

**Guidance Note on  
Code of Conduct  
for  
Company Secretaries**



**THE INSTITUTE OF  
Company Secretaries of India**  
**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
Statutory body under an Act of Parliament

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## PREFACE TO THE FOURTH EDITION

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Code of Conduct is a set of Principles outlining the responsibilities of, or proper practices with values for, an individual, party or organization.

*“People forget how fast you did a job – but they remember how well you did it”*  
*-Howard Newton*

Professional ethics concerns one's conduct of behavior and practice when carrying out professional work. Ethics arises from three main factors:

- Moral attitudes as a result of consciousness;
- Culture as a result of education; and
- Application of standards as results of learning and training.

Ethics amounts to fundamental moral attitudes, binding values and irrevocable standards. “Ethics is relevant and useful to all individuals in a civil society but its importance and significance is much more for a professional because he is expected to play a more meaningful and useful role for the benefit of the society in discharging his social responsibility and accountability at a higher level as compared to other sections of the society”. Observance of high standards of conduct is an important characteristic of any profession in order that it can create the trust, confidence and respect of the public.

Being at a key position, advice of a Company Secretary has an impact on all the stakeholders i.e. investors, employees, customers, suppliers, lenders, government and society.

The metamorphosis that the Practising side of the profession went through during the past decade has brought with it numerous opportunities and attendant challenges. In addition, the Companies Act, 2013 inter alia provides ample opportunities for growth of the profession of the Company Secretaries. New competitive business environment provides huge opportunities for the profession of Company Secretaries vis-à-vis huge responsibilities and accountability. This necessitated to further revision of the Guidance Note on Code of Conduct for Company Secretaries.

I take this opportunity to express my sincere thanks to CS Ashish Garg, Chairman and the members of Practising Company Secretaries Committee of the Council for their guidance and offering valuable suggestions in the revision of this Guidance Note on Code of Conduct.

I wish to place on record my sincere appreciation to Shri Ritesh Kumar, Deputy Director in the Institute for incorporating various suggestions and inputs under the able guidance of CS Ashok Kumar Dixit, Joint Secretary and CS Sonia Baijal, Director and overall supervision of CS Dinesh Chandra Arora, Secretary of the Institute for accomplishing the task within a short time.

I am confident that this revised Guidance Note would be of immense value to the members of our profession and other readers.

Place : New Delhi

**CS Mamta Binani**

Date : 03 August, 2016

*President*

**The Institute of Company Secretaries of India**

## **PREFACE TO THE THIRD EDITION**

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Professional Codes of Conduct are one of the most important characteristics of a profession. Such Codes of Conduct illustrate the high ethical and professional standards to reassure various stakeholders of two conditions, namely, that any particular set of professional services is being rendered not only by (i) properly qualified or technically expert persons but also (ii) by persons whose professional standards merit the high degrees of trustworthiness, typically required of professionals.

It was in 1989 that the first edition of the Guidance Note on Code of Conduct for Company Secretaries was published by the Institute which was revised in 2003 in the light of the transformation that had taken place in the practising side of the profession. The metamorphosis that the practising side of the profession went through during the past few years brought with it numerous opportunities and attendant challenges. In addition, the Company Secretaries Act, 1980 was amended in the year 2006, ushering in a new era of speedy disposal of cases relating to professional misconduct. This necessitated the Council of the Institute to further revise the Guidance Note on Code of Conduct for Company Secretaries to bring it in conformity with the governing legislation.

It was in this backdrop that the Council of the Institute invited CS Mahesh A Athavale, Past President of the Institute to guide the then Practising Company Secretaries Committee of the Council and the successive committees thereafter in accomplishing the mammoth task of revising the Guidance Note.

I deem it my duty to place on record my sincere thanks to CS Mahesh Anant Athavale, Past President of the Institute, my colleagues on the Council, members of the Practising Company Secretaries Committees of the Council of the Institute for their untiring efforts in revising this Guidance Note on Code of Conduct.

I wish to place on record my sincere thanks and gratitude to CS Nesar Ahmad, my colleague on the Council and Vice President of the Institute for finalizing this revised Guidance Note, as authorized by the Council.

I am thankful to CS N K Jain, Secretary & CEO under whose dynamic leadership the revision of this Guidance Note has been accomplished.

I also wish to place on record my sincere appreciation for CS Saurabh Jain, Assistant Director for incorporating various suggestions as advised by the Council and the Practising Company Secretaries Committee, under the able guidance of CS Sutanu Sinha, Director (Academics) of the Institute. I also place on record my sincere appreciation for CS S Kumar, former Principal Director of the Institute for his valuable contribution in the finalization of this Guidance Note.

I am confident that this revised Guidance Note would be of immense value to the members of our profession and other readers. I look forward to views / suggestions from the members / readers for further improving the contents of this publication.

*Place* : New Delhi

**CS Anil Murarka**

*Date* : October 3, 2011

*President*

**The Institute of Company Secretaries of India**

## **PREFACE TO THE SECOND EDITION**

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Since 1989 when the first edition of the Guidance Note on Code of Conduct for Company Secretaries was published, the profession of Company Secretaries in general and practicing side in particular, has undergone metamorphosis. The Government and regulatory authorities continuously reposing greater trust and confidence have provided various opportunities to Practising Company Secretaries. Consequently, more and more members are taking up practice.

A distinguishing characteristic of a profession is the ability to combine ethical standards with the performance of technical skills. The professionals being exclusive custodian of expertise, need to profess high ethical and moral values, and to redeem their noble traditions. There is therefore, a need for introspection and a dynamic movement is desired to promote a value revolution with deeper conviction and creative consciousness, leading us to be good professional citizens. Let the collective wisdom prevail to inculcate highest standards of professional ethics, and moral values and adherence to code of conduct of the Institute in its true letter and spirit.

In view of these developments, a need was felt to revise the guidance note, to make it a self-contained document on Code of Conduct providing updated information to the members. The revised edition of the Guidance Note on Code of Conduct for Company Secretaries as finalised by the Practising Company Secretaries Committee (PCSC) of the Council after extensive deliberations has been approved by the Council of the Institute for publication.

The revised edition apart from containing updated information also incorporates a 'Gist of Disciplinary Proceedings Against Members'. I am confident that the revised Guidance Note will be very useful to the members.

I place on record my sincere thanks to Shri V Sreedharan, Chairman and S/Shri Mahesh A Athavale, H I Bhatt, H M Choraria, G Gehani and R Ravi, Members of the Practising Company Secretaries Committee for their unstinted efforts in revising the publication.

I wish to place on record my sincere thanks and gratitude to Shri Keyoor M Bakshi, Vice President of the Institute for finalizing this revised Guidance Note, as authorized by the Council.

I also wish to place on record my sincere appreciation for Shri Purushottam Grover, Education Officer for incorporating various decisions of the PCSC and

Council and seeing the manuscript through the press, under the able guidance of Shri V K Aggarwal, Senior Director of the Institute.

Suggestions/views to improve the contents of this edition are earnestly solicited.

*Place* : New Delhi  
*Date* : September 1, 2003

**(Pavan Kumar Vijay)**  
*President*

**The Institute of Company Secretaries of India**



## **PREFACE TO THE FIRST EDITION**

Observance of high standards of conduct is an important characteristic of any profession, in order that it can beget the trust, confidence and respect of the public. The rigorous preparatory education and valuable practical training acquired by a member of a profession should enable him to pursue righteous and edifying conduct in the practise of the profession. The oldest among the professions, namely, Medicine and Law have set up noble traditions to emulate.

The enactment of Section 383A of the Companies Act, which came into force from 1st February, 1975 recognised Company Secretary as an important professional in the efficient management of corporate sector. With a view to laying down right type of conduct expected of a professional manager and to create necessary awareness among members, the Institute organised a National Convention in February 1976. After the conclusion of the Convention, the Institute appointed a Committee to formulate a model code of conduct. The model code, evolved by the Committee and accepted by the Council contained rules applicable to members in service or practice, as well as rules applicable to all members generally.

The code of conduct became statutory with the conversion of the Institute into a statutory body under the Company Secretaries Act, 1980 with effect from 1st January 1981. The First and Second Schedules to the Act encompassing various instances of professional misconduct adopt to a great measure, the code evolved by the Institute in 1977.

With the statutory recognition to a Company Secretary in practice under section 2(45A) of the Companies Act, 1956, an exclusive area of practice by members for certifying annual returns of listed companies and further, keeping in view the other growing areas of practice, the Council of the Institute decided to bring out a concise guidance note explaining the rules relating to professional misconduct under the Company Secretaries Act, 1980.

The 17th National Convention of the Institute held in Bangalore in March 1989 provided an ideal occasion to deliberate on the code of conduct in the Third Technical Session as an aspect of 'Search for excellence' in the profession. The background paper on code of conduct prepared by Shri R. Krishnan, Joint Director of Research, circulated among the delegates at this Convention made an attempt at giving brief explanations to the various rules of misconduct. The background paper incorporated the suggestions and comments of Shri T.V. Narayanaswamy formerly Secretary, DCM Ltd., New Delhi and Shri T.P. Subbaraman, Secretary & Executive Director of the Institute. The Professional Development Committee of the Council appointed a special sub-committee to finalise the draft guidance note prepared in the Directorate of Research of the Institute, based on the background paper circulated at the 17th National Convention. The sub-committee deliberated upon the draft in its four long meetings and submitted its final draft for approval by the Council.

