who had conducted the regular audit for the period covered by the Special Audit.
- ❑ The retiring auditor shall, on such request by the Incoming auditor, provide all relevant facts and other information concerning non-compliance to the Incoming Auditor.
- ❑ The communication received back by the Incoming auditor with —Office found Locked" written on the Acknowledgement Due shall be deemed as having been delivered to the retiring auditor.
- ❑ If the Communication sent by the Incoming auditor is received back with remarks —No such office exists at this address", the letter will be deemed to be delivered.

Part 'I' of Schedule '1' Cont..

The Council has also laid down the detailed guidelines on the subject as under:-

1. The requirement for communicating with the previous auditor being a Chartered Accountant in practice would apply to all types of audit viz., GST Audit, Statutory Audit, Tax Audit, Internal Audit, Concurrent Audit or any other kind of Audit.
2. Various doubts have been raised by the members about the terms “audit”, “previous auditor”, “Certificate” and “report”, normally while interpreting the aforesaid Clause (8). These terms need to be clarified.
3. As per para 2 of the Institute’s publication viz. Standard on Auditing (SA) 200, “Basic Principles Governing an Audit”, an “audit” is the independent examination of financial information of any entity, whether profit oriented or not, and irrespective of its size or legal form, when such an examination is conducted with a view to expressing an opinion thereon.
4. A communication is mandatorily required for all types of audit/report where the previous auditor is a Chartered Accountant. For certification, it would be healthy practice to communicate. In case of assignments done by other professionals not being Chartered Accountants, it would also be a healthy practice to communicate.

Part 'I' of Schedule '1' Cont..

5. The term “previous auditor” means the immediately preceding auditor who held same or similar assignment comprising same/similar scope of work. For example, a Chartered Accountant in practice appointed for an assignment of physical verification of inventory of raw materials, spares, stores and finished goods, before acceptance of appointment, must communicate with the previous auditor being a Chartered Accountant in practice who was holding the appointment of physical verification of inventory of raw materials, stores, finished goods and fixed assets. The mandatory communication with the previous auditor being a Chartered Accountant is required even in a case where the previous auditor happens to be an auditor for a year other than the immediately preceding year.

Part 'I' of Schedule '1' Cont..

6. As explained in para 2.2 of the Institute's publication viz., 'Guidance Note on Audit Reports and Certificates for Special Purposes', a "certificate" is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion. A "report", on the other hand, is a formal statement usually made after an enquiry, examination or review of specified matters under report and includes the reporting auditor's opinion thereon. Thus, when a reporting auditor issues a certificate, he is responsible for the factual accuracy of what is stated therein. On the other hand, when a reporting auditor gives a report, he is responsible for ensuring that the report is based on factual data, that his opinion is in due accordance with facts, and that it is arrived at by the application of due care and skill.

Part 'I' of Schedule '1' Cont..

7. Although the mandatory requirement of communication with previous auditor being Chartered Accountant applies, in uniform manner, to audits of both government and non- government entities, yet in the case of audit of government Companies/banks or their branches, if the appointment is made well in time to enable the obligation cast under this clause to be fulfilled, such obligation must be complied with before accepting the audit.

However, in case the time schedule given for the assignment is such that there is no time to wait for the reply from the outgoing auditor, the incoming auditor may give a conditional acceptance of the appointment and commence the work which needs to be attended to immediately after he has sent the communication to the previous auditor in accordance with this clause. In his acceptance letter, he should make clear to the client that his acceptance of appointment is subject to professional objections, if any, from the previous auditors and that he will decide about his final acceptance after taking into account the information received from the previous auditor.

Part 'I' of Schedule '1' Cont..

Clause	Description
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;

Part 'I' of Schedule '1' Cont..

The Companies Act, 1956 provides for the requirements which an auditor appointed in respect of a Company should satisfy himself about, before he accepts the appointment. The relevant provisions are contained in **Sections 224 and 225 of the Companies Act, 1956 (corresponding sections 139 and 140 of the Companies Act 2013)** and the Council has notified that the provisions to be complied with under Clause (9) are those contained in Sections 224 and 225 of the Act. **Section 224 of the Companies Act 1956 (section 139 of the Companies Act 2013)** contains several provisions in the matter of appointment of auditors in different circumstances and situations whereas **Section 225 of the Companies Act, 1956 (section 140 of the Companies Act 2013)** lays down the procedure which must be followed whenever a Company desires to change its auditors. In order that the validity of the appointment of an auditor is not challenged or objected to by shareholders or the retiring auditors at a later date, it has been made obligatory on the incoming auditor to ascertain from the Company that the appropriate procedure in the matter of appointment has been faithfully followed

Part 'I' of Schedule '1' Cont..

The following guidelines have been issued by the Council for this purpose:-

1. Clause (9) of Part I of the First Schedule to Chartered Accountants Act, 1949, provides that a member in practice shall be deemed to be guilty of professional misconduct if he accepts an appointment as auditor of a Company without first ascertaining from it whether the requirements of **Sections 224 and 225 of the Companies Act, 1956, (corresponding sections 139, and 140 of the Companies Act 2013)** in respect of such appointment have been duly complied with. Under this clause it is obligatory on the incoming auditor to ascertain from the Company that the appropriate procedure in the matter of his appointment has been duly complied with so that no shareholder or retiring auditor may, at a later date, challenge the validity of such appointment.
2. A question arises as to what is the duty of the incoming auditor under this clause and what steps he should take in order to ascertain whether the Company has complied with the provisions of **Sections 224 and 225 of the Companies Act, 1956, (corresponding sections 139, and 140 of the Companies Act 2013)** . These guidelines are issued by the Council in order to assist the members in practice to ensure that the provisions of clause (9) are duly complied with.

Part 'I' of Schedule '1' Cont..

