

CHARTERED ACCOUNTANTS ACT, 1949

38 of 1949

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CHARTERED ACCOUNTANTS ACT, 1949

38 of 1949

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An Act to make provision for the regulation of the profession of chartered accountants Whereas it is expedient to make provision for the regulation of the profession of chartered accountants and for that purpose to establish an Institute of Chartered Accountants: It is hereby enacted as follows :-

CHAPTER 1

PRELIMINARY

1. Short title, extent and commencement :-

(1) This Act may be called the Chartered Accountants Act, 1949

.

(2) It extends to the whole of India

.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf

2. Interpretation :-

(1) In this Act, unless there is anything repugnant in the subject or context,

(a) "associate" means an associate member of the Institute;

1'(aa) "Authority" means the Appellate Authority constituted under section 22A;

(aaa) "Board" means the Quality Review Board constituted under Section 28A;';

(b) "chartered accountant" means a person who is a member of the Institute;

(c) "Council" means the Council of the Institute;

(d) "holder of a restricted certificate" means a person holding a permanent or temporary restricted certificate granted by a State Government under the Restricted Certificates Rules, 1932;

(e) "Institute" means the Institute of Chartered Accountants of India constituted under this Act;

2'(ea) "notification" means a notification published in the Official Gazette;';

(f) "prescribed" means prescribed by regulations made under this Act;

(g) "Register" means the Register of Members maintained under this. Act;

(h) "registered accountant" means any person who has been enrolled on the Register of Accountants maintained by the Central Government under the Auditors' Certificates Rules, 1932;

3 '(ha) "Specified" means specified by rules made by the Central Government under this Act;

(hb) "Tribunal" means a Tribunal established under sub-section (1) of section 10B;

(i) "year" means the period commencing on the 1st day of April of

any year and ending on the 31st day of March of the succeeding year

.

(2) A member of the Institute shall be deemed, "to be in practice", when individually or in partnership with chartered accountants in practice, he, in consideration of remuneration received or to be received,-

(i) engages himself in the practice of accountancy; or

(ii) offers to perform or performs services involving the auditing or verification of financial transactions, books, accounts, or records or the preparation, verification or certification of financial accounting and related statements or holds himself out to the public as an accountant; or

(iii) renders professional services or assistance in or about matters of principle or detail relating to accounting procedure or the recording, presentation or certification of financial facts or data; or

(iv) renders such other services as, in the opinion of the Council, are or may be rendered by a chartered accountant in practice, and the words "to be in practice" with their grammatical variations and cognate expressions shall be construed accordingly

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), in section 2, in sub-section (1), after clause (a), the following clauses shall be inserted, namely:- '(aa) "Authority" means the Appellate Authority constituted under section 22A; (aaa) "Board" means the Quality Review Board constituted under Section 28A;'; by the Chartered Accountants Act, 1949 (38 of 1949)

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), in section 2, in sub-section (1), after clause (e), the following clause shall be inserted, namely:- '(ea) "notification" means a notification published in the Official Gazette;'; by the Chartered Accountants Act, 1949 (38 of 1949)

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), after clause (h), the following clauses shall be inserted, namely:- '(ha) "Specified" means specified by rules made by the Central Government under this Act; (hb) "Tribunal" means a Tribunal established under sub-section (1) of section 10B; by the Chartered Accountants Act, 1949 (38 of 1949)

CHAPTER 2

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

3. Incorporation of the Institute :-

(1) All persons whose names are entered in the Register at the commencement of this Act and all persons who may hereafter have their names entered in the Register under the provisions of this Act, so long as they continue to have their names borne on the said Register, are hereby constituted a body corporate by the name of the Institute of Chartered Accountants of India, and all such persons shall be known as members of the Institute

(2) The Institute shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of property, both movable and immovable, and shall by its name sue or be sued

4. Entry of names in the Register :-

(1) Any of the following persons shall be entitled to have his name entered in the Register, namely :-

(i) any person who is a registered accountant or a holder of a restricted certificate at the commencement of this Act;

(ii) any person who has passed such examination and completed such training as may be prescribed for members of the Institute;

(iii) any person who has passed the examination for the Government Diploma in Accountancy or an examination recognised as equivalent thereto by the rules for the award of the Government Diploma in Accountancy before the commencement of this Act, and who, although not duly qualified to be registered as an accountant under the Auditors' Certificates Rules, 1932, fulfils such conditions as the Central Government may specify in this behalf;

(iv) any person who, at the commencement of this Act, is engaged in the practice of accountancy in any Part B State and who, although not possessing the requisite qualifications to be registered as an accountant under the Auditors' Certificates Rules, 1932, fulfils such conditions as the Central Government may specify in this behalf;

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

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

(vi) any person domiciled in India, who at the commencement of this Act is studying for any foreign examination and is at the same time undergoing training, whether within or without India, or, who, having passed such foreign examination, is at the commencement of this Act undergoing training, whether within or without India : Provided that any such examination or training was recognised before the commencement of this Act for the purpose of conferring the right to be registered as an accountant under the Auditor's Certificates Rules, 1932, and provided further that such person passes the examination or completes the training within five years after the commencement of this Act

.

(2) Every person belonging to the class mentioned in clause (i) of sub-section (1) shall have his name entered in the Register without the payment of any entrance fee

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4 "(3) Every person belonging to any of the classes mentioned in clauses (ii), (iii), (iv), (v) and (vi) of sub-section (1) shall have his name entered in the Register on application being made and granted in the prescribed manner and on payment of such fee, as may be determined, by notification, by the Council, which shall not exceed rupees three thousand: Provided that the Council may, with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand."