I am very grateful to S/Sh. S.D. Israni, Bipin S. Acharya, T.V. Padmanabhan & O.P. Dani, members of the sub-committee of which I was the Chairman, for

their valuable contribution in finalising the guidance note. I am also highly thankful to Shri T.P. Subbaraman, Secretary & Executive Director for giving his views in the finalization of the draft. The views and suggestions put forward by Shri P.T. Rangamani and Shri D.K. Prahlada Rao on certain vital aspects of the draft deserve special mention. I wish to record my appreciation to Shri R. Krishnan, Joint Director of Research for the support and help extended by him in revising the draft incorporating the suggestions made by the sub-committee.

The guidance note is only illustrative and not exhaustive. It is for the members to adopt righteous path and uphold good traditions in the practice of the profession. I can only quote Marcus Aureliu who said, "The man should be upright and not kept upright".

I am sure the guidance note would help the members in understanding the spirit behind the rules relating to professional misconduct under the Company Secretaries Act, 1980.

I would value your views and suggestions for improving the content of this guidance note

*Place* : New Delhi

*Date* : 28/12/89

**(Shyamal Sen)**

*President*

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# **GUIDANCE NOTE ON CODE OF CONDUCT FOR COMPANY SECRETARIES**

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## **1. Background**

- 1.1 Principles of ethics and morality embedded in the legal framework makes a code of conduct for a professional. One of the major reasons why we need laws is that most of us are not self disciplined. Without external deterrence, barring few respectable exceptions, people tend to become selfish and violate pious principles or “DHARMA” One of the distinguishing features of profession over business is that for a professional , there exists a central controlling institute which guides the behavior of its members and puts him in four walls of ethical practices. One of the universally accepted characteristics of a profession is the observance of a strict code of conduct by the members of the profession. Not that businessmen are not guided by the code of conduct (‘Dharma’ ) but such code is stricter for professional with a legal sanction. A professional is endowed with higher faculties conditioned by an elaborate preparatory education, rigorous instruction and valuable practical training, as to distinguish, above all, righteous act/conduct from those deviant and unedifying.
- 1.2 Professionals are expected to conduct themselves in such a manner so as to uphold the grace, dignity and professional standing of their respective Institutes. Any commitment to complete a particular assignment as agreed by the person himself should be completed in a professional manner.
- 1.3 The purpose of the guidance note on the Code of Conduct is to explain to the members of ICSI , the various aspects of the code of conduct, caution them against the wrongdoing and promote ethical conduct. The matters covered in this Code are of utmost importance to all the members of ICSI. The note is designed to assist in defining appropriate personal and professional conduct, to provide guidance in the identification and resolution of ethical issues, and to help the members of the Institute to maintain the culture of honesty, integrity, transparency and accountability. Since no code or policy can anticipate every situation that may arise, this guidance note on the Code is intended to provide guidance for ensuring proper behaviour of each Member so as to ensure highest standards of work culture. Member must comply with the letter and spirit of this Code.

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### Guidance Note on Code of Conduct for Company Secretaries

- 1.4 Indian traditions teach us to respect others, earn trust and confidence of the public and discharge at least three major debts. These debts are towards their ancestors, parents and society as a whole. A professional renders personal confidential services to his client and the latter's affairs come into full knowledge of the professional when his services are engaged by a client. That society would, therefore, expect a professional to be a person of character and integrity. The society at large is given this assurance through the code of conduct evolved and effectively administered by the professional body concerned, of which the professional is a member. Code of conduct which also goes by the synonym 'Professional ethics' encompasses professional's conduct towards his peers, the clients, the employer and the people at large.
- 1.5 World over, the professions have accorded highest priority to professional ethical standards in the dealings and relationship of professionals with their employers, employees, Government, fellow professionals and the public at large. The fundamental principles which should govern the conduct of a professional with others have been broadly identified as to encompass;
  - Integrity;
  - Independence;
  - Competence;
  - Objectivity;
  - Ethical behaviour;
  - Conformance to the prescribed technical standards and
  - Confidentiality of information acquired in the course of professional work.
- 1.6 The history of human civilization bears ample testimony to the reverence and honour with which society looks upon persons who subjugate their personal gain to public good. Professionals, with their rigorous education and training belong to a class of people who have to uphold public good and serve wider public interest.
- 1.7 The societal expectations or norms are referred to as 'values' which are nothing but generalised beliefs or expected standards of conduct. The study of what values a society ought to have is the subject of a branch of philosophy known as ethics. A code of professional conduct is also referred to as code of professional ethics. Accordingly, the ethics of a Company Secretary would signify his conduct and behaviour.
- 1.8 The enactment of section 383A of the Companies Act, which came into force from 1st February, 1975, recognised statutorily a Company Secretary as an essential limb of top corporate management. This

section was amended by the Companies (Amendment) Act, 2000 to provide that every company not required to employ a whole-time secretary under sub-section (1) and having a paid-up share capital of Rs. ten lakh or more upto Rs.5 crore shall file with the Registrar a certificate from a Secretary in whole-time practice as to whether the company has complied with all the provisions of the Act and a copy of such certificate shall be attached with report of the Board of Directors, referred to in section 217 of the Companies Act, 1956. Before that the Companies (Amendment) Act, 1988 introduced a provision that the Annual Return filed by a company whose shares are listed on a recognised stock Exchange should be signed by a Secretary in whole-time practice. These two are the exclusive recognitions under the Companies Act, so far, granted to a Company Secretary in Practice.

- 1.8.1 Section 204 (1) of the Companies Act, 2013 provides that every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (3) of section 134, a Secretarial Audit Report, given by a Company Secretary in Practice, in such form as may be prescribed.
- 1.8.2 Section 92 of the Companies Act 2013, inter-alia provides for signing of annual return by a Company Secretary or a Company Secretary in Practice.
- 1.9 In order to evoke the necessary interest and awareness among the members and to create the necessary climate for laying down the right type of conduct which should govern the profession, the Institute organised in February 1976, a National Convention, primarily to evolve the necessary framework for a code of conduct. After the conclusion of that Convention, the Council of the Institute appointed a Code of Conduct Committee with the task of formulating a model code of conduct. The Council of the Institute accepted the recommendations of the Code of Conduct Committee which inter alia prescribed:
  - (a) rules applicable to all members; and
  - (b) rules applicable to members in service or in practice.
- 1.10 In formulating the code of conduct, the Committee and the Council adopted a certain normative approach or value judgment. The codes evolved were rooted in the principles of Dharma stating positively what the profession stands for, what it expects from the members and what it cherishes as valued ideals of the society. The code also negatively laid down what constitutes a breach of the code in any given situation and the penal consequences for any violation or misconduct.
- 1.11 The code of conduct acquired statutory status with the conversion

of the Institute into a statutory body under the Company Secretaries Act, 1980 (hereinafter referred to as 'The Act'), with effect from 1st January, 1981. In the year 2006 substantial amendments were made to Act and also to the First and the Second Schedules to the Act which encompass in detail, various instances of professional misconduct on the part of the members of the Institute in practice as well as in service.

- 1.12 The statutory recognition to a secretary in whole-time practice given in section 2(45A) of the Companies Act, 1956, effective from 15th June, 1988, recognition in e governance era of Ministry of Corporate Affairs for certifying e forms to be uploaded on MCA portal after 2006 and the exclusive recognition conferred on Company Secretaries in whole-time practice to certify annual returns of listed companies and for issuing compliance certificate u/s 383A of the Act, have been responsible in a great measure, for the Council of the Institute in deciding to bring the guidance note. With more and more recognitions likely to be conferred on the Practicing side of the profession and more and more members taking up whole-time practice, the Council of the Institute thought it appropriate to apprise the members, of the different facets of the code of conduct enshrined in the Act. Also in view of the development of the profession and in particular, the enactment of the Act, the Council felt it necessary to focus the attention of the members in general and those in practice in particular, to the various provisions of the code of conduct to enable them to uphold the professional values.
- 1.12.1 Section 2(24) of the Companies Act, 2013 provides that 'Company Secretary' or 'Secretary' means a Company Secretary as defined in clause (c) of sub section (1) of Section 2 of the Company Secretaries Act 1980 who is appointed by a company to perform the functions of the Company Secretary under the Companies Act, 2013.
- 1.12.2 Section 2(25) of the Companies Act, 2013 provides that 'Company Secretary in Practice' means a Company Secretary who is deemed to be in Practice under sub Section (2) of Section 2 of the Company Secretaries Act 1980.
- 1.13 The law in respect of matters of Misconduct has been provided in Chapter V of the Act. A glance at these substantive provisions would help understand the subject with precision.
- 1.14 As contemplated by section 21(1), the Council has by notification, established a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and other employees for making investigations in respect of any information or complaint received by it. Section 21 (2) states that 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.



