

Chartered Accountants Act, 1949

Overview of Chartered Accountants Act, 1949

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II	3 – 8	The ICAI	Entitlement of persons to get their names entered in register of members; fellow member and associate member; Certificate of practice and disabilities of persons
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Overview of Schedules of Chartered Accountants Act, 1949 covering professional misconduct

Schedule	Part	Title & Coverage
First	I	Professional Misconduct in relation to members in Practice
	II	Professional Misconduct in relation to members in Service
	III	Professional Misconduct in relation to members generally
	IV	Other Misconduct in relation to members generally
Second	I	Professional Misconduct in relation to members in Practice
	II	Professional Misconduct in relation to members generally
	III	Other Misconduct in relation to members generally

FIRST SCHEDULE *Part I*

Clause	Details	Remarks
1	Allows any person to practice in his name as a C.A. unless such person is also a C.A. in practice and is in partnership with or employed by himself.	This clause ensures that the work of accountant will be carried out by a CA.
2	<p>Pays / allows / agrees to pay or allow, directly or indirectly, any share, commission or brokerage in fees or profits of his professional business to any person other than</p> <ul style="list-style-type: none"> • a member, or • partner, or • retired partner, or • legal representative of deceased partner, or • member of any other professional bodies, or • with such other persons having prescribed qualifications. 	<ul style="list-style-type: none"> • This clause ensures that the practicing CA should get his professional work not through services of agents or third parties but due to his own competent. • This clause also enables the members to form multi disciplinary firms and offer multi professional services.
<i>Points to remember:</i>		
<p>(a) Widow or legal representative of deceased partner can continue to receive a share of profits in the firm provided the partnership agreement provides the same.</p> <p>(b) In case of sole proprietorship firm, the Council of ICAI has resolved that the sale / transfer</p>		

of goodwill shall be permitted in respect of cases where the death of the proprietor occurred on or after 30.08.1998 provided:

- ICAI's permission to practice in the deceased's firm name is sought within a year of death. (In such a case, name of the firm is kept in abeyance till one year from the date of death).
- In case there exist a dispute as to the legal heir of the deceased proprietor, information as to the existence of the dispute is received by the Institute within a year of the death. (In such a case, name of the firm is kept in abeyance till one year from the date of settlement of dispute).

Previous Years Questions

Q. No. 1: Mr. Qureshi, Chartered Accountant, in practice died in a road accident. His widow proposes to sell the practice of her husband to Mr. Pardeshi, Chartered Accountant, for Rs. 5 lakhs. The price also includes right to use the firm name-Qureshi and Associates. Can widow of Qureshi sell the practice and can Mr. Pardeshi continue to practice in that name as a proprietor? [Nov. 04 (4 Marks)]

Answer: Widow of Quershi can sell the goodwill and Mr. Pardeshi can continue to practice in that name provided sale is completed within one year from the death of Mr. Quershi and permission of ICAI is obtained.

Clause	Details	Remarks
3	Accepts / Agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute. However, such a restriction does not apply in respect of following persons: <ul style="list-style-type: none"> • member of any other professional bodies, or • with such other persons having prescribed qualifications. 	This clause enables the members to form multi disciplinary firms and offer multi professional services to face global competition.
4	Enters into partnership with any person other than the following: <ul style="list-style-type: none"> • C.A. in practice, or • Member of any other professional body having prescribed qualifications, or • a person resident without India who but for his residence abroad would be entitled to be registered u/s 4(i)(v), or • a person whose qualifications are recognized by Central Govt. or Council for the purpose of permitting such partnerships. 	
	Previous Years Questions	
	<p>Q. No. 2: Comment on the following with reference to the Chartered Accountants Act, 1949 and Schedules thereto: Mr. P, a Chartered Accountant in practice entered into a partnership with Mr. L, an advocate for sharing of fees for work sent by one to the other. However, due to some disputes, the partnership was dissolved after 1 month without any fees having been received. [Nov. 05 (4 Marks)]</p> <p>Answer: He would be guilty of professional misconduct irrespective of the fact that no work or fee was shared and the partnership was dissolved after one month since clause 4 pf Part I of First Schedule does not permit entering into partnership.</p>	
5	Secures any professional business through the services of a person who is not an employee or not his partner or by means which are not open to a CA.	A CA in practice must seek the work through his professional talent and skill not through using an agent or unfair means.
6	Solicits clients or professional work either directly or indirectly, by circular, advertisement, personal communication or by any other means.	This clause prohibits the members to advertise or solicit work so as to ensure independence of judgement.