(4) The Central Government shall take such steps as may be necessary for the purpose of having the names of all persons belonging to the class mentioned in clause (i) of sub-section (1) entered in the Register

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), In section 4 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:- "(3) Every person belonging to any of the classes mentioned in clauses (ii), (iii), (iv), (v) and (vi) of sub-section (1) shall have his name entered in the Register on application being

made and granted in the prescribed manner and on payment of such fee, as may be determined, by notification, by the Council, which shall not exceed rupees three thousand: Provided that the Council may, with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand." by the Chartered Accountants Act, 1949 (38 of 1949).

5. Fellows and Associates :-

(1) The members of the Institute shall be divided into two classes designated respectively as associates and fellows

.

(2) Any person shall, on his name, being entered in the Register, be deemed to have become an associate member of the Institute and be entitled to use the letters A.C.A. after his name to indicate that he is an associate member of the Institute of Chartered Accountants

.

5 "(3) A member, being an associate who has been in continuous practice in India for at least five years, whether before or after the commencement of this Act, or whether partly before and partly after the commencement of this Act, and a member who has been an associate for a continuous period of not less than five years and who possesses such qualifications as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a chartered accountant shall, on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees five thousand and on application made and granted in the prescribed manner, be entered in the Register as a fellow of the Institute and shall be entitled to use the letters F.C.A. after his name to indicate that he is a fellow of the Institute of Chartered Accountants:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand, which shall not in any case exceed rupees ten thousand."

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), In section 5 of the principal Act, sub-section (3), shall be substituted, in place of :- "(3) A member, being an associate who has been in continuous practice in India for

at least five years, whether before or after the commencement of this Act, or whether partly before and partly after the commencement of this Act, and a member who has been an associate for a continuous period of not less than five years and who possesses such qualifications as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a chartered accountant shall, on payment of the prescribed entrance fee, which shall not exceed rupees two hundred in any case, and on application made and granted in the prescribed manner, be entered in the Register as a fellow of the Institute and shall be entitled to use the letters F.C.A. after his name to indicate that he is a fellow of the Institute of Chartered Accountants" by the Chartered Accountants Act, 1949 (38 of 1949).

6. Certificate of practice :-

(1) No member of the Institute shall be entitled to practise whether in India or elsewhere unless he has obtained from the Council a certificate of practice

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6 "(2) Every such member shall pay such annual fee for his certificate as may be determined, by notification, by the Council, which shall exceed rupees three thousand, and such fee shall be payable on or before the 1st day of April in each year:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand.";

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), In section 6 of the principal Act, for sub-section (2), shall be substituted, in place of :- "(2) Every such member shall pay such annual fee for his certificate as may be prescribed, and such fee shall be payable on or before the 1st day of April in each year." by the Chartered Accountants Act, 1949 (38 of 1949).

7. Members to be known as Chartered Accountants :-

Every member of the Institute in practice shall, and any other member may, use the designation of a chartered accountant and no member using such designation shall use any other description, whether in addition thereto or in substitution therefor: Provided that nothing contained in this section shall be deemed to prohibit any such person from adding any other description or letters to his name, if entitled thereto, to indicate membership of such other

Institute of Accountancy, whether in India or elsewhere, as may be recognised in this behalf by the Council, or any other qualification that he may possess, or to prohibit a firm, all the partners of which are members of the Institute and in practice, from being known by its firm name as Chartered Accountants

8. Disabilities :-

Notwithstanding anything contained in section 4 , a person shall not be entitled to have his name entered in or borne on the Register if he-

(i) has not attained the age of twenty-one years at the time of his application for the entry of his name in the Register; or

(ii) is of unsound mind and stands so adjudged by an competent court; or

(iii) is an undischarged insolvent; or

(iv) being a discharged insolvent, has not obtained from the Court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part; or

(v) has been convicted by a competent Court whether within or without India, of an offence involving moral turpitude and punishable with transportation or imprisonment or of an offence, not of a technical nature, committed by him in his professional capacity unless in respect of the offence committed he has either been granted a pardon or, on an application made by him in this behalf, the Central Government has, by an order in writing, removed the disability; or

(vi) has been removed from membership of the Institute on being found on inquiry to have been guilty of professional or other misconduct : Provided that a person who has been removed from membership for a specified period, shall not be entitled to have his name entered in the Register until the expiry of such period

CHAPTER 3

COUNCIL OF THE INSTITUTE

9. Constitution of the Council of the Institute :-

(1) There shall be a Council of the Institute for the management of the affairs of the Institute and for discharging the functions assigned to it under this Act.

7 "(2) The Council shall be composed of the following persons, namely:-

(a) not more than thirty two persons elected by the members of the Institute from amongst the fellows of the Institute chosen in such manner and from such regional constituencies as may be specified:

Provided that a fellow of the Institute, who has been found guilty of any professional or other misconduct and whose name is removed from the Register or has been awarded penalty of fine, shall not be eligible to contest the election,-

(i) in case of misconduct falling under the Second Schedule of this Act, for a period of six years;

(ii) in case of misconduct falling under the Second Schedule of this Act, for a period of six years, from the completion of period of removal of name from the Register or payment of fine, as the case may be;

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), In section 9 of the principal Act, for sub-section (2), shall be substituted, in place of :- "(2) The Council shall be composed of the following persons, namely :- (a) not more than twenty-four persons elected by members of the Institute from amongst the fellows of the Institute chosen in such manner and from such regional constituencies as may be specified in this behalf by the Central Government by notification in the Official Gazette; and (b) six persons nominated by the Central Government." by the Chartered Accountants Act, 1949 (38 of 1949).