- 1.15 Where the Director (Discipline) is of the prima facie opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he places the matter before the Board of Discipline and where the Director (Discipline) is of the prima facie opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he places the matter before the Disciplinary Committee. Disciplinary Directorate follows procedures as are prescribed by the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. (hereinafter referred to as 'the Rules')
- 1.16 The amended provisions, of 2006, permit a complainant to withdraw the complaint, at any stage, including before or after registration of complaint.
- 1.17 The Council has constituted a Board of Discipline pursuant to Section 21A of the Company Secretaries Act according to which the Board of Discipline follows summary disposal procedure in dealing with all the cases before it. Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it gives the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—
- (a) reprimand the member;
  - (b) remove the name of the member from the Register up to a period of three months;
  - (c) impose such fine as it may think fit which may extend to Rs. one lakh.
- 1.18 Where the Director (Discipline) is of the opinion that there is no prima facie case, he submits before the Board of Discipline all information and the relevant complaint and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.
- 1.19 The Disciplinary Committee, while considering the cases placed before it, follows procedure as have been prescribed by the Rules. Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it gives to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—
- (a) Reprimand the member;
  - (b) Remove the name of the member from the Register permanently or for such period, as it thinks fit;

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- (c) impose such fine as it may think fit, which may extend to Rs. Five lakh.
- 1.20 As contemplated by section 21C, the Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) have powers of civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—
- (a) summoning and enforcing the attendance of any person and examining him on oath;
  - (b) the discovery and production of any document; and
  - (c) receiving evidence on affidavit.
- 1.21 For the purposes of sections 21, 21A, 21B, 21C and 22, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he might have ceased to be a member of the Institute at the time of the inquiry.
- 1.22 As per section 22 the expression “professional or other misconduct” includes any act or omission provided in any of the Schedules.
- 1.23 On making a reference by the Council, the Director (Discipline) under sub-section (1) of section 21 has to inquire into the conduct of any member of the Institute under any other circumstances whether such circumstances fall in either of the schedules or not.
- 1.24 As contemplated by section 22A the Appellate Authority constituted under sub-section (1) of section 22A of the Chartered Accountants Act, 1949, is deemed to be the Appellate Authority for the purposes of Company Secretaries Act with a modification about its composition.
- 1.25 The provisions of section 22C, section 22D and section 22F of the Chartered Accountants Act, 1949, apply to the Appellate Authority in relation to allowances and terms and conditions of service of its Chairperson and members, and in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Chartered Accountants Act, 1949.
- 1.26 As contemplated by section 22E any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Appellate Authority.
- 1.27 The Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Appellate Authority if so authorised by the Council, within ninety days.
- 1.28 The Appellate Authority can entertain any such appeal after the

expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

1.29 The Appellate Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (3) of section 21A and sub-section (3) of section 21B and may —

- (a) confirm, modify or set aside the order;
- (b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
- (c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Appellate Authority considers proper in the circumstances of the case; or
- (d) pass such other order as the Authority thinks fit:

Appellate Authority gives an opportunity of being heard to the parties concerned before passing any order.

1.30 The following paragraphs explain in detail the implications of the code of conduct. Explanations in these paragraphs are illustrative and not exhaustive.

## **2. Certain Provisions Relating to Misconduct under the Company Secretaries Act, 1980 as amended**

2.1 Under section 9 of the Act, the Council of the Institute is the Competant Authority for the management of the affairs of the Institute and discharging the functions assigned to it by or under the Act. The Council, inter alia, has authority to exercise disciplinary powers by instituting inquiry through Director (Discipline) into cases where it is *prima facie* of the opinion that a member is guilty of professional or other misconduct.

2.2 Professional misconduct in relation to members of the Institute is broadly structured as under:

- (a) Professional misconduct in relation to Company Secretaries in Practice. (Part I of the First Schedule)
- (b) Professional misconduct in relation to members of the Institute in service. (Part II of the First Schedule)
- (c) Professional misconduct in relation to members of the Institute generally. (Part III of the First Schedule)
- (d) Other misconduct in relation to members of the Institute generally (Part IV of the First Schedule)
- (e) Professional misconduct in relation to Company Secretaries in practice requiring action by disciplinary committee (Part I of the Second Schedule)

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- (f) Professional misconduct in relation to members of the Institute generally, requiring action by disciplinary committee (Part II of the Second Schedule).
- (g) Other misconduct in relation to members of the Institute generally (Part III of the Second Schedule)

The detailed provisions relating to misconduct and disciplinary mechanism are contained in Sections 21, 21A, 21B, 21C, 21D & 22 and the First and the Second Schedules to the Act and the Rules.

- 2.2.1 Every member of the Institute in Practice shall, and any other member may, use the designation of a 'Company Secretary' (section 7). A member of the Institute may be in practice or otherwise occupied, say, in employment or other vocation.
- 2.2.2 Under section 6 of the Act, a member of the Institute is entitled to practice on obtaining from the Council of the Institute, a Certificate of Practice pursuant to an application made in the prescribed form and upon remittance of the prescribed fee.

### **2.3 Members deemed to be in practice**

- 2.3.1 Section 2(2) of the Company Secretaries Act provides that a member of the Institute shall be deemed to be in practice, if he does any of the following:
  - (a) engages himself in the practice of the profession of Company Secretaries to, or in relation to, any company; or
  - (b) offers to perform or performs services in relation to the promotion, forming, incorporation, amalgamation, reconstruction, reorganisation or winding up, of companies; or
  - (c) offers to perform or performs such services as may be performed by:
    - (i) an authorised representative of a company with respect to filing, registering, presenting, attesting or verifying any documents (including forms, applications and returns) by or on behalf of the company,
    - (ii) a share transfer agent,
    - (iii) an issue house,
    - (iv) a share and stock broker,
    - (v) a secretarial auditor or consultant,
    - (vi) an adviser to a company on management, including any legal or procedural matter falling under the Capital Issues (Control) Act, 1947 (29 of 1947), the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Companies Act, 1956 (1 of 1956), the Securities

Contracts (Regulation) Act, 1956 (42 of 1956), any of the rules or bye-laws made by a recognised stock exchange, the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), the Foreign Exchange Regulation Act, 1973 (46 of 1973), or under any other law for the time being in force,

- (vii) Issuing certificates on behalf of, or for the purposes of, a company; or
  - (d) holds himself out to the public as a Company Secretary in practice; or
  - (e) renders professional services or assistance with respect to matters of principle or detail relating to the practice of the profession of Company Secretaries; or
  - (f) renders such other services as, in the opinion of the Council, are or may be rendered by a Company Secretary in practice.
- 2.3.2 Any member of the Institute engaging in any of the above activities without obtaining a Certificate of Practice would be deemed to be in practice and would be liable for professional misconduct. This section also contemplates a member of the Institute engaging in the above activities in partnership with members of such other professions as may be prescribed.
- 2.3.3 In terms of the above stated section 2(2), the Council has decided to allow a Company Secretary in Practice who becomes a partner of a firm of company secretaries to continue to practice individually also, if there is an agreement to such continuation between the partners.

Likewise, a Company Secretary in Practice may be permitted to become a partner in more than one partnership firms of company secretaries if he has obtained consent from the other partners of each of such firms.

In terms of the decision of the Council published in the December 2007 issue of the Chartered Secretary, a member of the Institute in practice who is entitled to sign an Annual Return pursuant to proviso to sub-section (1) of Section 161 of the Companies Act, 1956, and issue compliance certificates pursuant to section 383A can sign Annual Returns and issue compliance certificates not exceeding, both put together, eighty in number in a calendar year. In the case of a firm of Company Secretaries, the ceiling of eighty Annual Returns and Compliance certificates (counted together) applies to each partner therein who is entitled to sign the Annual Return in terms of the proviso to sub-section (1) of Section 161 of the Companies Act, 1956 and issue compliance certificate in terms of section 383A of the Companies Act, 1956. In view of the above, where any partner of a firm of company secretaries is also a partner of any other firm or

firms of company secretaries or is also holding office in his individual capacity as Company Secretary in practice, the number of Annual Returns and Compliance certificates he can sign, shall not exceed the specified number of eighty, in aggregate, in a calendar year.

- 2.3.4 On the question of whether Investment Consultancy falls within the scope of practice under section 2(2) of the Company Secretaries Act, 1980, the Committee for Company Secretaries in Practice of the Council stated that In order to come within the purview of section 2(2) of the Company Secretaries Act, 1980 and the Company Secretaries Regulations 1982, the scope of the Investment Consultancy should be confined to rendering of professional advice/ services to the clients in areas relating to stocks and shares, fixed deposits in companies, inter corporate loans, mutual funds, savings scheme and the like. It should not extend to acting as a broker or agent of various companies, institutions, mutual funds etc. as this would amount to engaging oneself in the business or profession other than the profession of Company Secretary.

**2.4 Council powers to expand the scope of services that can be rendered by a member in practice**

- 2.4.1 In terms of clause (f) of section 2(2) of the Act, the Council has power to specify any other services that can be rendered by a member.

**2.5 Company Secretary in Practice to use the designation of 'Company Secretary' only**

- 2.5.1 Under section 7 of the Act, a member in practice shall use the designation of a Company Secretary and shall not use any other designation, whether in addition thereto or in substitution there for. However, use of the prefix 'Practicing' before the designation 'Company Secretary' would not offend section 7. Similarly, use of the suffix 'in whole-time practice' or 'in practice' after the designation 'Company Secretary' would also not offend section 7. Further, use of any description or letters to indicate membership of any other Institute in India or elsewhere is permissible, if recognised by the Council. Any other academic qualification possessed by a member in practice is also not prohibited to be used - say M.Com., M.Sc., M.A., M.B.A., A.C.A., F.C.A, ACWA, FCWA, LL.B. The Council has recognised membership of the Institute of Chartered Accountants of India and Institute of Cost & Works Accountants of India and Bar Councils for the purpose of allowing members of the Institute to use the relevant statutory descriptions of such bodies, provided members are not holding certificate of practice of the Institute or using the description "Company Secretary".
- 2.5.2 Use of designations like Company Law Consultant, Corporate Law Advisor, Corporate Advisor, Investment Advisor, Management Consultant, Corporate Counselor, Attorney, and Certified Public

Secretary is prohibited. A PCS can not describe himself as 'Company Secretary & Chartered Secretary' or 'Company Secretary and Excise law consultant' or 'Company Secretary and Trade mark agent'

- 2.5.3 Pursuant to Section 7 of the Act, the Council while deciding as regard to the use of description of MICA (Member of Indian Council of Arbitration) that only those descriptions/qualifications be allowed to be indicated by the company secretaries in practice where the members have passed certain academic/professional examinations for acquisition of such descriptions/qualifications and therefore for using the description MICA no academic/professional examinations are required to be passed, disallowed the use of description MICA.