3. It may be clarified that though clause (9) refers to compliance with **Sections 224 and 225 of the Companies Act, 1956, (corresponding sections 139, and 140 of the Companies Act 2013)**. It is also necessary to ascertain that the provisions of **Section 224A of the companies Act 1956 (no corresponding section in the Companies Act,2013)** are duly complied with by the Company. This Section deals with special provisions relating to appointment of auditors by certain Companies and they have necessarily to be considered by the incoming auditor before he accepts his assignment.
4. The steps to be taken by an auditor of a Company who is appointed in the following circumstances are indicated below:
 - (i) When the auditor appointed is the first auditor of the Company.
 - (ii) When the auditor is appointed in place of an existing auditor who has resigned or has been removed or has ceased to hold office for any other reason.
 - (iii) When the auditor or auditors appointed by the Company were holding this office jointly with others and one or more of such joint auditors are not reappointed.
 - (iv) When one or more of the auditors appointed by the Company was/were not holding this office earlier.

Part 'I' of Schedule '1' Cont..

5. The procedure to be followed by a Company for appointment of an auditor is laid down in Section 224 of the Companies Act, 1956 (Sec. 139 of the Companies Act 2013). The relevant provisions of the Section are summarized in the ensuing sub-
paras.
 - 5.1 The first auditor can be appointed by the Board of Directors within one month of the date of registration of the Company. The auditor so appointed will hold office up to the conclusion of the first Annual General Meeting.
 - 5.2 If the Board of Directors do not make such appointment, the Company, can make the appointment of first auditor at any General Meeting as per the Companies Act 1956. **(Corresponding section 139 of the Companies Act 2013 states that In case board of directors failed to appoint the first auditor within 30 days of incorporation then the company needs to convey a extraordinary general meeting by issuing notice to all the members in writing. Such members within 90 days from the date of failure to appoint shall appoint the first auditor in extraordinary general meeting.)**
 - 5.3 The first auditor appointed by the Board of Directors can be removed at any General Meeting and any other auditor can be appointed at such meeting if any member gives due notice of such resolution and such notice, is sent to all the members of the Company at **least fourteen days (corresponding 21 days as per section 101(1) of the Companies Act 2013)** before the date of the meeting. The notice of such a resolution will have to be dealt with as provided in Sections 225(2) and 225(3).

Part 'I' of Schedule '1' Cont..

- 5.4 Subsequent appointment of the auditor is to be made at each Annual General Meeting of the Company
- 5.5 Before making appointment or reappointment of an auditor, the Company has to obtain a written certificate from the auditor proposed to be appointed that such appointment or reappointment will be in accordance with the limits in respect of maximum number of audits which he can accept under the provisions of Section 224 (1-B) **(Corresponding Section 139(1) Second Proviso of the Companies Act 2013)**.
- 5.6 The auditor so appointed will hold his office from the conclusion of the meeting at which he is appointed to the conclusion of the next **(sixth)** Annual General Meeting .
- 5.7 The Company has to give intimation of the appointment to the auditor within seven days **(Corresponding section 139(1) of the Companies Act 2013 within 15 days)** of his appointment.
- 5.8 If the retiring auditor has given a notice in writing of his unwillingness to be reappointed, the Company can appoint any other auditor.

Part 'I' of Schedule '1' Cont..

- 5.9 The members of the Company can pass a resolution at the Annual General Meeting to the effect that the retiring auditor shall not be reappointed. They can also pass a resolution at that meeting to appoint some-one else in place of the retiring auditor. Where a notice has been given of an intended resolution to appoint some other auditor(s) in the place of a retiring auditor but such a resolution cannot be proceeded with in view of the fact that the person or persons proposed to be appointed has incurred an incapacity or disqualification or has died, the retiring auditor shall not be reappointed. For this purpose the procedure laid down in Section 225 (**corresponding section 140 of the Companies Act 2013**) is to be complied with.
- 5.10 Except in the circumstances mentioned in 5.8 and 5.9 above, a retiring auditor shall be reappointed if he is otherwise qualified for such reappointment.

Part 'I' of Schedule '1' Cont..

- 5.11 If the Company fails to appoint an auditor at the Annual General Meeting, such appointment will be made by the Central Government. The Company has to give intimation to the Central Government within seven days about the fact that no such appointment has been made.
- 5.12 The Board of Directors, except for the situation covered by 5.13 below, can fill any casual vacancy in the office of the auditor. Until this appointment is made the remaining auditor, in case there are joint auditors, can function as auditor of the Company.
- 5.13 If the casual vacancy is caused by the resignation of an auditor, such vacancy can only be filled by the Company in any General Meeting. The auditor appointed to fill any casual vacancy shall hold office until the conclusion of the next Annual General Meeting.
- 5.14 The Company can remove the auditor before the expiry of his term of office by a resolution (**Corresponding Section 140 Companies Act,2013 by passing Special resolution**) passed at any General Meeting and after obtaining previous approval of the Central Government.

Part 'I' of Schedule '1' Cont..

6. Section 225 of the Companies Act, 1956 (**Corresponding Section 140 of the Companies Act 2013**) lays down the procedure for appointment of auditor other than the retiring auditor and for removal of existing auditor. The procedure for giving special notice as contained in Section 225(1) does not apply to the removal of the first auditor appointed by the Board of Directors, because separate provision as stated in para 5.3 above is made for this purpose. The procedure to be followed by the Company, is as under:
- 6.1 If a member of the Company wants that the retiring auditor should not be reappointed or that an auditor other than the retiring auditor should be appointed, he has to give a special notice to the Company and specify the resolution which he proposes to move at the Annual General Meeting for this purpose.
 - 6.2 Such special notice is also required to be given if a member of the Company wants to remove the auditor before the expiry of his term of office.
 - 6.3 The special notice should be given at least 14 days before the date of the General Meeting when the question of appointment or reappointment of the auditor is to be considered.

Part 'I' of Schedule '1' Cont..