10. Mode of election to the Council :-

(1) Elections under clause (a) of sub-section (2) of section 9 shall be conducted in the prescribed manner.

(2) Where any dispute arises regarding any such election, the matter shall be referred by the Council to a Tribunal appointed by the Central Government in this behalf and the decision of such Tribunal shall be final: Provided that no such reference shall be made except on an application made to the Council by an aggrieved party within thirty days from the date of the declaration of the result of the election.

(3) The expenses of the Tribunal shall be borne by the Council.

11. Nomination In default of election or nomination :-

If any body of persons referred to in section 9 fails to elect any of the members of the Council which it is empowered under that section to elect, the Central Government may nominate a person duly qualified to fill the vacancy, and any person so nominated shall be deemed to be a member of the Council as if he had been duly elected.

12. President and Vice-President :-

(1) The Council at its first meeting shall elect two of its members to be respectively the President and the Vice-President thereof, and so often as the office of the President or the Vice-President becomes vacant the Council shall choose another person to be the President or the Vice-President, as the case may be: Provided that on the first constitution of the Council a member of the Council nominated in this behalf by the Central Government shall discharge the functions of the President, until such time as a President is elected under the provisions of this sub-section.

(2) The President shall be the Chief Executive Authority of the Council.

(3) The President or the Vice-President shall hold office for a period of one year from the date on which he is chosen but so as not to extend beyond his term of office as a member of the Council, and, subject to his being a member of the Council at the relevant time, he shall be eligible for re-election ¹⁰"under sub-section (1)" .

(4) On the expiration of the duration of the Council, the P "President and the Vice-President" of the Council at the time of such expiration shall continue to hold office and discharge such administrative and other duties as may be prescribed until such time as a new ¹¹ "President and the Vice-President" shall have been elected and shall have taken over charge of his duties.

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), In section 12 of the principal Act, in sub-section (3), after the words " he shall be eligible for re-election", the words brackets and figure "under sub-section (1)" shall be inserted, by the Chartered Accountants Act, 1949 (38 of 1949).

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), In section 12, in sub-section (4), for the word "President" the words "President and the Vice-President" shall be substituted , by the Chartered Accountants Act,

1949 (38 of 1949).

13. Resignation of membership and casual vacancies :-

(1) Any member of the Council may at any time resign his membership by writing under his hand addressed to the President, and the seat of such member shall become vacant when such resignation is notified in the Official Gazette.

(2) A member of the Council shall be deemed to have vacated his seat if he is declared by the Council to have been absent without sufficient excuse from three consecutive meetings of the Council,¹²"or he has been found guilty of any professional or other misconduct and awarded penalty of fine," or if his name is, for any cause, removed from the Register under the provisions of section 20 .

(3) A casual vacancy in the Council shall be filled by fresh election from the constituency concerned or by nomination by the Central Government, as the case may be, and the person elected or nominated to fill the vacancy shall hold office until the dissolution of the Council : Provided that no election shall be held to fill a casual vacancy occurring within ¹³ "one years" prior to the date of the expiration of the duration of the Council, but such a vacancy may be filled by nomination by the Central Government after consultation with the President of the Council.

(4) No act done by the Council shall be called in question on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Council.

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), In section 13 of the principal Act, in sub-section (2), after the words "meetings of the Council", the words "or he has been found guilty of any professional or other misconduct and awarded penalty of fine," shall be inserted; by the Chartered Accountants Act, 1949 (38 of 1949).

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), In section 13 of the principal Act, in the proviso to sub-section (3), for the words "six months", the words "one years" shall be substituted, by the Chartered Accountants Act, 1949 (38 of 1949).

14. Duration and dissolution of Council :-

(1) The duration of any Council constituted under this Act shall be three years from the date of its first meeting, on the expiry of

which it shall stand dissolved and a new Council constituted in accordance with the provisions of this Act.

(2) Notwithstanding the expiration of the duration of a Council (hereinafter referred to as the former Council), the former Council shall continue to exercise its functions until a new Council is constituted in accordance with the provisions of this Act, and on such constitution, the former Council shall stand dissolved.

15. Functions of the Council :-

14 (1) The Institute shall function under the overall control, guidance and supervision of the Council and the duty of carrying out the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the Council shall include-

- (a) to approve academic courses and their contents;
- (b) the examination of candidates for enrolment and the prescribing of fees therefore;
- (c) the regulation of the engagement and training of articled and audit assistants;
- (d) the prescribing of qualifications for entry in the Register;
- (e) the recognition of foreign qualifications and training for the purposes of enrolment;
- (f) the granting or refusal of certificates of practicee under this Act;
- (g) the maintenance and publication of a Register of persons qualified to practice as chartered accountants;
- (h) the levy and collection of fees from members, examinees and other persons;
- (i) subject to the orders of the appropriate authorities under the Act, the removal of names from the Register and the restoration to the Register of names which have been removed;
- (j) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;
- (k) the carrying out, by granting financial assistance to persons other than members of the Council or in any other manner, of

research in accountancy;

(l) the maintenance of a library and publication of books and periodicals relating to accountancy;

(m) to enable functioning of the Director (Discipline), the Board of Discipline, the Disciplinary Committee and the Appellate Authority constituted under the provisions of this Act

(n) to enable functioning of the Quality Review Board;

(o) consideration of the recommendations of the Quality Review Board made under clause (a) of section 28B and the details of action taken thereon in its annual report; and

(p) to ensure the functioning of the institute in accordance with the provisions of this Act and in performance of other statutory duties as may be entrusted to the Institute from time to time."