Points to remember

- (a) Allowed forms of soliciting work: solicitation is relaxed in following cases:
- Secure professional work from another CA in practice.
 - Responding to tenders or enquiries issued by various users of professional services or organizations
- (b) Prohibited forms of Soliciting work:
- (1) Advertisement & note in press: As a general rule a member can't advertise subject to following exceptions:
- A member may advertise change in partnership, address of practice and telephone numbers provided it contains a bare statement of facts and area of distribution and number of insertions in newspaper should be limited.
 - Classified advertisements in journal / news letter of institute for sharing professional work or seeking partnership or salaried employment of accountancy nature provided it contains only CA's name, address, tel. no., fax or e-mail address.
- (2) Empanelment for allotment of audit/professional work:
- In respect of organisations, where a panel of CA's exists, a member is free to request to place his name on the panel. However roving enquiries for existence of such panel is not permitted.
 - It is permissible to quote fees on enquiries being received from such organisations, which maintains such panel. However, printed or Xerox copies of scale of fees in reply to such enquiries is not permitted.
- (3) Publication of name or firm name in telephone / other directories:
- Entries in telephone directory by making a special request or by means of additional payment is not permitted.
 - Entries in telephone directory is permitted subject to following conditions:
 - (a) Entry should appear in separate section of Chartered Accountant.
 - (b) Member should belong to the town/city of which directory is published.
 - (c) Entry should not be in bold or abnormal type of letters or in a box.
 - (d) Order of entries should be alphabetical and logical.
 - (e) Entry should not give the impression of publicity or advertisement.
 - (f) Payment for the entries, if any, should not be unreasonable.
 - (g) Entries should not be restricted and should be open to all CAs in town/city.
- (4) Issuing Hand Bills: A member is not permitted to distribute hand bills to persons other than his clients in matters such as changes in tax laws.
- (5) Publications of Books or articles: A member is not permitted to indicate his association with any firm of CAs, in a book published by him.
- (6) Issue of Greeting Cards or Invitations: A member is permitted to use designation "Chartered Accountant" as well as name of firm in greeting cards, invitations for marriages and religious ceremonies and any invitation for opening or inauguration of office or letters regarding change in office premises or telephone numbers provided these are sent only to clients, relatives and close friends.
- (7) Soliciting professional work by making roving inquiries: not permitted
- (8) Scope of representation u/s 225(3): representation should not be used to secure needless publicity and soliciting for his continuance as an auditor. However, it may set out in a dignified manner how he has been acting independently through his term of office and his willingness to continue as an auditor if reappointed by shareholders.
- (9) Acceptance of original professional work emanating from a client introduced by another member: not permitted. However 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.
- (10) Public Interviews: permitted subject to condition that it should not result in publicity.
- (11) Advertisements under Box Numbers: Not permitted.

(c) **Guidelines for Posting the particulars on Website:**

- CAs and CAs firms are free to create their own website. No standard format is prescribed and no restriction on use of colours.
- Website should run on 'pull' model not on 'push' model of technology.
- Mention of Website Address on professional stationery is permitted.
- Website may contain information like:
 1. Member or firm name,
 2. Year of establishment,
 3. Address, telephone number fax numbers, e-mail ids of members or firms.
 4. Nature of services rendered
 5. Partner's name, year of qualification, other qualifications, telephone numbers, e-mail, areas of experience.
 6. Employees name, designation, areas of experience.
 7. Job vacancies including articleship
 8. No. of articulated clerks.
 9. Nature of assignments handled.