- 6.4 On receipt of the special notice of such a resolution, the Company has to send a copy of the same to the retiring auditor forthwith.
- 6.5 The Company is also required to send the special notice to the members of the Company at least seven days before the Meeting as per the provisions of Section 190(2) read with Sections 172(2) and 53(1) to 53(4) of the Companies Act 1956(**Corresponding section 115 and 101 of the Companies Act,2013**). According to these provisions, the notice should be sent by post or if that is not practicable then it should be given either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the Articles of Association of the Company.
- 6.6 After receipt of the above notice, the retiring auditor can submit his representation to the members of the Company. Such representation, on receipt by the Company, is required to be sent to its members as required under Section 225(3) (**corresponding section 140 of the Companies Act 2013**) of the Companies Act.
- 6.7 The representation received from the retiring auditor will have to be considered at the General Meeting of the Company before the resolution proposed by the concerned member is passed. The resolution proposed by the concerned member can be passed only in accordance with the provisions of Section 189 of the Companies Act.

Part 'I' of Schedule '1' Cont..

7. Under Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949, the incoming auditor has to ascertain whether the Company has complied with the provisions of the above sections. The word "ascertain" means "to find out for certain". This would mean that the incoming auditor should find out for certain as to whether the Company has complied with the provisions of Sections 224, 224A and 225 of the Companies Act 1956 (**Corresponding Section 139 & 140 of the Companies Act 2013**) . In this respect, it would not be sufficient for the incoming auditor to accept a certificate from the management of the Company that the provisions of the above sections have been complied with. It is necessary for the incoming auditor to verify the relevant records of the Company and ascertain as to whether the Company has, in fact, complied with the provisions of the above sections. If the Company is not willing to allow the incoming auditor to verify the relevant records in order to enable him to ascertain as to whether the provisions of the above sections have been complied with, the incoming auditor should not accept the audit assignment.

Part 'I' of Schedule '1' Cont..

8. It is suggested that the incoming auditor should verify the following records of the Company:-
- 8.1 If the appointment of the auditor is being made for the first time after incorporation of the Company, the auditor should verify as to whether the Board of Directors have passed the resolution for his appointment within one month of the date of registration of the Company.
- 8.2 If the Board of Directors have not appointed the first auditor but the appointment is being made by a general meeting of the Company, the auditor should verify as to whether a proper notice convening the general meeting(As per Companies Act 2013 Extraordinary general meeting) has been issued by the Company and whether the resolution has been validly passed at the general meeting of the Company.
- 8.3 If the appointment is being made to fill a casual vacancy, the incoming auditor should verify as to whether the Board of Directors have powers to fill the casual vacancy and whether the Board of Directors have passed the resolution filling the casual vacancy.
- 8.4 If the vacancy has arisen due to resignation of the auditor, the incoming auditor should see as to whether a proper resolution filling the vacancy has been passed at the General Meeting of the Company.

Part 'I' of Schedule '1' Cont..

- 8.5 If the vacancy has arisen as a result of removal of the auditor before the expiry of his term of office, the incoming auditor should see that proper resolution (**Special Resolution as per section 140(1) of the Companies Act 2013**) has been passed at the General Meeting of the Company and that the previous approval of the Central Government has been obtained by the Company.
- 8.6 If the provisions of Section 224A apply to the Company, the incoming auditor should verify as to whether a special resolution as required under the said Section has been duly passed.
- 8.7 Where the auditor other than the retiring auditor is proposed to be appointed, the incoming auditor should ascertain whether the provisions of Section 225 (**Corresponding Sections 139 & 140 of the companies Act 2013**) have been complied with. These provisions equally apply where an auditor who was jointly holding office with another auditor or auditors and any one or more of such joint auditors has not been reappointed.

Part 'I' of Schedule '1' Cont..

8.8 For the purpose of ascertaining whether the Company has complied with the provisions of Section 225 of the Companies Act, 1956 (**corresponding Section 140(4) of the Companies Act, 2013**) the incoming auditor should verify the records of the Company in respect of the following matters:-

- (i) Whether a member of the Company has given special notice of the resolution as required under Section 225(1) (**corresponding Section 140(4)**) at least 14 days before the date of the general meeting. A true copy of this notice should be obtained by the incoming auditor.
- (ii) Whether this special notice has been sent to all the members, of the Company as required under Section 190(2) (**Corresponding Section 115 read with Rule 23(3) of the Companies (management and Administration) Rules, 2014**) at least 7 days before the date of the General Meeting.
- (iii) Whether this special notice has been sent to the retiring auditor forthwith as required under Section 225(2) (**corresponding Section 140(4)(4)(ii)**).
- (iv) Whether the representation received from the retiring auditor has been sent to the members of the Company as required under Section 225(3) (**corresponding Section 140(4)(4)(iii)**).

Part 'I' of Schedule '1' Cont..

- 8.9 As regards the mode of sending the notice of the resolution to the members of the Company as provided in Sections 139 and 140 and section 20 to be followed for service of documents which is as under:-
- A. A document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed.
 - B. As regards the mode of sending the notice of the resolution to the retiring auditor as provided in Sections 139 140, attention is invited to the Department of Company Affairs circular dated 17.10.1981 issued to all Chambers of Commerce, where it is advisable that the copy of the special notice u/s 225(2) of the Act should be sent to the retiring auditors by Registered A/D post.
 - C. (A)Accordingly, it is necessary for the incoming auditor to satisfy himself that the notice provided for in Sections 139 & 140 has been effectively served on the outgoing auditor.

Part 'I' of Schedule '1' Cont..

- 8.10 A copy of the relevant minutes of the general meeting where the above resolution is passed duly verified by the Chairman of the meeting should also be obtained by the incoming auditor for his records.
9. Sometimes the annual general meeting is adjourned without conducting any business or after conducting business in respect of some of the items on the agenda. The items in respect of which the business is conducted may or may not include the item relating to appointment of auditors. Under Section 224(1) [*Corresponding Sec. 139(1)*] the retiring auditor holds office till the conclusion of the annual general meeting. Therefore, when the annual general meeting is adjourned in the circumstances stated above, the retiring auditor will continue to hold the office of auditor till the adjourned meeting is held and the business listed in the agenda of the meeting is concluded. In case a new auditor is appointed at the original meeting (which is adjourned) such auditor can assume office only after the conclusion of such adjourned meeting.

Part 'I' of Schedule '1' Cont..