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), Section 15 shall be substituted in place of :- "15. Functions of the Council.:- (1) The duty of carrying out the provisions of this Act shall be vested in the Council. (2) In particular, and without prejudice to the generality of the foregoing power, the duties of the Council shall include - (a) the examination of candidates for enrolment and the prescribing of fees therefor; (b) the regulation of the engagement and training of article and audit clerks; (c) the prescribing of qualifications for entry in the Register; (d) the recognition of foreign qualifications and training for purposes of enrolment; (e) the granting or refusal of certificates of practice under this Act; (f) the maintenance and publication of a Register of persons qualified to practise chartered accountants; (g) the levy and collection of fees from members, examinees and other persons; (h) the removal of names from the Register and the restoration to the Register of names which have been removed; (i) the regulation, and maintenance of the status and standard of professional qualifications of members of the Institute; (j) the carrying out, by financial assistance to persons other than members of the Council or in any other manner, of research in accountancy; (k) the maintenance of a library and publication of books and periodicals relating to accountancy; and (l) the exercise of disciplinary powers conferred by this Act." the Chartered Accountants Act, 1949 (38 of 1949).

16. Staff, remuneration and allowances :-

(1) For the efficient performance of its duties, the Council may-

(a) appoint a Secretary who may also, if so decided by the Council, act as Treasurer;

- (b) appoint such other officers and servants as it deems necessary;
- (c) require and take from the Secretary or from any other officer or servant of the Council such security for the due performance of his duties, as the Council considers necessary;
- (d) fix the salaries, fees, allowances and other conditions of service of the officers and servants of the Council;
- (e) with the previous sanction of the Central Government, fix the allowances of the President, Vice-President and other members of the Council and members of its committees.

(2) Notwithstanding anything contained in sub-section (1), on the first constitution of the Council the Secretary shall be a person appointed by the Central Government in consultation with the Council, and he shall hold office during the pleasure of the Central Government, but so as not to exceed a period of three years from the date of his appointment.

(3) The Secretary of the Council shall be entitled to participate in the meetings of the Council but shall not be entitled to vote thereat.

17. Committees of the Council :-

(1) The Council shall constitute from amongst its members the following Standing Committees, namely :-

- (i) an Executive Committee,
- (ii) an Examination Committee, and

17"(iii) a Finance Committee."

18 "(2)The Council may also form such other committees from amongst its members as it consider necessary for the purpose of carrying out the provisions of this Act, and any Committee so formed may, with the sanction of the Council, co-opt such other members of the Institute not exceeding one-third of the members of the committee as it thinks fit, and any member so co-opted shall be entitled to exercise all the rights of a member of the committee.

(3) Each of the Standing Committees shall consist of the President and the Vice-Presiding \ ex officio, and minimum of three and maximum of five members to be elected by the Council \ from amongst its members."

(4) The President and the Vice-President of the Council shall be the Chairman and Vice-Chairman respectively of each of the Standing Committees.

(5) Every member of the Standing Committee other than the Chairman and the Vice-Chairman shall hold office for one year from the date of his election, but subject to being a member of the Council, he shall be eligible for re-election.

(6) The Standing Committee shall exercise such functions and be subject to such conditions in the exercise thereof as may be prescribed.

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), In section 17 of the principal Act, in sub-section (1), for clause (iii), shall be substituted, in place of :- "(iii) a Disciplinary Committee." by the Chartered Accountants Act, 1949 (38 of 1949).

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), In section 17, sub-sections (2), (3) shall be substituted, in place of :- "(2) The Council may also form such other committees from amongst its members as it deems necessary for the purpose of carrying out the provisions of this Act, and any committee so formed may, with the sanction of the Council, co-opt such other members of the Institute not exceeding two-thirds of the members of the committee as the committee thinks fit, and any member so co-opted shall be entitled to exercise all the rights of a member of the committee. "(3) Each of the Standing Committees shall consist of the President and the Vice-President, ex-officio, and three other members of the Council elected by the Council: Provided that in the case of the Disciplinary Committee, out of the members to be elected, two shall be elected by the Council, and the third nominated by the Central Government from amongst the persons nominated to the Council by the Central Government." by the Chartered Accountants Act, 1949 (38 of 1949).

18. Finances of the Council :-

(1) There shall be established a fund under the management and control of the Council into which shall be paid all moneys received by the Council and out of which shall be met all expenses and liabilities properly incurred by the Council.

(2) The Council may invest any money for the time being standing to the credit of the fund in any Government security or in any other security approved by the Central Government.

"

(3) The Council shall keep proper accounts of the fund distinguishing capital from revenue in the manner prescribed.

19(4) The Council shall prepare in the manner prescribed and approve prior to the start of the financial year, an annual financial statement (the budget) indicating all its anticipated revenues as well as all proposed expenditure for the forthcoming year.

(5) The annual accounts of the Council shall be prepared in such manner as may be prescribed and be subject to audit by a chartered accountant in practice to be appointed annually by the Council: Provided that no member of the Council or a person who has been a member of the Council during the last four years or a person who is in partnership with such member shall be eligible for appointment as an auditor under this sub-section : Provided further that, in the event it is brought to the notice of the Council that the accounts of the Council do not represent a true and fair view of its finances, then, the Council may itself cause a special audit to be conducted: Provided also that, if such information, that the accounts of the council do not represent a true and fair view of its finances, is sent to the Council by the Central Government, then, the Council may, wherever appropriate cause a special audit or take such other action as it considers necessary and shall furnish an action taken report on it to the Central Government.