- Members are not allowed to use logo (other than prescribed by ICAI) on website.
- Photographs of any sort (other than passport size photo of member) is not permitted.
- Bulletin Boards can be provided.
- Chat room between client and CA is permitted.
- Listing on suitable search engines is permitted.
- Details should be so designed that it does not amount to soliciting client or advertisement of professional attainments or services.
- Website should ensure secrecy of matters of clients handled through website.
- Advertisement in the nature of banner or any other nature is not permitted.
- Website may provide a link to the website of ICAI, its regional councils and branches and also to the websites of Government/Government departments/Regulatory Authorities only.
- Address of the website may be different from the name of the firm.
- Name of clients and fees charged is not permitted to be given on website.
- Address of website should be intimated to the ICAI within 30 days.
- Website should mention the date upto which it is updated.

Previous Years Questions

Q. No. 4: Discuss the following with reference to the Chartered Accountants Act, 1949 and the schedules thereto: M/s XYZ a firm in practice develops a website "XYZ.com". The colour chosen for the website was a very bright green and the website was to run on a "push" technology where the name of the partners of the firm and the major clients were to be displayed on the web site. [Nov. 02 (4 Marks)]

Answer: As per guidelines of ICAI in relation to development of website, there is no restriction on the use of colours. However, the website is required to run on a "pull" technology and not on "push" technology; and the name of clients and fees charged from them is not permitted to be appear on the website. Hence the firm would be liable for professional misconduct.

Q. No. 5: Can a practicing CA be held guilty of professional misconduct under the following circumstance: Z, a Chartered Accountant wrote several letters to Government Department, pointing out seniority of his firm, sending his life sketch and stating that he had a glorious record of service to the country as well as to the organisation of accountancy profession with a view to get the audit work. [Nov. 03 (4 Marks)]

Answer: Guilty of professional misconduct by virtue of clause 6 of Part I of First Schedule which prohibits a member in practice to solicits professional work by means of advertisement, circular, personal communication or roving enquiries, etc.

Q. No. 6: Comment on the following with reference to the Chartered Accountants Act, 1949 and Schedules thereto: M/s XYZ, a firm of Chartered Accountants created a website “www.xyzindia.com”. The website besides containing details of the firm and bio-data of the partners also contains the photographs of all the partners of the firm. [May 05 (5 marks)]

Answer: No violation as per guidelines for development of website under Clause 6 of Part I of First Schedule.

Q. No. 7: Comment on the following with reference to the Chartered Accountants Act, 1949 and Schedules thereto: Mr. S, a Chartered Accountant published a book and gave his personal details as the author. These details also mentioned his professional experience and his present association as partner with M/s RST, a firm. [Nov. 05 (5 Marks)]

Answer: A member in practice is not permitted to mention his association with any firm as partner in a book published by him. In the present case, Mr. S has violated that restriction and hence held to be guilty of professional misconduct by virtue of Clause 6 of part I of First Schedule.

Q. No. 8: Comment on the following with reference to the Chartered Accountants Act, 1949, Code of Ethics and Schedules to the Act: XYZ & Associates, a firm with 5 partners developed a website www.xyzassociates.com. The website also contained a link to “All India Chartered Accountants Association”, a voluntary association where X, a partner of the firm is currently the Vice-president. [May 06 (4 Marks)]

Answer: As per guidelines issued by ICAI for development and contents of website, a website may provide a link to website of ICAI, its regional councils, branches and government departments and other professional bodies like AICPA, ICAEW etc. In the present case, website provide a link to the “All India Chartered Accountants Association” which is not permitted. Hence the firm is guilty of professional misconduct by virtue of Clause 6 of Part I of First Schedule.

Q. No. 9: Comment on the following with reference to the Chartered Accountants Act, 1949, Code of Ethics and Schedules to the Act: M/s LMN, a firm of Chartered Accountants responded to a tender from a State Government for computerization of land revenue records. For this purpose, the firm also paid Rs. 50,000 as earnest deposit as part of the terms of the tender. [May 06 (5 Marks)]

Answer: Proviso to Clause 6 of Part I of First Schedule permit a member in practice to respond to a tender issued by various users of professional services or organisations from time to time. Hence in the present case, firm can not be held guilty of professional misconduct.