## 2.6 **Disabilities for purposes of membership**

- 2.6.1 A member has to discharge onerous professional responsibilities, which call for highest professional standards and values. He should profess ethics and should first himself get convinced that ethics and morality are the foundations of the success. Hence, section 8 of the Act debars a person from having his name entered in or borne on the register of members, if he —
- (a) 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
  - (b) is of unsound mind and stands so adjudged by a competent court; or
  - (c) is an un-discharged insolvent; or
  - (d) 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
  - (e) has been convicted by a competent court, whether within or without India, of an offence involving moral turpitude and punishable with 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
  - (f) has been removed from membership of the Institute on being found on inquiry to have been guilty of professional or other misconduct and the period for which name has been removed has yet to expire.

The name of the person who is found to have been subject at any time to any of the disabilities aforementioned can be removed from the Register of Members by the Council [sub-section (2) of section 20].

**2.7 Procedure in enquiries relating to misconduct of members of the Institute**

- 2.7.1 Section 21, 21A, 21B, 21C, 21D, 22, 22A, 22B, 22C, 22D & 22E of the Act and the Rules lay down the procedure to be followed in an enquiry. It is essential to know that for the purposes of disciplinary proceedings, 'member of the Institute' includes a person who was a member of the Institute on the date of alleged misconduct although he has ceased to be a member at the time of the enquiry.

**2.8 Definition of Professional Misconduct or other Misconduct**

- 2.8.1 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.]

**2.9 "Other Misconduct" - meaning of**

- 2.9.1 The Supreme Court in Council of the Institute of Chartered Accountants of India and Another v. B. Mukherjee [1957 AIR 72 1958 SCR 371], after examining the nature, scope and extent of the disciplinary jurisdiction under the provisions of the Chartered Accountants Act, 1949 (which contains provisions analogous to those in the Company Secretaries Act, 1980), observed as follows:-

"We therefore, take the view that, if a member of the Institute is found, prima facie, guilty of conduct, which, in the opinion of the Council renders him unfit to be a member of the Institute, even though such conduct may not attract any of the provision of the Schedules, it would still be open to the Council to hold an enquiry against the member in respect of such conduct and a finding against him, in such an enquiry, would justify appropriate action being taken by the High Court."

- 2.9.2 The following can be cited as illustrative examples of "other misconduct":

- (i) where a Company Secretary retains the records, books of account and documents of the client and fails to return to the client on request without a reasonable cause;
- (ii) where a Company Secretary makes a material misrepresentation;
- (iii) where a Company Secretary uses the services of his apprentice(s) for purposes other than professional practice;
- (iv) conviction by a competent court of law;
- (v) wrong publicity causing damage to the clients;



- (vi) where in the opinion of the Council member brings disrepute to the profession or the Institute as a result of his action whether or not related to his profession; and
- (vii) member is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months.

2.9.3 The question what constitutes misconduct also came up for consideration before the Hon'ble Supreme Court of India in the case of *N. G. Dastane v. Shrikant S. Shivade & Anr.* [AIR (2001) SC 2028]. This case was in the context of sub-section (1) of section 35 of the Advocates Act, 1961. The said provision is extracted herein below:-

"Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any Advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee."

The Hon'ble Supreme Court of India observed in Paras 16 and 17 of the judgment as under:-

"The collocation of the words "guilty of professional or other misconduct" has been used for the purpose of conferring power on the Disciplinary Committee of the State Bar Council. It is for equipping the Bar Council with the binocular as well as whip to be on the qui vive for tracing out delinquent Advocates who transgress the norms or standards expected of them in the discharge of their professional duties. The central function of the legal profession is to help promotion of administration of justice. Any misdemeanour or misdeed or misbehaviour can become an act of delinquency, if it infringes such norms or standards and it can be regarded as misconduct.

In Black's Law Dictionary "misconduct" is defined as a "transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness."

In the aforesaid case, the Hon'ble Supreme Court quoted with approval the following passage from the observations of Privy Council in *George Frier Grahame v. Attorney General* [AIR 1936, PC, 224].

"Misconduct envisaged in Section 35 of the Advocates Act is not defined. The section uses the expression "misconduct, professional or otherwise." The word "misconduct" is relative term. It has to be considered to the subject-matter and the context wherein such term occurs. It literally means wrong conduct or improper conduct."

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**2.10 Penalty for falsely claiming to be a member, etc.**

Section 24 of the Act provides that any person, who

- (a) not being a member of the Institute—
  - (i) represents that he is a member of the Institute; or
  - (ii) uses the designation “Company Secretary; or
  - (iii) uses the letters “A.C.S.” or “F.C.S.” after his name; or
- (b) being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practices as a Company Secretary

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.

**3. Consequences of misconduct and appeals**

- 3.1 Section 22 of the Act states that 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 enquire into the conduct of any member of the Institute under any other circumstances.
- 3.2 Where a member is found guilty of misconduct, both the Board of Discipline and the Disciplinary Committee have the powers, after giving an opportunity of being heard, to award the punishment as stated earlier.
- 3.3 The Act contains provisions for appeals by a member aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing penalties for professional misconduct. Section 22E of the Act provides that a member aggrieved by any order of the Board of Discipline or the Disciplinary Committee, may prefer an appeal to the Appellate Authority constituted under the provisions of section 22A of the Act, within ninety days from the date on which the order is communicated to him.

**4. Professional misconduct in relation to Company Secretaries in Practice (Part I of the First Schedule to the Act)**

- 4.1 Part I of the First Schedule to the Act deals with professional misconduct in relation to Company Secretaries in practice. It contains eleven clauses in all. The implications of various clauses in Part I are briefly explained herein below.

#### 4.2 Clause (1)

4.2.1 Clause (1) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —

“allows any person to practice in his name as a Company Secretary unless such person is also a Company Secretary in Practice and is in partnership with or employed by him.”

4.2.2 This rule is intended to ensure that the professional work is done by a qualified professional so as to protect the client's/public interest. The rule permits another person to practice in the name of a Company Secretary in Practice provided such other person is also a Company Secretary in Practice and is in partnership with or is employed by the Company Secretary in Practice in whose name the work is to be carried out.

4.2.3 This clause read with clause 11 of Part I of the First scheduled does not permit PCS to allow any person to practice in his name as a Company Secretary or to allow any person to sign as PCS, unless such person is also a Company Secretary in Practice or is in partnership with or employed by him;

4.2.4 On a question as to how CA / CWA can become partner(s) of PCS, council has opined that though for the time being CA/CWA etc. cannot become partners of a PCS but after the amendments to the relevant provisions, person(s) who are non members, may become partners of PCS and may be allowed to provide non-attestation services.

4.2.5 Two persons are said to be in Partnership when they work together on mutual faith and agency. Sharing of remuneration does not make them partners. Thus an associate who is not a part of decision making process does not become a partner. Following tests if fulfilled cumulatively may make two persons partners of each other.

- i. Sharing of profits and or losses.
- ii. Taking decisions together.
- iii. Sharing the responsibilities of such decision making.
- iv. Acting on behalf of each other and binding other person with one own acts of commission or omission.

4.2.6 Sharing of common infrastructure at same or different geographical location are not relevant at all to decide the relationship.

#### 4.3 Clause (2)

4.3.1 Clause (2) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —

“pays or allows or agrees to pay or allow, directly or indirectly, any

share, commission or brokerage in the fees or profits of his professional business to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner or a member of any other professional body or with such other persons having such 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 Company Secretary in Practice has entered into partnership which is not in contravention of item (4) of this part."

- 4.3.2 This clause does not prohibit a Company Secretary in Practice from sharing fees, commission or brokerage in the fees or profits of his professional business, with any other member of the Institute or a partner or a retired partner or the legal representative of a deceased partner. Such sharing of fees, commission or brokerage in the fees or profits of professional business is also permissible with members of such professional bodies or with such other persons having such qualifications as may be prescribed from time to time. This provision is made primarily to encourage multi-disciplinary partnership
- 4.3.3 In terms of clause (2) of Part II of the First Schedule to the Act, a member of the Institute in service shall be deemed to be guilty of professional misconduct, if he being an employee of any company, firm or person, accepts or agrees to accept any part of fees, profits, or gains from a lawyer, a Company Secretary 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. Accordingly a Practicing Company Secretary cannot share fees with an employee Company Secretary. Therefore, words 'who is in practice' are to be read in Clause 2 of the Part I of the First Schedule, after the word "institute"
- 4.3.4 The term 'partner' used in this rule would include 'ipso facto' another Company Secretary in Practice or a member of any other recognised profession under Section 2(2) of the Act. In regard to sharing of fees with the legal representative of a deceased partner it is desirable that the partnership deed contains a suitable covenant in this behalf. In the case of a sole proprietorship firm, on the death of the proprietor of the firm, there cannot be any sharing of fees between the purchaser of the goodwill of the firm and the legal representative of the proprietor. Payment of goodwill is permissible, which can be in installments as provided in the agreement of sale of goodwill. The payment of goodwill shall, in no circumstances be linked with participation in the earnings of the firm of the buyer of the goodwill.
- 4.3.5 It may appear that this Clause permits sharing of fees by PCS with

members of the Institute who are not employed but are practicing as CA / CWA or an Advocate. However this does not appear to be the intention. The term "Professional Business" used may be understood as professional activities.