20 (5A) As soon as may be practicable at the end of each year, the Council shall circulate the audited accounts to its members at least fifteen days in advance and consider and approve these accounts in a special meeting convened for the purpose.

(5B) The Council shall cause to be published in the Gazette of India not later than the 30th day of September of the year next following, a copy of the audited accounts and the Report of the Council for that year duly approved by the Council and copies of the said accounts and report shall be forwarded to the Central Government and to all the members of the Institute."

(6) The Council may borrow from a scheduled bank, as defined in the Reserve Bank of India Act, 1934 or from the Central Government -

(a) any money required for meeting its liabilities on capital account on the security of the fund or on the security of any other assets for the time being belonging to it, or

(b) for the purpose of meeting current liabilities pending the receipt of income by way of temporary loan or overdraft.

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), In section 18 of the principal Act, sub-sections (3), (4) and (5), shall be substituted, in place of :- "
(3) The Council shall keep proper accounts of the fund distinguishing capital from revenue. (4) The annual accounts of the Council shall be subject to audit by a chartered accountant in practice to be appointed annually by the Council : Provided that no member of the Council or a person who is in partnership with such member shall be eligible for appointment as an auditor under this sub-section. (5) As soon as may be practicable at the end of each year, but not later than the 30th day of September, of the year next following, the Council shall cause to be published in the Gazette of India a copy of the audited accounts and the Report of the Council for that year, and copies of the said accounts and Report shall be forwarded to the Central Government and to all the members of the Institute." by the Chartered Accountants Act, 1949 (38 of 1949).

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), In section 18 of the principal Act, after sub-section (5), the following sub-sections shall be inserted, namely:- "(5A) As soon as may be practicable at the end of each year, the Council shall circulate the audited accounts to its members at least fifteen days in advance and consider and approve these accounts in a special meeting convened for the purpose. (5B) The Council shall cause to be published in the Gazette of India not later than the 30th day of September of the year next following, a copy of the audited accounts and the Report of the Council for that year duly approved by the Council and copies of the said accounts and report shall be forwarded to the Central Government and to all the members of the Institute.". by the Chartered Accountants Act, 1949 (38 of 1949).

CHAPTER 4

REGISTER OF MEMBERS

19. Register :-

(1) The Council shall maintain in the prescribed manner a Register of the Members of the Institute.

(2) The Register shall include the following particulars about every member of the Institute, namely, -

(a) his full name, date of birth, domicile, residential and professional addresses;

(b) the date on which his name is entered in the Register;

(c) his qualifications;

(d) whether he holds a certificate of practice; and

(e) any other particulars which may be prescribed.

(3) The Council shall cause to be published in such manner as may be prescribed, a list of members of the Institute as on the 1st day of April of each year, and shall, if requested to do so by any such member, send to him a copy of such list ²¹"on payment of such amount as may be prescribed".

"²² (4) Every member of the Institute shall, on his name being entered in the Register, pay such annual membership fee as may be determined, by notification, by the Council, which shall not exceed rupees five thousand: Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand, which shall not in any case exceed rupees ten thousand."

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), in section 19 of the principal Act, in sub-section (3), the words "on payment of such amount as may be prescribed" shall be inserted at the end; by the Chartered Accountants Act, 1949 (38 of 1949).

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), in section 19 of the principal Act, sub-section (4) shall be substituted, in place of :- " (4) Every member of the Institute shall, on his name being entered in the Register, pay such annual membership fee differing in amount according as he is an associate or a fellow of the Institute, as may be prescribed." by the Chartered Accountants Act, 1949 (38 of 1949).

20. Removal from the Register :-

(1) The Council may remove from the Register the name of any member of the Institute-

(a) who is dead; or

(b) from whom a request has been received to that effect; or

(c) who has not paid any prescribed fee required to be paid by him; or

(d) who is found to have been subject at the time when his name was entered in the Register, or who at any time thereafter has become subject, to any of the disabilities mentioned in section 8 ,

or who for any other reason has ceased to be entitled to have his name borne on the Register.

(2) The Council shall remove from the Register the name of any member in respect of whom an order has been passed under this Act removing him from membership of the Institute.

23 "(3) If the name of any member has been removed from the Register under clause (c) of sub-section (1), on receipt of an application, his name may be entered again in the Register on payment of the arrears of annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council which shall not exceed rupees two thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees two thousand, which shall not in any case exceed rupees four thousand."

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), In section 20 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely :- "(3) If the name of any member has been removed from the Register under clause (c) of sub-section (1), on receipt of an application, his name may be entered again in the Register on payment of the arrears of annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council which shall not exceed rupees two thousand: Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees two thousand, which shall not in any case exceed rupees four thousand.". by the Chartered Accountants Act, 1949 (38 of 1949).

CHAPTER 5 MISCONDUCT

21. Procedure in inquiries relating to misconduct of members of Institute :-

24

(1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

(2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct.

(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

(4) In order to make investigations under the provisions of this act, the Disciplinary Directorate shall follow such procedure as may be specified.

(5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or, as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage."