Q. No. 10: Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto: A chartered Accountant in practice created his own website in attractive format and colours and circulated information contained in the website through E-mail. [May 07 (5 Marks)]

Answer: Guidelines issued by the ICAI for development of website by members in practice does not prescribe any standard format or restriction on use of colours. However it is an requirement that none of the information contained in the website be circulated on their own or through E-mail or by any other mode except on a specific pull request. In the present case, information is circulated through e-mail, hence it is an violation of guidelines and concerned member would be held guilty of professional misconduct.

Q. No. 11: Comment on the following with reference to the Chartered Accountants Act, 1949, Code of Ethics and Schedules to the Act: B, a Chartered Accountant in practice is a partner in 3 firms. While printing his personal letter heads, B gave the names of all the firms in which he is a partner. [May 06 (4 Marks)]

Answer: There is no prohibition for printing names of all the three firms on the personal letterheads in which a member holding Certificate of Practice is a partner. Thus B is not guilty of any misconduct under the Chartered Accountants Act, 1949.

7	<p>Advertises his professional attainments or services, or uses any designation or expressions other than CA on professional documents, visiting cards, letter heads or sign boards.</p> <p>However, an recognized degree of university or title indicating membership of ICAI or other recognized institution may be used.</p>	<p>This clause prohibits advertising of professional attainments or services of a member and restrains a member from using a designation other than that of a CA on professional documents.</p>
<p><i>Points to remember</i></p>		
<p>(a) <u>Advertisement through write – up</u>: is allowed subject to guidelines issued by the Council.</p> <p>(b) Use of words like income-tax consultant, cost consultant or management consultant is not allowed.</p> <p>(c) Use of designation like ‘Member of Parliament’, etc. in addition to that of Chartered Accountant is not permissible.</p> <p>(d) Persons eligible otherwise, subject to permission may practice as advocates but can’t use designation “Chartered Accountant” and “Advocate” simultaneously.</p> <p>(e) Name, description and address of member (firm) may appear in any directory or list of members of a particular body (alphabetically). He may provide appropriate directorship held and reasonable personal details (outside Interest) but not name of clients and services offered by his firm.</p> <p>(f) <u>Photograph and brief particulars in magazine</u> is allowed provided no payment is made for such publication and it contains no advertisement.</p> <p>(g) <u>Advertisement appearing in the press</u> is permissible, provided it is not displayed more prominently than usual or name of member or firm should not appear in type bolder than the substance, in the following cases only:</p> <ul style="list-style-type: none"> • Recruiting staff in own office. • Recruiting staff or acquiring/disposing business/property on behalf of client. • Sale of Business/Property when concerned member is acting as trustee, liquidator or receiver. <p>(h) <u>Press note relating to the success in exams</u> of an individual candidate may be given without any undesirable publicity.</p> <p>(i) <u>A member may appear on T.V. and films</u> and etc. and describe themselves as CA, but no reference, as to name/address/services of firm should be made. Every thing he says or write must be an professional view of the topic under consideration.</p> <p>(j) <u>Publicity is permitted for appointment of position of local/national importance</u>, etc. by mentioning membership of ICAI. (However reference of firm is not allowed).</p> <p>(k) Member holding <u>training or seminars</u> for his staff may also invite the staff of other professional accountants and clients to attend the same. However, undue prominence should not be given to the name of member in any booklet or document issued there.</p> <p>(l) <u>Use of glow signs or lights on large size board</u> is not proper. A member may have a name board of himself at residence but not of a firm.</p> <p>(m) Name of CA acting as director in the company is permissible to appear in the prospectus of the company, however descriptions regarding his expertise, specialisation and knowledge in any particular field is not permitted.</p> <p><u>Use of logo</u>: common logo is prescribed by ICAI. Any other logo is not permissible.</p>		
8	<p>Accept a position as Auditor previously held by another chartered accountant or certified auditor without first communicating with him in writing.</p>	<p>This clause enables a member to know the reasons for the change in order to safeguard his own interest, public interest and to ensure independence.</p>

Points to remember

(a) **Professional reasons for not accepting Audit fee:**

- (i) Non-compliance of provisions of Sec. 224 & 225.
- (ii) Non-payment of undisputed audit fee (except sick unit)
- (iii) Issuance of a qualified Report.