- 4.3.6 For the time being at least, council has not permitted PCS to have Partnership with CA/CWA and other professionals. However, the modalities are being worked out, to permit PCS to have Partnership with CA / CWA. Bill is pending before the Parliament in this regard.
- 4.3.7 It is to be further understood that as and when permitted, CA/CWA may become partners of PCS only for non attestation services i.e. only for the purposes as contemplated by clause nos. 2, 3, 4 & 5 of the First Schedule and CA / CWA cannot become full fledged partners as contemplated by Clause 1 of Part I of the First Schedule. That is to say a PCS even if he is allowed to be a partner of a Chartered Accountant, will not be able to sign the Auditors report on behalf of the multidisciplinary firm.
- 4.3.8 In other words a CA or CWA who does not hold CP of ICSI can not sign certificate to be issued under section 383A by a multidisciplinary firm even if such CA/ CWA is a partner of PCS for the purposes of Clause 2,3,4, & 5 of the First Schedule.
- 4.3.9 Council in its 177th meeting held on 27th November 2007 has passed following resolution :
- " 168A. Other Professional bodies.—
- (1) For the purposes of clauses (2), (3) and (5) of Part I of the First Schedule to the Act, a person has to be member of any of the following, namely: -
- (a) The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949 (No.38 of 1949);
  - (b) The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959 (No. 23 of 1959);
  - (c) The Bar Council of India established under the Advocates Act, 1961 (No.25 of 1961);.
  - (d) The Indian Institute of Architects established under the Architects Act, 1972(No.20 of 1972);
  - (e) The Institute of Actuaries of India established under the Actuaries Act, 2006 (No.35 of 2006);
  - (f) the membership of the professional bodies or institutions whose qualifications relating to Company Secretaryship are recognized by the Council under sub-section (2) of Section 38 of the Act.

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- (2) For the purposes of clauses (2), (3) and (5) of Part I of the First Schedule to the Act, the following shall be the persons qualified in India, namely:-
- (a) Chartered Accountant within the meaning of the Chartered Accountants Act, 1949;
  - (b) Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959;
  - (c) Actuary within the meaning of the Actuaries Act, 2006;
  - (d) Bachelor in Engineering from a University established by law or an institution recognized by law;
  - (e) Bachelor in Technology from a University established by law or an institution recognized by law;
  - (f) Bachelor in Architecture from a University established by law or an institution recognized by law;
  - (g) Bachelor of Law from a University established by law or an institution recognized by law;
  - (h) Master in Business Administration from Universities established by Law or Technical Institutions recognized by All India Council for Technical Education."

The resolution amends the Company Secretaries Regulations, 1982. The amendment was notified in the Gazette of India Extraordinary dated 26th of July 2010.

**4.4 Clause (3)**

- 4.4.1 Clause (3) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —

"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."

- 4.4.2 This is the converse of clause (2) discussed (supra at para 4.3) wherein a Company Secretary in Practice can partake of his profits with other members of the Institute and with members of any other professional bodies specified in this regard or with such other persons having such qualifications as may be prescribed, under clause (3) a Company Secretary in Practice as recipient can enter into profit sharing arrangement with a member of the Institute and/or with a member of such other professional body or other person having qualifications, as is referred to in clause (2).

#### 4.5 Clause (4)

4.5.1 Clause (4) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —

“ enters into partnership, in or outside India, with any person other than a Company Secretary in Practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (e) 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 partnerships .”

4.5.2 This clause prohibits a Company Secretary in Practice entering into partnership with any person other than a Company Secretary in Practice or a member of any other recognised profession. Even entering into partnership with persons, who are not members of the Institute, for the purposes of carrying on a business and not the profession of Company Secretaries, would attract the mischief of the clause.

4.5.3 Also, partnership with any other person residing outside India but possessing qualifications recognised by the Central Government or the Council under section 4(1)(e) of the Act, is permitted. The purpose behind clause (4) is that a Company Secretary in Practice should not enter into partnership with any non-recognised professionals. In recognising any other profession for partnership, the compatibility of the other profession with the Company Secretaries' profession would be a relevant factor. The other professions referred to in this clause cannot be any different from those as may be recognised under section 2(2) of the Act. Practicing Company Secretary may share the fees or profits of the partnership both within and outside India.

4.5.4 The council has passed the resolution by inserting the following regulation in CS regulations, 1982.

“ 168B. Membership of Professional body for Partnership — (1) For the purposes of entering into partnership under clauses (4) and (5) of Part I of the First Schedule to the Act, a person shall be a member of any of the following professional bodies, namely: -

- (a) The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949 (No. 38 of 1949);
- (b) The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959 (No. 23 of 1959);
- (c) Bar Council of India established under the Advocates Act, 1961 (No.25 of 1961);

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- (d) The Institute of Engineers or Engineering from a University established by law or an institution recognized by law;
- (e) The Indian Institute of Architects established under the Architects Act, 1972 (No.20 of 1972);
- (f) The Institute of Actuaries of India established, under the Actuaries Act, 2006 (No. 35 of 2006);
- (g) Professional bodies or institutions outside India whose qualifications relating to Company Secretary recognized by the Council under sub-section (2) of Section 38 of the Act.”;

The resolution amends the Company Secretaries Regulations, 1982. The amendment was notified in the Gazette of India Extraordinary dated 26th July 2010.

**4.6 Clause (5)**

- 4.6.1 Clause (5) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he—

“secures, either through the services of a person who is not an employee of such Company Secretary or who is not his partner or by means which are not open to a Company Secretary, 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.”

- 4.6.2 This clause frowns upon discreditable practices in securing professional work. The clause covers instances of obtaining professional work by unethical means and by means which are not open to a Company Secretary.
- 4.6.3 Council has issued guidelines for advertisement by PCS. These guidelines were approved by the council in its 178th Meeting held on 29th of December, 2007. A PCS can therefore, within the parameters of the above guidelines issue advertisement / launch his own website and such action on the part of PCS would not be treated as violation of Clause 5 as well as Clause 6 of the Part I of the First Schedule.

Clause 5 of part I of first schedule is very clear that no member in practice should secure any professional business through propagation, etc., the member in practice have to be cautious that any kind of wording or message in the website created by them shall not indicate or imply securing/solicitation of business/client.

However any act of omission or commission beyond the permitted methods as per the guidelines would amount to misconduct. Text of the Advertisement Guidelines is printed as Appendix to this Guidance Note .



**4.7 Clause (6)**

- 4.7.1 Clause (6) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —

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

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

- (i) any Company Secretary from applying or requesting for or inviting or securing professional work from another Company Secretary in practice; or
  - (ii) a member from responding to tenders or enquires issued by various users of professional services a organisations from time to time and securing professional work as a consequence.”
- 4.7.2 This clause further fortifies the proposition under clause (5) supra about securing clients or professional work. Solicitation of clients or solicitation of professional work or both, are prohibited. Such a solicitation may be direct or indirect and such a solicitation may further be by means of a circular, advertisement, personal communication or interview or any other means. The bedrock of this rule is that a professional should gain recognition by rendering expert services, to a few though in the beginning, who would themselves lead others to him. A true professional should command honour and not demand it. The conduct of the member is noted all the times by the society at large and their ethics and integrity towards the profession itself is sufficient for growth. So, the purpose of this clause is, to ensure that a professional secures work by his credibility, reliability and integrity in the public eyes and not by advertisement adversely affecting the image of the professional and also the profession.
- 4.7.3 The word ‘solicit’ has various shades of meaning. According to Legal Thesaurus, it means bait, (lure) desire, importune, inquire, lobby, petition, plead (implore), apply (request), pray, pressure, pursue, (strive to gain), urge. ‘Solicit’ means ‘ask for’ or ‘seek’. Means of solicitation may be a circular, advertisement, personal communication or by any other means. The phrase ‘by any other means’ used in this clause would perhaps exhaust other means like telephonic conversation, mail, electronic means and messages/social media or even third party solicitation.
- 4.7.4 The word ‘indirectly’ used in this clause suggests that even innuendos would not be tolerated under this clause. If the overall message of the alleged act is solicitation of clients or professional work, though this lurks or lies beneath what has apparently been done, clause 6 would stand attracted.

4.7.5 It would not be possible to exhaustively provide for all situations where it can be said there was solicitation of clients or professional work. But the following may be cited as illustrative examples where the Council was of the opinion that clause 6 may get attracted:

- (1) Circular or advertisement in newspapers indicating the range of services offered by him.
- (2) A circular letter offering secretarial services and professional work.
- (3) Any circular, advertisement or communication which creates an impression that certain professional work would be done much more expeditiously than is normally the case. Like for instance, registration of a company in, say, two days' time or registration of a charge in one day's time, etc.
- (4) Circular, advertisement or personal communication highlighting any provision of any law, to person other than existing clients, which provides for certification/ authentication by a Company Secretary in Practice of any form/return/application/document.
- (5) Issuing hand bills covering matters in (1) to (4) above.
- (6) Publication in the telephone directory, name and address in extra bold typeface or opting for more than one listing. However, where separate sections are devoted in the telephone directory (yellow pages, for instance) for a classified list, publishing the name and address by a member in such sub-section in the directory would not be treated as misconduct. But any kind of message or writing which indicates tall claims, supremacy and superiority in professional attainments will tantamount to solicitation of clients, indirectly.
- (7) Communicating or holding out, as being prepared to provide professional services at fees that are less than reasonable and appropriate in the circumstances, in order to obtain professional work.
- (8) Communicating or describing himself as a 'specialist' in any branch of law/work or knowingly permitting himself to be so described.
- (9) A member allowing a company to carry in its prospectus or other circular letters that 'Mr. X a specialist in corporate laws is the adviser to the company' would offend clause (6). However printing the name of Practising Company Secretary as Secretarial Auditor in Annual Report will not violate the provisions of the Act.
- (10) Requesting his client(s) to recommend his/their acquaintances to him for professional work.