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), For section 21 of the principal Act, the following sections shall be substituted, in place of :-
"21. Procedure in inquiries relating to misconduct of members of Institute. :- (1) Where on receipt of information by, or of a complaint made to it, the Council is prima facie of opinion that any member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee, and the Disciplinary Committee shall thereupon hold such inquiry and in such manner as may be prescribed, and shall report the result of its inquiry to the Council. (2) If on receipt of such report the Council finds that the member of the Institute is not guilty of any professional or other misconduct, it shall record its finding accordingly and direct that the proceedings shall be filed or the complaint shall be dismissed, as the case may be. (3) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record a finding accordingly and shall proceed in the manner laid down in the succeeding sub-sections. (4) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, the Council shall afford to the member an opportunity of being heard before orders are passed against him on the case, and may thereafter make any of the following orders, namely:- (a) reprimand the member; (b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit : Provided that where it appears to the Council that the case is one in which the name of the member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order referred to in clause (a) or clause (b), but shall forward the

case to the High Court with its recommendations thereon. (5) Where the misconduct in respect of which the Council has found any member of the Institute guilty is misconduct other than any such misconduct as is referred to in sub-section (4), it shall forward the case to the High Court with its recommendations thereon. (6) On receipt of any case under sub-section (4) or sub-section (5), the High- Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the Institute concerned, the Council and to the Central Government, and shall afford such member, the Council and the Central Government an opportunity of being heard, and may thereafter make any of the following orders, namely :- (a) direct that the proceedings be filed, or dismiss the complaint, as the case may be; (b) reprimand the member; (c) remove him from membership of the Institute either permanently or for such period as the High Court thinks fit; (d) refer the case to the Council for further inquiry and report." by the Chartered Accountants Act, 1949 (38 of 1949).

22. Professional misconduct defined :-

25 For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances."

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), section 22 shall be substituted, in place of :- "22. Professional misconduct defined. -For the purposes' of this Act, the expression "professional misconduct" shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Council under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances." by the Chartered Accountants Act, 1949 (38 of 1949)

22A. Appeals :-

26

(1) The Central Government shall, " by notification, constitute an Appellate Authority consisting of-

(a) a person who is or has been a judge of a High Court, to be its Chairperson;

(b) two members to be appointed from amongst the persons who have been members of the Council for at least one full term and

who is not a sitting member of the Council;

(c) two members to be nominated by the Central Government from amongst persons having knowledge and practical experience in the field of law, economics, business, finance or accountancy.

(2) The Chairperson and other members shall be part time members.

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), for section 22A of the principal Act, sections 22A, 22B, 22C, 22D 22E 22F, 22G shall be substituted, by the Chartered Accountants Act, 1949 (38 of 1949).

CHAPTER 6

REGIONAL COUNCILS

23. Constitution and functions of Regional Councils :-

(1) For the purpose of advising and assisting it on matters concerning its functions, the Council may constitute such Regional Councils as and when it deems fit for one or more of the regional constituencies that may be specified by the Central Government under clause (a) of sub-section (2) of section 9 .

(2) The Regional Councils shall be constituted in such manner and exercise such functions as may be prescribed.

CHAPTER 7

PENALTIES

24. Penalty for falsely claiming to be a member, etc :-

Any person, who-

(i) not being a member of the Institute,-

(a) represents that he is a member of the Institute, or

(b) uses the designation Chartered Accountant, or

(ii) being a member of the Institute, but not having a certificate of practice, represent that he is in practice or practises as the chartered accountant, shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months or with fine which may extend to five thousand rupees, or with both.

24A. Penalty for using name of the Council, awarding degrees of chartered accountancy, etc :-

(1) Save as otherwise provided in this Act, no person shall-

(i) use a name or a common seal which is identical with the name or the common seal of the Institute or so nearly resembles it as to deceive or as is likely to deceive the public;

(ii) award any degree, diploma or certificate or bestow any designation which indicates or purports to indicate the position or attainment of any qualification or competence similar to that of a member of the Institute; or

(iii) seek to regulate in any manner whatsoever the profession of chartered accountants.

(2) Any person contravening the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(3)²⁷ [* * *]

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), In section 24A of the principal Act, sub-section (3) shall be omitted , by the Chartered Accountants Act, 1949 (38 of 1949).

25. Companies not to engage In accountancy :-

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

(2) If any company contravenes the provisions of sub-section (1), then, without prejudice to any other proceedings which may be taken against the company, every director, manager, secretary and any other officer thereof who is knowingly a party to such contravention shall be punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent conviction to five thousand rupees.

26. Unqualified persons not to sign documents :-

(1) No person other than a member of the Institute shall sign any document on behalf of a chartered accountant in practice or a firm of such chartered accountants in his or its professional capacity.

28 "(2) Any person who contravenes the provisions of sub-section

(1) shall, without prejudice to any other proceedings, which may be taken against him, be punishable on first conviction with a fine not less than five thousand rupees but which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year or with fine not less than ten thousand rupees but which may extend to two lakh rupees or with both."

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), In section 26 of the principal Act, sub-section (2), shall be substituted, in place of :- "(2) Any person contravening the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable with fine which may extend on first conviction to one thousand rupees and on any subsequent conviction with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both. " by the Chartered Accountants Act, 1949 (38 of 1949).

27. Maintenance of branch offices :-

(1) Where a chartered accountant in practice or a firm of such chartered accountants has more than one office in India, each one of such offices shall be in the separate charge of a member of the Institute : Provided that the Council may in suitable cases exempt any chartered accountant in practice or a firm of such chartered accountants from the operation of this sub-section.