In first two, acceptance of audit amounts to professional misconduct. In (iii), member may accept audit if he thinks that attitude of retiring auditor wasn't proper and justified. But if the report was qualified for good and valid reasons, non acceptance of audit would be an healthy practice.

- (b) If there exists an dispute between client and retiring auditor regarding fee, the incoming auditor should use his influence in favour of his predecessor to have dispute settled.
- (c) Mode of communication: Incoming auditor is required to sent his communication by Registered post acknowledgement due or by hand against an acknowledgement in writing. Mere posting of a letter under certificate of posting is not sufficient to establish communication.
- (d) In case the retiring auditor does not reply within a reasonable time, incoming auditor may start his work.
- (e) The requirement for communicating with the previous auditor being a chartered accountant in practice would apply to all types of audit i.e. statutory audit, tax audit, internal audit, concurrent audit or any other kind of audit.
- (f) The mandatory communication with the previous auditor being a chartered accountant is required even in case where the previous auditor happens to be an auditor for a year other than the immediately preceding year.
- (g) In case, time schedule given for the assignment is such that there is no time to wait for the reply from the retiring auditor, the incoming auditor may give an conditional acceptance of the appointment and can commence the work immediately after he has sent the communication to the retiring auditor.

Previous Years Questions

Q. No. 12: Mr. X a chartered Accountant accepted his appointment as tax auditor of a firm under Sec. 44AB of the Income Tax Act ad commenced the tax audit within two days of his appointment since the client was in a hurry to file return of income before the due date. After commencing the audit, Mr. X realised his mistake of accepting this tax audit without sending any communication to the previous tax auditor. In order to rectify his mistake, before signing the tax audit report, he sent a registered post to the previous auditor and obtained the postal acknowledgement. Will Mr. X be held guilty under the CA Act? [May 03 (6 Marks)]

Answer: Guilty by virtue of clause 8 of Part I of First Schedule.

Q. No. 13: Can a practicing Chartered Accountant be held guilty of professional misconduct under the following circumstance: W, a chartered Accountant has sent letters under certificate of posting to the previous auditor informing him his appointment as an auditor before the commencement of audit by him. [Nov. 03 (4 Marks)]

Answer: Guilty of professional misconduct by virtue of clause 8 of Part I of first schedule in accordance with which communication need to be sent "Registered Acknowledgement Due" or by "hand against a written acknowledgement".

Q. No. 14: Comment on the following with reference to the Chartered Accountants Act, 1949 as amended by the Chartered Accountants (Amendment) Act, 2006 and schedules thereto: BC & Co, a firm of Chartered Accountants, accepted an assignment for audit under State level VAT Act, without any prior communication with the previous auditor. [May 08 (4 Marks)]

Answer: Guilty of professional misconduct by virtue of clause 8 of Part I of first schedule.

9

Accepts an appointment as auditor of a company without ascertaining whether requirements of Sec. 224 & 225 of Companies Act, 1956, in respect of such appointment have been duly complied with.

The purpose of this clause is to ensure that no shareholder or retiring auditor may, at a later day, challenge the validity of such appointment.

<u>Points to remember</u>
Though the clause 9 refers to Sec. 224 & 225, it is also necessary to ascertain that the provisions of Sec. 224A are duly complied with by the company.

<u>Previous Years Questions</u>
<p>Q. No. 15: Can a practicing Chartered Accountant be held guilty of professional misconduct under the following circumstance: P, a Chartered Accountant had accepted appointment as an auditor of QRS Company limited without ascertaining from the company whether the requirements of Sec. 224 and 225 of the Companies Act had been complied with. However, he realised this defect only after acceptance. [Nov. 03 (4 marks)]</p> <p>Answer: P will be held to be guilty of professional misconduct under clause 9 of Part I of First Schedule to the Chartered Accountants act, 1956. Realisation of defect subsequent to acceptance of audit is immaterial.</p>

10	Charges or offers to charge, accepts or offers to accept in respect of any professional employment, fee which is based on a %age of profits or which are contingent upon findings, or results of such employment, except as permitted under regulations.	This clause tries to ensure ethical standards, integrity and independence of profession.
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<u>Points to remember</u>
<p>(a) Fees will not be treated as contingent if fixed by a court or other public authority.</p> <p>(b) <u>Regulation 192 (Restriction on Fees):</u> In respect of the cases fees may be fixed as specified below:</p> <ul style="list-style-type: none"> • In the case of receiver or liquidator: on the basis of %age of realisation or disbursement of assets. • In the case of co-operative society: on the basis of %age of paid up capital or working capital or gross/net income or profits. • In the case of valuer for purposes of direct taxes and duties: on the basis of %age of value of property valued.