- 9.1 If any annual general meeting is adjourned without appointing an auditor, no special notice for removal or replacement of the retiring auditor received after the adjournment can be taken note of and acted upon by the Company, since in terms of Section 190(1) (Corresponding Section 115) of the Companies Act, special notice should be given to the Company at least fourteen clear days before the meeting in which the subject matter of the notice is to be considered. The meeting contemplated in Section 190(1) undoubtedly is the original meeting.
10. If the incoming auditor is satisfied that the Company has complied with the provisions of Sections 224, 224A and 225(Corresponding Section 139 & 140) of the Companies Act, he should first communicate with the outgoing auditor in writing as provided in Clause (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 before accepting the audit assignment.

In order to examine various ethical issues and safeguard the independence of the Auditors, the Council has set up a Ethical Standards Board (ESB). This Board examines various issues concerning professional ethics governing the members of the Institute which are either raised by the members or are taken up based on their importance. The recommendations of the Board are forwarded to the Council for its consideration. This Board is also charged with the responsibility of looking into the cases of removal and resignation of auditors and making an appropriate report to the Council.

Part 'I' of Schedule '1' Cont..

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

What distinguishes a profession from a business is that professional service is not rendered with the sole purpose of a profit motive. Personal gain is one but not the main or the only objective. Professional opinion, therefore, frowns upon methods where payment is made to depend on the basis of results. It is obvious that a person who is to receive payment in direct proportion to the benefit received by his client, may be tempted to exaggerate the advantage of his service or may adopt means which are not ethical. It will have the effect of undermining his integrity and impairing his independence. Therefore, the members are prohibited from charging or accepting any remuneration based on a percentage of the profits or on the happening of a particular contingency such as, the successful outcome of an appeal in revenue proceedings.

Part 'I' of Schedule '1' Cont..

The Council of the Institute has however framed Regulation 192 which exempts members from the operation of this Clause in certain professional services. The said Regulation 192 is reproduced below:-

192. Restriction on fees

No Chartered Accountant in practice shall charge or offer to charge, accept or offer to accept, in respect of any professional work, fees which are based on a percentage of profits, or which are contingent upon the findings, or results of such work:

Provided that:

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

Part 'I' of Schedule '1' Cont..

- (d) in the case of certain management consultancy services as may be decided by the resolution of the Council from time to time, the fees may be based on percentage basis which may be contingent upon the findings, or results of such work;
- (e) in the case of certain fund raising services, the fees may be based on a percentage of the fund raised;
- (f) in the case of debt recovery services, the fees may be based on a percentage of the debt recovered;
- (g) in the case of services related to cost optimisation, the fees may be based on a percentage of the benefit derived; and
- (h) any other service or audit as may be decided by the Council.

Note:- Following activities have been decided by the Council under —hll above :-

- (i) Acting as Insolvency professional
- (ii) Non-Assurance Services to Non-Audit Clients

Part 'I' of Schedule '1' Cont..

Clause	Description
11.	<p>Engages in any business or occupation other than the profession of chartered accountant unless permitted by the Council so to engage:</p> <p>Provided that nothing contained herein shall disentitle a chartered accountant from being a director of a company (not being a managing director or a whole time director) unless he or any of his partners is interested in such company as an auditor;</p>

This is a provision introduced to restrain a member in practice from engaging himself in any business or occupation other than that of Chartered Accountant except when permitted by the Council to be so engaged. The objective is to restrain members from carrying on any other business in conjunction with the profession of accountancy and combining such work with any business which is not in keeping with the dignity of the profession. Another reason for the introduction of such prohibition is that a Chartered Accountant, if permitted to enter into all kinds of business, would be able to advertise for his other business and thereby secure an unfair advantage in his professional practice.

Part 'I' of Schedule '1' Cont..

The Council, on a very careful consideration of the matter, has formulated Regulations 190A & 191 which are reproduced below, specifying the activities with which a member in practice can associate himself with or without the permission of the Council.

190A. Chartered Accountant in practice not to engage in any other business or occupation

A Chartered Accountant in practice shall not engage in any business or occupation other than the profession of accountancy, except with the permission granted in accordance with a resolution of the Council.

Please refer to Appendix (9) of the Chartered Accountants Regulations, 1988, (see Appendix-'F').

191. Part-time employments a Chartered Accountant in practice may accept

Notwithstanding anything contained in Regulation 190A but subject to the control of the Council, a Chartered Accountant in practice may act as a liquidator, trustee, executor, administrator, arbitrator, receiver, adviser or representative for costing, financial or taxation matter, or may take up an appointment that may be made by the Central Government or a State Government or a court of law or any other legal authority or may act as a Secretary in his professional capacity, provided his employment is not on a salary-cum-full-time basis.

Part 'I' of Schedule '1' Cont..

The Council has considered the question of permitting members in practice to become a **Director, Managing Director, full time/Executive Director etc.** and related issues and the following decisions have been taken:-

As regards the question of permitting a member in practice to be a Director, Promoter/Promoter- Director, Subscriber to the Memorandum and Articles of Association of any Company, it was decided that:

(a) Director of a Company

- (i) The expression “Director Simplicitor” means an ordinary/simple Director.
- (ii) A member in practice is permitted generally to be a Director Simplicitor in any Company including a board-managed Company and as such he is not required to obtain any specific permission of the Council in this behalf unless he or any of his partners is interested in such Company as an auditor, irrespective of whether he and/or his relatives hold substantial interest in that Company.

(b) Promoter/Promoter-Director

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

Item Nos. 4 of the Specific Resolution would be equally applicable to member carrying out the activities referred to therein in his capacity as Karta/representative of HUF provided he is not actively engaged in carrying on such activities.

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.

Part 'I' of Schedule '1' Cont..

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

The above clause prohibits a member from allowing another member who is not in practice or his partner to sign any balance sheet, Profit and loss account, or financial statement on his behalf or on behalf of his firm.

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

The term 'financial statement' for the purposes of this clause would cover an examination of the accounts or of financial statements given under a statutory enactment or otherwise.

Part 'I' of Schedule '1' Cont..

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

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

Part 'I' of Schedule '1' Cont..

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

However, the Council has decided that where a Chartered Accountant while signing a report or, a financial statement or any other document is statutorily required to disclose his name, the member should disclose his name while appending his signature on the report or document. Where there is no such statutory requirement, the member may sign in the name of the firm.