(2) Every chartered accountant in practice or a firm of such chartered accountants maintaining more than one office shall send to the Council a list of offices and the persons in charge thereof and shall keep the Council informed of any changes in relation thereto.

28. Sanction to prosecute :-

No person shall be prosecuted under this Act except on a complaint made by or under the order of the Council or of the Central Government.

CHAPTER 8

MISCELLANEOUS

29. Reciprocity :-

(1) Where any country, specified by the Central Government in this behalf by notification in the Official Gazette, prevents persons of Indian domicile from becoming members of any institution similar to the Institute of Chartered Accountants of India or from practising

the profession of accountancy or subjects them to unfair discrimination in that country, no subject of any such country shall be entitled to become a member of the Institute or practise the profession of accountancy in India.

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

30. Power to make regulations :-

(1) The Council may, by notification in the Gazette of India, make regulations for the purpose of carrying out the objects of this Act,³⁰
[* * *].

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters:-

(a) the standard and conduct of examinations under this Act;

(b) the qualifications for the entry of the name of any person in the Register as a member of the Institute;

(c) the conditions under which any examination or training may be treated as equivalent to the examination and training prescribed for members of the Institute;

(d) the conditions under which any foreign qualification may be recognised;

(e) the manner in which and the conditions subject to which applications for entry in the Register may be made;

(f) the fees payable for membership of the Institute and the annual fees payable by associates and fellows of the Institute in respect of their certificates;

(g) the manner in which elections to the Council and the Regional Councils may be held;

(h) the particulars to be entered in the Register;

(i) the functions of Regional Councils;

(j) the training of articled and audit clerks, the fixation of limits within which premia may be charged from articled clerks and the

cancellation of articles and termination of audit service for misconduct or for any other sufficient cause;

(k) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute;

(l) the carrying out of research in accountancy;

(m) the maintenance of a library and publication of books and periodicals on accountancy;

(n) the management of the property of the Council and the maintenance and audit of its accounts;

(o) the summoning and holding of meetings of the Council, the times and places of such meetings, the conduct of business thereat and the number of members necessary to form a quorum;

(p) the powers, duties and functions of the President and the Vice-President of the Council;

(q) the functions of the Standing and other committees and the conditions subject to which such functions shall be discharged;

(r) the terms of office, and the powers, duties and functions of the Secretary and other officers and servants of the Council;

(s) the exercise of disciplinary powers conferred by this Act; and

(t) any other matter which is required to be or may be prescribed under this Act.

(3) All regulations made by the Council under this Act shall be subject to the condition of previous publication and to the approval of the Central Government.

(4) Notwithstanding anything contained in sub-sections (1) and (2) the Central Government may frame the first regulations for the purposes mentioned in this section, and such regulations shall be deemed to have been made by the Council, and shall remain in force from the date of the coming into force of this Act, until they are amended, altered or revoked by the Council.

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), in section 30 of the principal Act, sub-section (1) the words "and a copy of such regulations shall be sent to each member of the institute" shall be omitted, by the Chartered Accountants Act, 1949 (38 of 1949).

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

(1) Where the Central Government considers it expedient so to do, it may, by order in writing, direct the Council to make any regulations or to amend or revoke any regulations already made within such period as it may specify in this behalf.

(2) If the Council fails or neglects to comply with such order within the specified period, the Central Government may make the regulations or amend or revoke the regulations made by the Council, as the case may be, either in the form specified in the order or with such modifications thereof as the Central Government thinks fit.

30B. Laying of regulations :-

3132 Every rule and every regulation made and every notification issued under this Act shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, regulation or notification, or both Houses agree that the rule, regulation or notification should not be made or issued, the rule, regulation or notification, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, regulation or notification.

Inserted by the Delegated Legislation Provisions (Amendment) Act, 1983, w.e.f. 15-3-1984.

In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), for section 30B shall be substituted, in place of :- "30B."Laying of regulations".- Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation, or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment

shall be without prejudice to the validity of anything previously done under that regulation." by the Chartered Accountants Act, 1949 (38 of 1949).

31. Construction of references :-

Any reference to a chartered accountant or a registered accountant or a certified or qualified auditor in any other law or in any document whatsoever shall be construed as a reference to a chartered accountant in practice within the meaning of this Act.

32. Act not to affect right of accountants to practise as such in Part B States :-

Nothing contained in this Act shall affect the right of any person who, at the commencement of this Act, is entitled to engage himself in the practice of accountancy in any Part B State under any law in force in that State, to continue to engage himself in the practice of accountancy in that State after the commencement of this Act.

SCHEDULE 1

FIRST SCHEDULE

34 In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), for the First Schedule shall be substituted, in place of :- • FIRST SCHEDULE [See Section 21(4) and Section 22] PART I Professional misconduct in relation to chartered accountants in practice. A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he- (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 himself; (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. (3) accepts or agrees to accept any part of the profits of the professional work of a lawyer, auctioneer, broker or other agent who is not a member of the Institute; (4) enters into partnership with any person other than a chartered accountant in practice or a person resident without India who but for his residence abroad would be entitled to be registered as a member under clause (v) of sub-section (1) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnership, provided that the chartered accountant shares in the fees or profits of the business of the partnership both within and without India; (5) secures, either through the services of a person not qualified to be his partner by means which are not open to a chartered accountant, any professional business; (6) solicits clients or professional work either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means; (7) 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 recognised by the Central Government or a title indicating membership of