11	Engage in any Business or occupation other than profession of C.A. unless permitted by council so to engage. However, a member may become director (not being M.D. or Whole time director) in a company provided he or any of his partner is not interested in such company as an auditor.	The purpose of this clause is to ensure that a member in practice should not involve in other business to take advantage for his practice indirectly.
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<u>Points to remember</u>
<p>(a) <u>Regulation 190:</u> A CA in practice is not entitled to engage in any other business or occupation other than the profession of accountancy except with the permission of the Council. Accordingly the various occupations has been specified for which general permission is granted and the occupations for which specific and prior approval of council is required.</p> <p><u>Occupations for which permission has been granted generally:</u></p> <ul style="list-style-type: none"> • Employment under C.A. in practice of firms of such CAs. • Private tutorship. • Authorship of Books/Articles. • Holding of Life Insurance Agency licence for limited purpose of Renewal Commission. • Attending class and appearing for any exams. • Holding of public elective officees such as MP or MLA. • Honorary office of charitable – educational or other non commercial institute. • Notary public, Justice of peace, Special Executive Magistrate and like. • Part time tutorship under coaching organization of institute. • Valuation of paper, acting as paper setter, head-examiner or moderator for any exam.

	<ul style="list-style-type: none"> • Editorship of professional journal. • Acting as Surveyor/Loss Assessor under Insurance Act. <p><u>Occupations for which specific and Prior approval is required:</u></p> <ul style="list-style-type: none"> • Full time/Part time employment in Business concerns provided he/his relative not do not hold substantial interest in such concerns. • Full time/Part time employment in non-business concern. • Office of Managing Director/Whole-time Director of a body corporate. • Interest in family business concerns. • Interest in agricultural or allied activities carried out with the help of hired labour. • Interest in any educational institute. • Part time/Full time lectureship for courses other than ICAI Examinations. • Part time/Full time tutorship under any educational institution other than coaching organisation of institute. • Editorship of journals other than professional journals. • Any other Business/Occupation for which Executive Committee considers that permission may be granted.
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	<p>(b) <u>Regulation 191</u>: A CA in practice may accept the appointment</p> <ul style="list-style-type: none"> • as an liquidator, trustee, executor, administrator, arbitrator, receiver, advisor or • as representative for costing, financial or taxation matters or • an appointment made by Central or State Government or Court of Law or any other legal authority • as an secretary
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	<p>Previous Years Questions</p>
	<p>Q. No. 16: Mr. J started his practice as Chartered Accountant in 2006. During 2009, he got an offer for the post of Chief Accountant of a Software Development Company, as a fulltime employee for a salary of Rs. 60,000 p.m. On accepting the offer, Mr. J converted his practice into a partnership firm by taking a fresh Chartered Accountant as his partner. Mr. J neither intimated the Institute nor obtained permission from the Institute about his employment. Will Mr. J be held guilty under the CA Act? [May 03 (6 Marks)]</p> <p>Answer: Guilty of professional misconduct by virtue of Clause 11 of Part I of First schedule, as he has accepted the employment in addition to the practice without obtaining permission of the Institute.</p> <p>Q. No. 17: Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto: Mr. J.J. a practicing Chartered Accountant engages himself as part time finance manager of Quick Return Securities Ltd. He is of the view that as both functions are independent, he need not take permission from the Institute. [Nov. 06 (4 Marks)]</p> <p>Answer: Guilty of professional misconduct by virtue of Clause 11 of Part I of First schedule, as he has accepted the employment in addition to the practice without obtaining permission of the Institute.</p> <p>Q. No. 18: Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto: A chartered accountant in practice takes up the appointment as managing director of a public limited company. [May 07 (4 Marks)]</p> <p>Answer: Appointment requires prior and specific approval from Council. In absence of such approval, member will be held to be guilty of professional misconduct (by virtue of clause 11 of Part I of First Schedule and Regulation 190A), otherwise not.</p>

Q. No. 19: Comment on the following with reference to the Chartered Accountants Act, 1949 as amended by the Chartered Accountants (Amendment) Act, 2006 and schedules thereto: M, a Chartered Accountant in practice, is the Statutory Auditor of S Ltd. for the year ended 31st March 2009. In January 2009, he was appointed as a Director in H Ltd., which is the holding Company of S Ltd.