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

Part 'II' of Schedule '1'

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	Description
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;
<i>'X', a CA (being an employee in a Company) , pays a part of his salary to 'Y', for doing work on behalf of 'X' during periods when 'X' unofficially goes out of the office. 'X' is guilty under this Item.</i>	

Part 'II' of Schedule '1' Cont..

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

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

These are simple rules of ethics; both the circumstances have already been considered in relation to a member in practice under clauses (2) & (3) of part I of the First Schedule.

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

Part 'III' of Schedule '1'

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

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

Part 'III' of Schedule '1' Cont..

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

(P.S. Rao in Re:- Page 110 of Vol. VII(2) of the Disciplinary Cases – Council's decision dated 9th to 11th April, 1992).

Where a Chartered Accountant had continued to **train an articled clerk though his name was removed from the membership** of the Institute and he had failed to send any reply to the Institute asking him to send his explanation as to how he was training as his articled clerk when he was not a member of the Institute. Held that he was **guilty under clause (3) of Part III of the First Schedule.**

(S.M. Vohra in Re:- Page 151 of Vol.VII(2) of Disciplinary Cases – Council's decision dated 16th to 18th July, 1992).

Part 'III' of Schedule '1' Cont..

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

The foregoing clauses are intended to empower the Council to enforce discipline over the members, and for obtaining information from members or requiring compliance with any directions/Guidelines issued by the Council.

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

Part 'IV' of Schedule '1'

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

Clause	Description
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;
<i>'X', a CA, is held guilty of 'affray' (punishable with up to one month punishment u/s 160 of IPC). He will also be liable under this clause.</i>	

Part 'IV' of Schedule '1' Cont..

Clause	Description
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.
<i>'X', a CA, retains books and documents of the client and fails to return these to the client on request without a reasonable cause. He is liable under this Item.</i>	

Part 'IV' of Schedule '1' Cont..

The Council has been empowered to opine on any action of a member which brings the Institute or profession in disrepute as misconduct.

This Clause, **read with Section 22** of the Act, now defines '**Other misconduct**', which has been covered under this Part does not limit or abridge in anyway the power conferred or duty cast on the Director (Discipline) under Section 21(1) of the Act to inquire into the conduct of any member of the Institute under any other circumstances.

THE SECOND SCHEDULE

PART - I :

**Professional misconduct in
relation to Chartered
Accountants in practice**

Part 'I' of Schedule '2'

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

Clause	Description
1.	<p>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;</p> <ul style="list-style-type: none">○ An accountant, in public practice, has access to a great deal of information of his client which is of a highly confidential character. It is important that he should treat such information as having been provided to him, only to facilitate the performance of his professional duties to divulge such information would be a breach of professional confidence.○ The accountant's duty not to disclose continues even after the completion of his assignment.

Part 'I' of Schedule '2' Cont..

- However, nothing in this Clause would bar the previous accountant to inform such client affairs to the new accountant, as he may deem fit.
- If disclosure is required as a part of performance of professional duty by a practising member in relation to a client, the fact that such performance is required by the client would itself amount to the client 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.
- A member is not permitted to submit client information before the Court at his own behest, for example as an evidence; however, he will have to submit the information in case it is specifically required vide the directions of the court.

Person competent to accord consent

Structure of Organisation	Consent of
Sole Proprietary	Proprietor or his constituted attorney who is legally empowered to give such consent.
Partnership Firm	Any Partner
Company	Managing Director if the powers of the Board of Directors are delegated to him. If not, then the consent should be obtained by means of resolution of the Board of Directors of the Company

Working papers of the Auditor

- ❑ An auditor is not required to provide the client or the other auditors of the same enterprise or its related enterprise such as a parent or a subsidiary, access to his audit working papers.
- ❑ The main auditors of an enterprise do not have right of access to the audit working papers of the branch auditors.
- ❑ 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.
- ❑ 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.

Sharing of Information

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.

Difficulty in disclosure of information required by law

- The only circumstances in which this duty of confidence may give rise to a difficulty is where the accountant has reason to believe that the client has been guilty of some unlawful act or default. This matter is of special significance in the case where the client is guilty of tax evasion.
- such matters involve niceties of law and expert legal advice may be sought prior to such disclosure.

Role of Chartered Accountants in relation to unlawful acts by their Clients

Member's liability when he is not directly involved in tax frauds committed by his client but he discovers such fraud in the course of his professional work

- ❑ No duty is cast on a member, whether by Section 39 of the Code of Criminal Procedure 1973, or by any other enactment, to inform the Income-tax Authorities about taxation frauds by his client of which he comes to know during the course of his professional work.

Role of Chartered Accountants in relation to unlawful acts by their Clients

- ❑ Under Section 126 of the Evidence Act, 1872, a barrister, attorney, pleader or Vakil is barred from disclosing, except with the express consent of his client, any communication made to him in the course of and for the purpose of his employment or to state the contents or conditions of any document with which he has become acquainted with in such course. The privilege given and the restrictions imposed by Section 126 apply as between the client and the member, as the member is the client's attorney. Nothing in Section 126 shall protect from non-disclosure of any fact observed by a barrister, pleader, attorney or Vakil in the course of his employment at such showing that any crime or fraud has been committed since the commencement of his employment.

Role of Chartered Accountants in relation to unlawful acts by their Clients

- ❑ Subject to the above, it is not the duty of a member to shield a client from the consequences of his tax frauds, on the contrary it is guiding principle of professional conduct to discourage tax evasion.
- ❑ If the fraud discovered by the member relates to the accounts or tax matters of the client for past year(s) for which the client was not represented by the member, the client should be advised to make a disclosure. The member may, however, continue to act for the client in respect of current matters, but is under no obligation so to continue. It is assumed that the past fraud does not affect in any way the current tax matters, and the member should be extra careful to ensure that past behaviour is not reflected in current matters.