- (11) Frequent press announcements or circulars about his not being available for professional work for a certain period at the place whereat he normally has his office.
  - (12) Highlighting or causing to be highlighted in public interviews over the television, AIR, etc. their professional attainments, more than just necessary or warranted by the circumstances of such an interview, making tall claims, indicating supremacy over other professional colleagues, etc. However sending bio data to organizers of the programmes/seminars, etc., where they have been invited as a faculty, is not violative of this clause.
  - (13) Writing to any institution/agency that though, he is in the panel; no work has been allotted to him. Even approaching through a third person is violative of this clause.
  - (14) Approaching any trade association/chamber of commerce/business forum, communicating his ready availability for rendering any professional service to the constituents of any association or chamber.
  - (15) Sending his profile to persons/companies/firms without any requisition for the same.
  - (16) Including names of other professionals in his profile circulated to various persons.
- 4.7.6 The Professional Development Committee of the Council of the Institute has opined that listing of services by a Company Secretary with a group for creation of network of affiliates which is non-professional and not a group of company secretaries would amount to commercialization of the profession and therefore such listing would amount to violation of the Code of Conduct.
- 4.7.7 However, the following would not fall into the mischief of clause (6):-
- (1) publishing in the journal of the Institute or newspaper any change in the professional address;
  - (2) publishing in professional journals, newspapers and magazines in any classified column, any advertisement for recruitment of staff without in any way giving an impression about the services that he can render, or in other manner smacking of solicitation of work;
  - (3) publishing information regarding changes in the constitution of firm, provided the information contained therein is limited to bare facts and consideration given to appropriateness of the area in which the newspaper or magazine is circulating and the number of insertions;

- (4) sending New Year or any other seasonal greetings without narrating the list of services, professional attainments, supremacy or any kind of indication seeking clients.
- (5) appearance in AIR, TV or any stage in private capacity as a speaker, actor or otherwise on programmes having no nexus with his profession. Any reference to him only as a Company Secretary and nothing beyond that in such programmes would not offend clause (6);
- (6) appearance or participation in professional capacity in the AIR/TV or other forums where a reasonable amount of biographical material may be given without in any way referring to the member as specialist in any branch of work;
- (7) editing/publishing any professional journal, newspaper and magazines;
- (8) writing articles/comments in professional journals, magazines and newspapers;
- (9) associating with charitable, other welfare associations and trade associations without in any way using such position to solicit clients/professional work;
- (10) writing to his existing clients about implications/interpretations of any law or amendments thereof by way of any circular, newsletter or any personal communication or by way of print/electronic means of communication.

The Council of the Institute in a case held that the Conduct of the member in practice by mentioning against his name 'Company Secretary' in the issue of 'Secretarial Aid' a journal edited by him was violative of Clause (6) of Part I of First Schedule to the Act. It was observed that the words 'for further clarification please contact the Editor' was an indirect attempt to solicit professional work.

Responding to a specific letter or a follow up of personal discussions and sending a profile of a firm/individual to specific addresses is not prohibited.

- (11) Stating the assignments handled by him in his profile. However, the name of the clients should be supplied only against specific request of the client for the same.
- (12) Issuing advertisement in Chartered Secretary for opening branch or seeking partnership with other members.
- (13) Issuing advertisement or launching website within the frame work of guidelines issued by the council about advertisement by PCS.
- (14) Securing professional work from another PCS is now expressly permitted.

- (15) Responding to tenders or enquires issued by various users of professional services and securing professional work as a consequence is now expressly permitted.

#### 4.8 **Clause (7)**

- 4.8.1 Clause (7) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —

“advertises his professional attainments or services, or uses any designation or expressions other than Company Secretary on professional documents, visiting cards, letterheads or signboards, 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 Company Secretaries of India or of any other institution that has been recognised by the Central Government or may be recognised 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.”

- 4.8.2 This clause covers two aspects - (i) advertisement of professional attainments or services by a Company Secretary in Practice and (ii) using the designation 'Company Secretary'.
- 4.8.3 As regards the ban on advertisement of professional attainments or services, almost all the professions all over the world had this type of restriction at least to start with. The idea behind this restriction was that advertisement by professionals is incompatible with the qualities of integrity and independence which a professional is expected to possess, especially when these acts are motivated by a desire for personal gain. The advertisement of professional attainment or services under this clause is completely prohibited except where the Company Secretary in Practice advertises as per the guidelines issued by the council, through a write up setting forth services provided by him or his firm.
- 4.8.4 A PCS cannot include in his advertisement following particulars like the infrastructure available in his own office, details of Associate PCS, details of his networking in other places within & outside India, infrastructure at such networked offices, number of trainees who have completed training from his office, certain landmark achievements like number of companies incorporated since he started his practice, number of appearances made before CLB/NCLT, CBDT, Tribunals, Regulatory Authorities, Commissions, number of Foreign Collaborations handled, number of Merger & Acquisitions handled, Number of due diligence carried out etc.
- 4.8.5 Council is of the view that a PCS can be permitted to allow his clients to use his name in their brochure/ hoardings etc. e.g. Builders

invariably write the names of Architects, RCC Consultants, legal advisors on the Board at the construction site. Similarly the name of PCS may also be written. Certain software companies desire to use the name of PCS in their marketing brochure for their products while giving a list of satisfied customers. A PCS is permitted to allow his name to be used as one of the satisfied customers of particular software.

- 4.8.6 What amounts to advertisement of professional attainments or services is to be decided on a case to case basis, having regard to the attendant facts. For instance, where in the visiting card or name board or letterhead, a member in practice mentions that he is a specialist or expert in company law, tax law, etc. it would amount to advertisement of professional attainments or services.
- 4.8.7 Where a member in practice furnishes upon a specific request by a prospective client, a list of companies for whom he is a consultant/retainer or writes his specific subjects of specialisation, it may not be objectionable.
- 4.8.8 Where in the letterhead or visiting card, a member in practice mentions that he was or is holding directorships in any company; it would be offending this clause.
- 4.8.9 Advertisement by a Practising member for staff for his office in the press should in no way savour of any advertisement of professional attainments or services. The use of certain adjectives like "a reputed firm", "a well-known firm", etc. may be treated as inconsistent with the spirit of this clause. Similarly, announcement in the press by a Practising member in regard to certain attainments like having been named for certain public awards, acquisition of merit in other professional examinations and other recognitions in any important committee, commission, governing body, etc. should be suitably modified so as not to be construed as amounting to advertisement of professional attainments or services. Advertisement for part-time assignments fall under the mischief of this clause.
- 4.8.10 Circulars or announcement regarding change of address, or change in the constitution of the firm should be very cautiously worded to tell just the minimum necessary facts.
- 4.8.11 Where a Company Secretary in Practice has been appointed as retainer/consultant by certain companies, it would not be proper to either list the names of such companies in letterheads, visiting cards or signboards or to circulate the list among prospective clients by way of circular. However, including such names, while sending individual profile in response to a specific enquiry is permitted.
- 4.8.12 Where a Company Secretary in Practice takes up the position of a director in a company, it is incumbent on his part to exercise great care in regard to references in any explanatory statement in notice

of the general meeting reappointing the Practicing Company Secretary brochure or circular brought out in connection with an issue of securities of the company etc. The member concerned is to ensure personally that laudatory statements in such literature about his professional competence, while highlighting the Board's competence as a whole, are avoided; otherwise liability under clause (7) would attract.

- 4.8.13 The Council held a member guilty of professional misconduct for misusing the Institute's letter head, brochures, circulars, etc. mentioning his name with designation, description and the Practicing field other than as prescribed and thus misleading the readers by not mentioning his whole time employment.
- 4.8.14 This clause also speaks of using the designation 'Company Secretary' on professional documents, visiting cards, letterheads, sign-boards, etc. This requirement fortifies the provisions of section 7 of the Act and in fact is an extension of the requirement in regard to the use of proper designation. Designations like Company Law Consultant, Income Tax Consultant, Corporate Adviser, Investment Adviser, Management Consultant etc. are prohibited. The use of descriptions indicating membership of the Institute of Chartered Accountants of India, The Institute of Cost and Works Accountants of India and the Bar Councils is permitted provided members are not holding certificate of practice issued by the Institute or using the description 'Company Secretary'. The use of the designation "Practicing Company Secretary", "Company Secretary in whole-time practice", etc. is not violative of this clause.
- 4.8.15 Where a member in practice had described himself in visiting cards and letter heads as "Company Secretary & Advocate, High Court", the Council held the member guilty of professional misconduct under this clause.