the Institute of Chartered Accountants or of any other institution that has been recognised by the Central Government or may be recognised by the Council; (8) accepts a position as auditor previously held by another chartered accountant or a restricted State auditor without first communicating with him in writing; (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; (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 in cases which are permitted under any regulations made under this Act; (11) engages in any business or occupation other than the profession of chartered accountant unless permitted by the Council so to engage : Provided that nothing contained herein shall disentitle a chartered accountant from being a director of a company unless he or any of his partners is interested such company as an auditor; (12) accepts a position as auditor previously held by some other chartered accountant or a restricted state auditor in such conditions as to constitute undercutting; (13) allows a person not being a member of the Institute or a member not being his partner to sign on his behalf or on behalf of his firm any balance-sheet, profit and loss account report or financial statements. PART II Professional misconduct in relation to members of the Institute in service. A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he being an employee of any company, firm or person - (a) pays or allows or agrees to pay directly or indirectly to any person any share in the emoluments of the employment undertaken by the member; (b) 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; (c) discloses confidential information acquired in the course of his employment except as and when required by law or except as permitted by the employer. PART III Professional misconduct in relation to members of the Institute generally. A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he- (1) includes in any statement, return or form to be submitted to the Council any particulars knowing them to be false; (2) not being a fellow styles himself as a fellow; (3) does not supply the information called for, or does not comply with the requirements asked for, by the Council or any of its Committees." by the Chartered Accountants Act, 1949 (38 of 1949).

THE FIRST SCHEDULE

[See sections 21(3), 21A(3) and 22]

PART I

PROFESSIONAL MISCONDUCT IN RELATION TO CHARTERED ACCOUNTANTS IN PRACTICE

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he-

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

(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;

(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;

- (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

underclause (iv) of sub-section (1) of section 4 or whose qualifications are recognized by the Central Government or the Council for the purpose of permitting such partnerships;

(5) secures, either through the services of a person who is not an employee of such chartered accountant or who is not his partner or by means which are not open to a chartered accountant, any professional business:

Provided that nothing herein contained shall be

construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this part;

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

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

(i) any chartered accountant from applying or requesting for or inviting or securing professional work from another chartered accountant in practice; or

(ii) a member from responding to tenders or enquiries issued by various users of professional services or organizations from time to time and securing professional work as a consequence;

(7) 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 recognized by the Central Government or may be recognized by the Council:

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

issued by the Council;

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

(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 (1 of 1956) in respect of such appointment have been duly complied with;

(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;

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

Provided that nothing contained herein shall

disentitle a chartered accountant from being a director of a company (not being a managing director or a whole time director) unless he or any of his partners is interested in such company as an auditor;

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

PART II

PROFESSIONAL MISCONDUCT IN

RELATION TO MEMBERS OF THE INSTITUTE IN SERVICE

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

(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;

(2) accepts or agrees to accept any part of fees,

profit 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.

PART III

PROFESSIONAL MISCONDUCT IN RELATION TO MEMBERS

OF THE INSTITUTE GENERALLY

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

(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;

(3) while inviting
professional work from
another chartered
accountant or while
responding to tenders or
enquiries or while
advertising through a
write up, or anything as
provided for in items (6)

and (7) of Part I of this Schedule, gives information knowing it to be false.

PART IV

OTHER MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE GENERALLY

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

other misconduct, if he -

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

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

SCHEDULE 2

SECOND SCHEDULE

35 In the Chartered Accountants Act, 1949 (38 of 1949) (hereinafter referred to as the principal Act), for the Second Schedule shall be substituted, in place of :- • SECOND SCHEDULE [SEE SECTIONS 21(3), 21B(3) AND 22] PART 1 Professional misconduct in relation to chartered accountant in practice requiring action by a High Court. A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he- (1) discloses information acquired in the course of his professional engagement to any person other than his client, without the consent of his client or otherwise than as required by any law for the time being in force; (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; (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; (4) expresses his opinion on financial statements of any business or any enterprise in which he/his firm or a partner in his firm has a substantial interest, unless he discloses the interest also in his report; (5) fails to disclose a material fact known to him which is riot disclosed in a financial statement, but disclosure of which is necessary to make the financial statement not misleading; (6) fails to report a material mis-statement known to him to appear in a financial statement with which he is concerned in a professional capacity; (7) is grossly negligent in the conduct of his professional duties; (8) fails to obtain sufficient information to warrant the expression of an opinion or his exceptions are sufficiently material to negate the. expression of an opinion; (9) fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances; (10) fails to keep moneys of his client in a separate banking account or to use such moneys for purposes for which they are intended. PART 2 Professional misconduct in relation to members of the Institute generally requiring action by a High Court. A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he- (i) contravenes any of the provisions of this Act or the regulations made thereunder; (ii) is guilty of such other act or omission as may be specified by the Council in this behalf, by notification in

**THE SECOND
SCHEDULE
[SEE SECTIONS
21(3), 21B(3) AND 22]**

PART I

**PROFESSIONAL
MISCONDUCT IN
RELATION TO
CHARTERED
ACCOUNTANTS IN
PRACTICE**

A chartered accountant

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

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

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

(3) permits his name or the name of his firm to

be used in connection with an estimate of chartered or earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

(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;

(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 financial statement in a professional capacity;

(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;

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

(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;

(9) fails to invite attention to any material departure from the generally accepted procedure of chartering and pricing applicable to the circumstances;

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

PART II

PROFESSIONAL MISCONDUCT IN RELATION TO MEMBERS OF THE INSTITUTE GENERALLY

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

(1) contravenes any of the provisions of this Act or the regulations made

thereunder or any guidelines 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;

(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

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."