[May 08 (5 Marks)]

Answer: As per clause 11 of Part I of the First Schedule to the CA Act, 1949, a CA in practice can be a director of a company wherein he or any of his partners is not interested in such company as auditor.

However, public conscience is expected to be ahead of law and to ensure and reflect independence, members should thus not place themselves in position which may affect their independence.

Hence, auditor of a subsidiary should not accept the position as an director in holding company as it might affect his independence.

Q. No. 20: Comment on the following with reference to the Chartered accountants Act, 1949 as amended by the Chartered Accountants (amendment) Act, 2006 and Schedules thereto Mr. A, a Chartered Accountant in practice has been appointed editor of a monthly journal which analyses performance of the Stock Market and Mutual Fund Schemes. [Nov. 08 (4 Marks)]

Answer: Clause 11 permits editorship of professional journals, but in the instant case journal related to performance analysis of stock market and mutual fund schemes can not be treated as professional journal hence, Mr. would be held guilty of professional misconduct by virtue of Clause 11 of Part I of First Schedule.

12

Allows a person not being a member of ICAI in practice or a member not being his partner to sign on his behalf or on behalf of his firm, any Balance Sheet, P&L A/c. Report or Financial Statements

The clause tries to ensures that professional work of practicing member of ICAI shall only be signed by a practicing member of ICAI.

Points to remember

The Financial Statements and the Reports referred to in this clause means the financial statements and reports as ultimately finalised and submitted to the outside authorities.

Previous Years Questions

Q. No. 21: Comment on the following with reference to the Chartered Accountants Act, 1949 and schedules thereto: S. a practicing chartered accountant gives power of attorney to an employee chartered accountant to sign reports and financial statements, on his behalf. [May 07 (5 Marks)]

Answer: S is guilty of professional misconduct under clause 12 of Part I of First Schedule.

First Schedule, Part II - Professional misconduct in relation to members in service

Clause	Details	Remarks
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.	This clause ensures that job must be procured and retained with own professional capabilities & not by any financial deal impairing professional dignity.
2	Accepts or agrees to accept any part of fees, profits or gains from a lawyer, a chartered accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification	This clause ensures that a member must maintain high level of ethics & should not accept any amount from anyone for which he is not entitled from employer under contractual agreement of service

First Schedule, Part III - Professional misconduct in relation to members generally

Clause	Details
1	Not being a fellow of the Institute, but acts as a fellow of the Institute.
2	Does not supply the information called for, or does not comply with the requirements asked for by the Institute, Council or any of its committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the appellate authority.
3	While inviting professional work from another chartered accountant or while responding to tenders or enquiries or while advertising through a write up or anything as provided for in items (6) and (7) of Part I of this schedule, gives information knowing it to be false.

First Schedule, Part IV - Other Misconduct in relation to members to generally

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

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

Previous Years Questions

Q. No. 1: Comment on the following with reference to the Chartered Accountants Act, 1949 as amended by the Chartered Accountants (Amendment) Act, 2006 and schedules thereto: (b) X, a Chartered Accountant availed a loan against his shares held as investments from a nationalized bank. He issued 2 cheques towards repayment of the said loan. Both the cheques were returned back by the bank with the remarks "Refer to Drawer". [May 08 (5 Marks)]

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

In the present case, two cheques was dishonored and returned back with the remarks "Refer to Drawer", it is not clear what was the exact reason for the dishonor. If the cheques were dishonoured due to insufficiency of funds, the drawer will be held guilty of offence under Negotiable Instruments act, 1881 and consequently he would be held guilty of "Other Misconduct".

VIPIN
SINGLA