#### 4.9 **Clause (8)**

- 4.9.1 Clause (8) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —  
"accepts the position of a Company Secretary in Practice previously held by another Company Secretary in Practice without first communicating with him in writing."
- 4.9.2 The primary requirement under this clause is of prior communication with the previous incumbent. This is intended for reasons of professional courtesy. The clause is not intended to prevent a client from changing over to another Company Secretary for his own reasons. The client as of right, has full freedom to change over to another Company Secretary.
- 4.9.3 It would be desirable for the new incumbent to obtain a letter from the company letting him know the name of the earlier incumbent

or that no other Company Secretary has been appointed for the same assignment.

- 4.9.4 It is expressly clarified that the communication mentioned in this clause does not mean that no-objection or consent of the previous incumbent is a prerequisite of accepting the said assignment.
- 4.9.5 In regard to certification of Annual Return of listed companies under Section 161 and issuance of compliance certificate under section 383A of the Companies Act, 1956, and for all exclusive attestation assignments, it is incumbent on the Company Secretary; to ascertain if any other Company Secretary had been appointed previously by the company concerned for certification of Annual Return or for issuance of compliance certificate, as the case may be. The appointee shall take positive steps to ascertain if anyone has been engaged earlier, for the same year, for the certification work. In such cases it is not only necessary for the Company Secretary to communicate with the earlier incumbent, but it is desirable to seek his consent in order to uphold the dignity and independence of the profession. It is further clarified that though communication is a must, obtaining consent will not apply in cases of certification of Annual Returns for different years.
- 4.9.6 It would be necessary that the communication, in order to be effective, shall be by a registered letter or by hand with an acknowledgement so that there is positive evidence of the communication having been complete. In a case under a similar rule of conduct under the Chartered Accountants Act, 1949, the Rajasthan High Court in *J S Bhati v. Council of ICAI* (S.B. Civil Misc. Appeal No. 136 of 1973) observed that mere obtaining a certificate of posting does not fulfill the requirements of clause (8) of Schedule I as the presumption under section 114 of the Evidence Act that the letter in due course reached the addressee cannot replace that positive degree of proof of delivery of letter to the addressee which letters of the law in this case require.
- 4.9.7 The expression 'in communication with' when read in the light of the instructions contained in the booklet 'Code of Conduct' cannot be interpreted in any other manner but to mean that there should be positive evidence of the fact that the communication addressed to the outgoing auditor by the incoming auditor reached his hands. Certificate of posting of a letter cannot, in the circumstances, be taken as positive evidence of its delivery to the addressee. The Court, therefore, has expressed the view that the communication by a certificate of posting cannot be taken as a positive evidence of its delivery to the addressee. A communication sent by hand which has been properly acknowledged by the addressee would be effective communication.
- 4.9.8 With the advent of use of the technology, it would proper



communication in this regard made by any other electronic medium viz., SMS, WhatsApp and such other Messenger apps is also permitted, provided the sender (the PCS taking up the assignment) is able to establish that the message is delivered to the recipient before he or she takes up the assignment. Needless to mention, that a reasonable time should be given to the previous incumbent to offer his response, if any, and it is not just a kind of formality. For sake of better clarity, the new incumbent should express clearly in the communication the details of assignment being taken up by him.

- 4.9.9 Members have been held guilty of professional misconduct under this clause for having accepted and commenced the certification of Annual Return of a company without first communicating with the earlier incumbent in writing. It has been concluded that mere posting of the letter is not sufficient to comply with the requirements of clause (8) of Part I of First Schedule to the Act, but the delivery of the message to the addressee of the same is essential. Oral communication is no communication as far as this clause is concerned.
- 4.9.10 To a question about whether communication 'with' contemplates a dialogue, the council is of the view that use of the preposition 'with' instead of 'to' does not make it mandatory for the PCS to obtain 'no objection' from the earlier incumbent. What is critical for PCS (new incumbent) is to prove that he has sent a written communication to the earlier incumbent before accepting a position of PCS.
- 4.9.11 It has been observed that majority of the Disciplinary cases were in respect of this clause about not sending written intimation by the new incumbent (PCS).
- 4.9.12 While clarifying the scope of the words "accepting a position of Company Secretary in Practice" Council has expressed a view that need for sending a previous communication to the earlier incumbent arises only in relation to exclusive area of practice under the Act. Therefore, in respect of following it shall not be mandatory (though desirable) to send a prior written communication to the earlier incumbent:
- a. certifying e-forms for various companies.
  - b. giving Due Diligence Certificate for consortium borrowers.
  - c. holding assignment as retainer for a company or group of companies .
  - d. issuing search reports.
  - e. Issuing certificates as contemplated by Clause 47C, 49 and 55 of listing agreement.
  - f. Giving legal opinion

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4.9.13 In respect of the following, it shall be mandatory to send a prior written communication (including means mentioned above in 4.9.8) to the earlier incumbent:

- (i) Signing / Certification of Annual Return
- (ii) Issuance of Secretarial Audit Report in terms of Section 204 of the Companies Act, 2013
- (iii) Issuance of Certificate of Securities Transfers in Compliance with the Listing Agreement with Stock Exchanges
- (iv) Certificate of reconciliation of capital, updation of Register of Members, etc. as per the Securities & Exchange Board of India's Circular D & CC/Cir-16/2002 dated December 31, 2002
- (v) Conduct of Internal Audit of Operations of the Depository Participants
- (vi) Certification under Clause 49 of the Listing Agreement.

**4.11 Clause (10)**

4.10.1 Clause (9) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he -

"charges or offers to charge, accepts or offers to accept, in respect of any professional employment, fees which are based on 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."

4.10.2 which determine remuneration based on results. For instance, if the Company Secretary in Practice were to quote remuneration in an Excise Refund case, as a percentage of the final amount of refund that may be ordered by an appellate authority, it would be hit by this clause. The fundamental is that the fee should be more related to the expertise required and the time spent on a particular case without in any way linking the fee with the final results.

**4.11 Clause (10)**

4.11.1 Clause (10) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —

"engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a Company Secretary from being a director of a company except as provided in the Companies Act."

4.11.2 This clause is intended to ensure that a PCS does not engage in

vocations which are not compatible with the profession of Company Secretary. This has been provided with a view to ensure the profession develops in its true sense. Pursuant to the Company Secretaries Regulations, 1982, the Council has decided not to issue certificate of practice to members engaged in other professions such as Chartered Accountants, Cost Accountants and Advocates and also to members in employment. The said decision was taken by the Council to give an independent identity and status to the profession and a thrust to the concept of Company Secretary in whole-time practice.

- 4.11.3 The Council held a member guilty of professional misconduct under this clause for engaging himself in employment while holding a certificate of practice from the Institute.
- 4.11.4 The Council in an another case held a member guilty of professional misconduct under this clause for holding the certificate of practice of both the Institutes, i.e., ICAI & ICSI without the permission of the Council of the latter and also Practicing both the professions on whole-time bases simultaneously.
- 4.11.5 Regulation 168(2) of the Regulations provides that a Company Secretary may act as a secretary, trustee, executor, administrator, arbitrator, receiver, appraiser, valuer, internal auditor, management consultant or as a representative of financial matters including taxation and may take up appointment that may be made by the Central or any State Government, Courts of Law, labour tribunals, or any authority. From the reading of Regulation 168, it is clear that the various occupations provided in sub-regulation (2) thereof do not require a specific resolution to be passed by the Council.
- 4.11.6 It is pertinent to refer to Regulation 168(1) which provides that the prior permission of the Council by a resolution is required for a Company Secretary to engage in any business or occupation other than the profession of Company Secretary. The Council has expressly permitted a PCS to take up following vocations:
- (i) Acting as Private tutor.
  - (ii) Authoring Books and Articles.
  - (iii) Holding of Life Insurance Agency License for the limited purpose of getting renewal commission.
  - (iv) Holding of public elective offices such as M.P., M.L.A., M.L.C. and others.
  - (v) Honorary office-bearership of charitable, educational or other non-commercial organisations.
  - (vi) Acting as Justice of Peace, Special Executive Magistrate and the like.

- (vii) Teaching assignment under the Coaching Organisation of the Institute and other Institutes such as the Institute of Cost & Works Accountants of India, the Institute of Chartered Accountants of India, Management Institutes, Universities and any college affiliated to a University, and such other organisation as may be recognised by the Council of the Institute from time to time, so long as the hours during which a member in practice is so engaged in teaching do not exceed average three hours in a day irrespective of the manner in which such assignment is described or the remuneration receivable ( whether by way of fixed amount or on the basis of any time scale of pay or in any other manner) by the member in practice for such assignment.
- (viii) carrying out valuation of papers, acting as a paper-setter, head examiner or a moderator, for any examination.
- (ix) Acting as editor of professional journals.

#### 4.11.7 *Permission to be granted specifically*

Members of the Institute in practice may engage in the following categories of business or occupation, after obtaining the specific and prior approval of the Executive Committee of the Council in each case:

1. Interest or association in family business enterprises even when he does not hold substantial interest in such enterprises.
2. Office of Managing Director or whole-time Director of a body corporate within the meaning of the Companies Act, 1956.

The Council may refuse permission in individual cases though covered under any of the above categories.

For the purpose of the above, a member shall be deemed to have a "substantial interest" in a concern:-

- (i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty-five per cent of voting power at any time during the previous year, are owned beneficially by such member.
- (ii) in the case of any other concern, if such member is entitled at any time during the previous year, to not less than 25% of the profits of such concern.