Role of Chartered Accountants in relation to unlawful acts by their Clients

- ❑ If there is a genuine mistake or inadvertent omission, it is presumed that the client would not have any objection to make a complete disclosure to the tax authorities.
- ❑ If the fraud relates to accounts etc., examined by the member and reported upon, on the basis of which the tax assessment in the past has been made, or is currently to be made, the client should be advised to make a complete disclosure. If the client should refuse, he should be informed that the member would be entitled to dissociate himself from the case, and that, further, he would inform the authorities that the accounts prepared by him and/or reported upon by him are unreliable, on account of certain information since obtained. He should then make such a report to the authorities. But the information subsequently obtained should not as such be communicated to the authorities, unless the client consents in writing.

Role of Chartered Accountants in relation to unlawful acts by their Clients

- ❑ if disclosure is consented to by the client it should be made immediately. But if the suppression is trivial, the disclosure may be made when the current return is submitted. But if there is any possibility that the collection of tax would be prejudiced, on account of the client disposing of his property or removing his person from the jurisdiction of the Income-tax authorities, the postponement of disclosure would be improper.
- ❑ If the suppression etc. relates to accounts or returns currently being prepared, the member should advise the client to make full disclosure in the accounts and/or return, and should the client refuse, he should make full reservation in his report, and should not associate himself with the return.

Role of Chartered Accountants in relation to unlawful acts by their Clients

- ❑ If the employment of the member is dispensed with before the accounts are completed or are reported on, or the return is submitted, no further duty regarding disclosure etc. rests on the member.
- ❑ The suppression may relate to accounts which are not prepared and/or reported upon by the member, e.g., personal income, income from investments other than business investments etc. The client may refuse full disclosure in the tax return, but still wish that the member should continue to prepare and/or report on his business accounts, though this is quite unlikely in practice. If so requested, the member may continue to do so, but is under no obligation so to do.

Role of Chartered Accountants in relation to unlawful acts by their Clients

- ❑ It should be impressed on the client that:
 - (a) while disclosure may entail only monetary penalties, non-disclosure and subsequent discovery thereof may entail imprisonment and fine, in addition to penalties.
 - (b) any intimation by the member to the Income-tax authorities that the member dissociates himself from the case is certain to start investigation by them in the whole matter.
- ❑ The Income-tax authorities may summon the member for the purpose of examining him on oath, under Section 131(1)(b)
- ❑ Production of books of account and other documents may be called for under Section 131(1)(c); Here the protection offered by Section 126 of the Evidence Act, 1872 is a matter for expert legal advice.

Person competent to accord consent

Clause	Description
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;

This restraint is 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.

Position in case of Joint Auditors

- ❑ Where the joint auditors are appointed, they should by mutual discussion divide the audit work among themselves. The division of work is usually in terms of audit of identifiable units or specified areas, or with reference to the items of assets or liabilities, or income or expenditure.
- ❑ Certain areas of work, owing to their importance or owing to the nature of the work involved, would often not be divided and would be covered by all the joint auditors. Such division of audit work should be adequately documented and communicated to the auditee.
- ❑ In the course of the audit, where a joint auditor comes across matters which are relevant to the areas of responsibility of other joint auditors and which deserve their attention, or which require disclosure or require discussion with, or application of judgement by, other joint auditors, he should communicate the same to all the other joint auditors in writing prior to the completion of the audit.

Position in case of Joint Auditors

- ❑ Each joint auditor is responsible only for the work allocated to him including proper execution of the audit procedures. On the other hand, all the joint auditors are jointly and severally responsible for-
 - (a) the audit work which is not divided among the joint auditors and is carried out by all joint auditors;
 - (b) decisions taken by all the joint auditors under audit planning in respect of common audit areas concerning the nature, timing and extent of the audit procedures to be performed by each of the joint auditors.
 - (c) matters which are brought to the notice of the joint auditors by any one of them and on which there is an agreement among the joint auditors;
 - (d) examining that the financial statements of the entity comply with the requirements of the relevant statute;
 - (e) presentation and disclosure of the financial statements as required by the applicable financial reporting framework;
 - (f) ensuring that the audit report complies with the requirements of the relevant statutes, the applicable Standards on Auditing and the other relevant pronouncements issued by ICAI.

Position in case of Joint Auditors

- ❑ Each joint auditor is responsible to determine the nature, timing and extent of audit procedures to be applied in relation to the areas of 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 this responsibility, the liability of the joint auditors is limited to the area allocated to that joint auditor.
- ❑ For detailed consideration of the subject, the members must refer to Standard on Auditing (SA) 299(Revised), —Joint Audit of Financial Statements"

Part 'I' of Schedule '2' Cont..

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

Clause	Description
3.	Permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;
<ul style="list-style-type: none">▪ The Council has issued Standard on Assurance Engagements (SAE) 3400, —The Examination of Prospective Financial Information", which is effective in relation to reports on projections/forecasts, issued on or after April 1, 2007. Pursuant to the issuance of this Standard, the Guidance Note on Accountant's Report on Profit Forecasts and/or Financial Forecasts, issued in September, 1982 stands withdrawn. The guidance provided in this Standard is in line with the provisions of clause (3) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.	

Part 'I' of Schedule '2' Cont..

- 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 in practice shall be deemed to be guilty of professional misconduct, if he –

Clause	Description
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;
<ul style="list-style-type: none">○ To command respect and the confidence of the public, it is essential that it must be free of any interest which is likely to affect their independence. Since financial interest in the business can be a substantial interest and the existence of such an interest direct or indirect affects the opinion of the auditors.	

Part 'I' of Schedule '2' Cont..

- This clause does not 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.
- Member must take care to see that they do not land themselves in situations where there could be conflict of interest and duty. For example, where a Chartered Accountant is appointed the Liquidator of a Company, he should not qua a Chartered Accountant himself, audit the Statement of Accounts to be filed under Section 348(1) of the Companies Act, 2013. The audit in such circumstances should be done by a chartered Accountant other than the one who is the Liquidator of the Company.

Part 'I' of Schedule '2' Cont..

- 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.

Part 'I' of Schedule '2' Cont..

- requirement of Clause (4) are equally applicable while performing all types of attest functions by the members. Including 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.

What is Substantial Interest

1. **Where the member, his firm or his partner or his relative has substantial interest in the business or enterprise (not being a company).**
 - An enterprise/concern of which a member is either an owner or a partner** would affect his independence of mind in the performance of professional duties in conducting the audit and/or expressing an opinion on financial statements of such enterprise. Therefore, a member shall not audit financial statements of such business or enterprise.
 - Where the partner or relative of a member has substantial interest** the member may, for the same reasons as not to compromise his independence, desist from undertaking the audit of financial statements of such business or enterprise.

What is Substantial Interest

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.

❑ 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).
- in case the member is a Director Simplicitor (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.

What is Substantial Interest

- 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.

What is Substantial Interest

- ❑ **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.
- ❑ **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.

What is Substantial Interest

- ❑ **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.
- ❑ **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

What is Substantial Interest

- ❑ **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.
- ❑ **Further, as per Appendix (9) to The Chartered Accountants Regulations, 1988, it is not permissible for a member to accept audit of a Company in case if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of voting power at any time, during the relevant years are owned beneficially by any one or more relatives of the member.**

What is Substantial Interest

3. If the client is relative

- It is not permissible for a member to undertake the assignment of certification, wherein the client is relative of the member.

4. 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.

5. Statutory auditor not to be the internal auditor simultaneously

- A auditor appointed by an entity under the Companies Act or any other statute shall not be the internal auditor of the same entity.

What is Substantial Interest

6. 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.

7. Internal auditor not to be the GST auditor simultaneously

- The Internal Auditor of an entity cannot undertake GST Audit of the same entity.

Part 'I' of Schedule '2' Cont..

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

Clause	Description
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;

Materiality

Financial reporting frameworks may discuss materiality in different terms, they generally explain that:

- Misstatements, including omissions, are considered to be material if they, individually or in the aggregate, could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements;
- Judgments about materiality are made in the light of surrounding circumstances, and are affected by the size or nature of a misstatement, or a combination of both; and
- Judgments about matters that are material to users of the financial statements are based on a consideration of the common financial information needs of users as a group.

Applicability

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

Part '1' of Schedule '2' Cont..

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

Clause	Description
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;

Material

+

Misstatement
in a FS

+

Knowledge fails to
Report

=

Clause (6) of Part 1 of
Second Schedule

Part 'I' of Schedule '2' Cont..

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

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

Due Diligence

- Diligence means care; caution; attention and care required from a person in a given situation and the expression 'due diligence' means a measure of prudence, activity, or alertness, as is proper to be expected from, and ordinarily exercised by, a reasonable and prudent member in practice under the particular circumstance.

Due Diligence

- This would imply that a member in practice keeps himself updated of the changes and developments in the professional space that could have an impact on his professional assignments. The member should also act diligently in accordance with applicable technical and professional standards.
- He should evaluate whether the information, explanations and evidence obtained by him during his professional engagement are prima facie consistent with other conditions that may surround his client.
- It is also expected that a professional would enquire and satisfy himself about any transactions, which come to his attention in the course of his professional engagement, and are otherwise not in the ordinary course of business of his client.

What constitutes professional misconduct

- Professional misconduct implies fairly serious cases of misconduct of gross negligence. Negligence per se would not amount to gross negligence. In the case of minor errors and lapses, which do not constitute professional misconduct and which, therefore, do not require a reference to the Director, Board of Discipline and the Disciplinary Committee. Nevertheless the matter is to be brought to the attention of its members so that greater care may be taken in the future in avoiding errors and lapses of a similar type.

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

Clause	Description
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;
	<ul style="list-style-type: none"><li data-bbox="264 735 2002 943">▪ Attention is drawn to Standard on Auditing (SA) 500, —Audit Evidence" which requires the auditor to design and perform audit procedures to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the auditor's opinion.<li data-bbox="264 959 2002 1378">▪ where due to inadequacy of information or data the report has to be circumscribed to an extent that it would cease to be of any expression of a categorical opinion, the auditor should clearly express his disclaimer in no uncertain terms. For example, if the auditor has not seen any evidence of the existence and/or valuation of the investment which constitute the only asset of a Company, he should not say that:- <i>Subject to the verification of the existence and value of the investments the Balance Sheet shows a true and fair view.....etc."</i>

SA 700(Revised) - Forming an Opinion and Reporting on Financial Statements

- ❑ This establishes standards on the form and content of the auditor's report issued as a result of an audit of financial statements. It requires the auditor to form an opinion on the financial statements based on an evaluation of the conclusions drawn from the audit evidence obtained; and to express clearly that opinion through a written report.

SA 705(Revised) - Modifications to the Opinion in the Independent Auditor's Report

- ❑ The auditor shall express an unmodified opinion when the auditor concludes that the financial statements are prepared, in all material respects, in accordance with the applicable financial reporting framework.
- ❑ The auditor shall express a modified opinion (qualified opinion, adverse opinion or disclaimer of opinion) in accordance with SA 705(Revised) in the following situations:
 - If the auditor concludes that, based on the audit evidence obtained, the financial statements as a whole are not free from material misstatement; or
 - If the auditor is unable to obtain sufficient appropriate audit evidence to conclude that the financial statements as a whole are free from material misstatement.

SA 705(Revised) - Modifications to the Opinion in the Independent Auditor's Report

- ❑ The auditor shall express a qualified opinion when:
 - The auditor, having obtained sufficient appropriate audit evidence, concludes that misstatements, individually or in the aggregate, are material, but not pervasive, to the financial statements; or
 - The auditor is unable to obtain sufficient appropriate audit evidence on which to base the opinion, but the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be material but not pervasive.

SA 705(Revised) - Modifications to the Opinion in the Independent Auditor's Report

- The auditor shall express an adverse opinion when the auditor, having obtained sufficient appropriate audit evidence, concludes that misstatements, individually or in the aggregate, are both material and pervasive to the financial statements.
- The auditor shall disclaim an opinion when the auditor is unable to obtain sufficient appropriate audit evidence on which to base the opinion, and the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be both material and pervasive.

SA 706(Revised), —Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report

- ❑ This SA deals with additional communication in the auditor's report when the auditor considers it necessary to:
 - (a) Draw users' attention to a matter or matters presented or disclosed in the financial statements that are of such importance that they are fundamental to users' understanding of the financial statements; or
 - (b) Draw users' attention to any matter or matters other than those presented or disclosed in the financial statements that are relevant to users' understanding of the audit, the auditor's responsibilities or the auditor's report.

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

Clause	Description
9.	fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances;

Generally Accepted Audit Procedure

- Generally accepted audit procedure" would depend upon the facts and circumstances of each case, but guidance is available from the various pronouncements of the Institute issued from time to time by way of Engagement and Quality Control Standards, Statements, General Clarifications, Guidance Notes and Technical Guides, Practice Manuals, Studies and Other Papers & his report should draw attention to material departures from such procedures.

Audit of listed Companies

- ❑ Pursuant to Notification No. LAD-NRO/GN/2009-10/23/186926 dt. 11th December, 2009, 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.

Unique Document Identification Number [UDIN]

- ❑ The members may note that UDIN (unique document identification number) is mandatory from 1st July, 2019 on all Corporate/ Non-Corporate Audit, Attest and Assurance Functions.

PRONOUNCEMENTS

As per the Preface to the Standards on Quality Control, Auditing, Review, Other Assurance and Related Services the scope and authority of the various pronouncements of the AASB issued under the authority of the Council of the Institute is as under:

1. Engagement Standards

The following Standards issued by AASB under the authority of the Council are collectively known as the Engagement Standards:

- (a) Standards on Auditing (SAs), to be applied in the audit of historical financial information.
- (b) Standards on Review Engagements (SREs), to be applied in the review of historical financial information.

Part 'I' of Schedule '2' Cont..

- (c) Standards on Assurance Engagements (SAEs), to be applied in assurance engagements, other than audits and reviews of historical financial information.
- (d) Standards on Related Services (SRSs), to be applied to engagements involving application of agreed-upon procedures to information, compilation engagements, and other related services engagements, as may be specified by the ICAI.
- (e) Standards on Quality Control (SQC), issued by the AASB under the authority of the Council, are to be applied for all services covered by the Engagement Standards.

2. Standards on Auditing

SAs are to be adapted as necessary In conducting an audit of financial statements, the overall objectives of the auditor are:

- (a) To obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, thereby enabling the auditor to express an opinion on whether the financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework; and
- (b) To report on the financial statements, and communicate as required by the SAs, in accordance with the auditor's findings.

3. Statements on Auditing

Statements on Auditing are issued with a view to securing compliance by professional accountants on matters which, in the opinion of the Council, are critical for the proper discharge of their functions. Statements are, therefore, mandatory.

4. General Clarifications

General Clarifications are issued with a view to clarify any issues arising from the Standards. General Clarifications are mandatory in nature.

The need for the professional accountants to depart from a relevant requirement is expected to arise only where the requirement is for a specific procedure to be performed and, in the specific circumstances of the engagement, that procedure would be ineffective. If because of that reason, a professional accountant has not been able to perform an engagement procedure in accordance with any Standard/Statement/General Clarification, he is required to document how alternative procedures performed achieve the purpose of the procedure, and, unless otherwise clear, the reasons for the departure. Further, his report should draw attention to such departures. However, a mere disclosure in his report does not absolve a professional accountant from complying with the applicable Standards/Statements/General Clarifications.

5. Guidance Notes

Guidance Notes are issued to assist professional accountants in implementing the Engagement Standards and the Standards on Quality Control. They also provide guidance on other generic or industry specific audit issues, not necessarily arising out of a Standard.

6. Technical Guides, Practice Manuals, Studies and Other Papers Published by AASB

These publications are ordinarily aimed at imparting broad knowledge or for providing additional guidance or for promoting discussion or debate or creating awareness. These publications do not establish any basic principles or essential procedures to be followed in audit, review, other assurance or related services engagements, and accordingly, have no authority of the Council attached to them.

Failure to perform a statutory duty

The failure to perform a statutory duty in the manner required is not excused merely by giving a qualification or reservation in auditor's report. For example, if an auditor fails to verify the cash balance in circumstances where such verification was necessary, feasible and material, it is not sufficient for him merely to state in his report that he did not verify the cash balance. Consequently when giving any reservations or qualifications in the auditors report as required under this clause, a member would be well advised to indicate clearly the reasons why he was unable to perform the audit in accordance with generally accepted procedures and standards.

Instances of an audit requiring special procedure

- ❑ Very often members are required to certify the figures of circulation of newspapers, magazines etc. by their clients on behalf of the Audit Bureau of Circulations Ltd. Members are normally supplied by the ABC with the Rules and Regulations under which the certification of circulation is to be carried out. Members are also asked to give their acceptance in writing that they will observe the rules of procedure envisaged to report upon any lapse of such special requirements, even of an insignificant nature.
- ❑ Similarly, in the case of verification on behalf of banks, the rules or procedure for conducting such audit are different from the normal rules applicable to audits under the Companies Act. Members are required to be very familiar with the special procedure required in these matters and act accordingly.

Part 'I' of Schedule '2' Cont..

Clause	Description
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.

For removal of difficulties

- 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.
- 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.
- 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.
- Moneys received by a Chartered Accountant, in his capacity as trustee, executor, liquidator, etc. must be put in a separate bank account immediately.

PART - II :

**Professional misconduct in
relation to members of the
Institute generally**

Part 'II' of Schedule '2'

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

Clause	Description
1.	Contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines ³ issued by the Council;
2.	being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment except as and when required by any law for the time being in force or except as permitted by the employer;

Part 'II' of Schedule '2' Cont..

Since as employee regardless of the fact that he was in wholetime or part-time employment , 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.

Part 'II' of Schedule '2' Cont..

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

Clause	Description
3.	Includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false;
4.	Defalcates or embezzles moneys received in his professional capacity.

PART - III :

**Other misconduct in
relation to members of the
Institute generally**

Part 'III' of Schedule '2'

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.

Thank You

PRESENTED BY:

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