4.11.8 A PCS can function as a non-executive director of a company. This does not require any prior approval.

**4.12 Clause (11)**

- 4.12.1 Clause (11) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —
- “allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm anything which he is required to certify as a Company Secretary, or any other statements related thereto.”
- 4.12.2 This clause further fortifies clause (1) discussed already. It is not permissible for a Company Secretary in Practice to allow any person to sign on his behalf or on behalf of his firm anything which he is required to certify as a Company Secretary or any other statement related thereto. The purpose is not to allow a member to have his judgment and expertise substituted by the judgment of any other person who is not a member in practice or his partner in the firm. To take an instance, the annual return under Section 161 of the Companies Act, 1956 has to be certified by a Company Secretary in Practice himself. It is not possible to have the certification done by a Company Secretary, say, through a power of attorney holder, even though the holder of the power of attorney is an employee (of the Company Secretary) who has been associated with the checking up of various details furnished in the Annual Return.
- 4.12.3 PCS who is not a partner of another PCS can not sign on behalf of such other PCS on Annual Returns, Compliance Certificates or Secretarial Audit Report or any other certificates.
- 4.12.4 In e-governance era, a PCS on many occasions attaches his Digital Signature to various forms / statements. Due care has to be taken that such digital signature is attached only by the PCS himself. It would be the exclusive duty and obligation of PCS to prevent any unauthorized use of his Digital signature. PCS is not expected to part with the password of his Digital signature.

**5. Professional misconduct in relation to members of the Institute in service**

*(Part II of the First Schedule to the Act)*

- 5.1 Part II of First Schedule to the Act deals with professional misconduct of a member of the Institute (other than a member in practice) if he is an employee of any company, firm or person.
- 5.2 Part II of the First Schedule recognises the need for a member in employment also to observe a certain code of conduct. To be in 'employment' connotes to be in a 'contract of service' and not 'contract for service'. There are four indicia of a contract of service, namely :-
- (a) master's power of selection of his servant;
  - (b) payment of wages or other remuneration;

- (c) master's right to control the method of doing the work; and
- (d) the master's right of suspension or dismissal.

Lord Denning pointedly observed, "under a contract of service, a man is employed as part of a business, and his work is done as an integral part of the business; whereas under a contract for services, his work although done for the business is not integrated into it but is only accessory to it."

- 5.3 One important issue which very frequently comes up is, the conflict that may arise between the employer's interest and the interest of the member to uphold professional values and broader public interest. The code of conduct formulated by the Institute originally in 1977, emphasised the importance of a member in employment exercising professional independence in relation to his work as well as his endeavor to provide the highest quality of service attainable by him, without reference to the monetary compensation. The idea being, a member must have courage of conviction to express candidly his considered professional opinion to his employer.

The Royal Commission in its Final Report on legal services submitted to the British Parliament in October, 1979 categorically observed that the standards of professional conduct and integrity which a member of the legal profession in employment has to abide by are the same as those who practice on their own account. Even though the difference is that a salaried lawyer acts for only one client, unlike a lawyer in practice who acts for several clients, the former must uphold the same standards of honour and etiquette, observed the Royal Commission. The Report recognised the continuing conflict between loyalty to the employer and loyalty to the external body enforcing the code of conduct. Nevertheless, whether a member is in employment or in practice, his duty to uphold professional values shall gain precedence over all other exigencies.

- 5.4 Part II and Part III of the First Schedule to the Act specify certain instances of misconduct to which a Company Secretary in employment may stand attracted. It has been mentioned earlier that under section 21 of the Act, the Council's power to direct enquiry is not limited only to those contained in the Schedule to the Act, in view of the fact that the phrase 'other misconduct' used in section 21 is sufficiently broad enough to cover instances not enumerated in the Schedule.

#### 5.5 Clause (1)

- 5.5.1 Clause (1) of Part II of the First Schedule provides that a member of the Institute (other than member in practice) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person—

"pays or allows or agrees to pay, directly or indirectly, to any person

any share in the emoluments of the employment undertaken by him."

- 5.5.2 This clause is analogous to clause (2) of Part I of the First Schedule in some respects. A member in employment shall not share emoluments of the employment with any other person, not even a member. Both direct and indirect sharing of the emoluments is prohibited. However, it may be noted that under Part I of the First Schedule, a member in practice can share the fee, commission or brokerage or profits with any other member of the Institute who is his partner (see para 4.3).

#### 5.6 Clause (2)

- 5.6.1 Clause (2) of Part II of the First Schedule provides that a member of the Institute (who is in service) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person—

"accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Company Secretary 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."

- 5.6.2 This clause vindicates the confidence and trust that an employer reposes in an employee while the latter deals with any outsider on matters relating to business. It is an implied term of any employment that the employee concerned shall not secretly benefit from the employment.
- 5.6.3 This clause is also analogous in some respects to clause (3) of Part I of First Schedule.

### 6. Professional misconduct in relation to members of the Institute generally (Part III of the First Schedule to the Act)

- 6.1 Part III of the First Schedule to the Act covers cases of professional misconduct in relation to members of the Institute generally. Under this Part, three specific instances have been categorised as professional misconduct.

#### 6.2 Clause (1)

- 6.2.1 Clause (1) of Part III of the First Schedule provides that a member of the Institute whether in practice or not shall be deemed to be guilty of professional misconduct, if he —

"not being a Fellow of the Institute, acts as a Fellow of the Institute."

- 6.2.2 This clause prohibits the practice of styling oneself as a Fellow, while in fact he is not a Fellow member. A person is entitled to have his name entered in the Register as a Fellow as per regulation 4(2) of the Regulations. The Fellowship of the Institute suggests a certain

degree of status and seniority and obviously any wrongful representation of such seniority amounts to breach of code of conduct.

### 6.3 Clause (2)

6.3.1 Clause (2) of Part III of the First Schedule provides that a member of the Institute whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

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

6.3.2 It is the duty of a member to supply information called for or to supply the requirements asked for by the Council or any of its Committees and other authorities. Non-compliance with this clause would tantamount to breach of code of conduct.

6.3.3 The Council of the Institute in a case of professional misconduct, held a member guilty of professional misconduct under this clause for failure to disclose the fact of holding of the certificate practice of the Institute of Chartered Accountants of India to the Council of ICSI which was required to be made at the time of renewal of Certificate of Practice.

6.3.4 A member of ICSI bound to give any and every kind of information called for from him since not providing information is a misconduct under clause (2) of Part III of the First Schedule. It is presumed that the concerned authorities would call only relevant information.

### 6.4 Clause (3)

6.4.1 Clause (3) of Part III of the First Schedule provides that a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

“while inviting professional work from another Company Secretary 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.”

## 7. Other Misconduct in relation to members of the Institute generally

### 7.1 Clause 1 of Part IV

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 not exceeding six months;

### 7.2 Clause 2 of Part IV

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, he brings disrepute to the profession or the institute as a result of his action whether or not related to his professional work.

- 7.2.1 Clause 2 of Part IV of the First Schedule provides that it shall be misconduct if in the opinion of the Council, a member of ICSI brings disrepute to the profession or the institute as a result of his action whether or not related to his professional work. Making an exhaustive list of such misconduct may not be possible. Following may amount to misconduct under Clause 2 of Part IV of the First Schedule;
- a. Sending an e-mail to number of members (e-groups ) criticizing the decisions of the Council in derogatory and filthy language.
  - b. Discussing through e forums failures of the Council/ president/ secretary by using derogatory and filthy language.
  - c. Writing letter(s) in an aggressive, loud and filthy language to the Ministry of Corporate Affairs, about working of ROC offices/ MCA site, inability to upload forms etc.
  - d. Arranging DHARANA/ agitations at the gates of the Govt. Offices/ Institute's offices in a manner not befitting a professional.
  - e. Instigating Students or other members by creating a pandemonium in or around Institute's offices by raising issues pertaining to syllabus, training, examination or any other reason what so ever.
  - f. Misusing the confidential data available with the offices of the Institute for personal purposes.
  - g. Inviting Govt. Officers for Chapter's / Regional Council's Programs by spending heavily on their travel & stay arrangements, with an intention to get personal mileage.
  - h. Tampering with the Books of Accounts/ Minutes of the meetings of the Managing Committees of Chapter/ Regional Councils.

**8. Part I of the Second Schedule to the Act Section 21(3), 21(B)(3) and 22) where the matters are to be dealt with by the disciplinary committee constituted by the Council**

- 8.1 Part I of the Second Schedule to the Act deals with ten instances of professional misconduct in relation to members in practice, which require action by a Disciplinary Committee. The implications of various clauses in Part I of the Second Schedule are briefly explained herein below:
- 8.2 **Clause (1)**
- 8.2.1 Clause (1) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —  
“discloses information acquired in the course of his professional

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

- 8.2.2 This clause indicates the position of trust and confidence reposed by the client in a Company Secretary in practice. A Company Secretary in Practice in the course of his professional engagement may come into possession of vital information. Such information has to be kept confidential unless consent of the client has been obtained to disclose the same or the disclosure is required by any law. In the case of a sole proprietor client, consent must be from the sole proprietor. In case the client is a partnership firm, consent has to be given by all partners if the partnership deed so provides; if the deed is silent, any partner can give the consent on behalf of the firm in view of his implied authority. In the case of Board-managed companies, the Board has to give the consent unless it has specifically resolved to delegate the power to any executive. Where the company is managed by a managing director, he may give consent.
- 8.2.3 It is necessary to bear in mind that any communication acquired by a Company Secretary in Practice in the course of his professional engagement on behalf of his client, any communication or any advice given by him to his client in the course and for the purpose of his engagement is a privileged communication and should not be disclosed by him without the express consent of his client. Similarly, the Company Secretary in Practice should not disclose, without written consent of his client, the contents or conditions of any document with which he has become acquainted in the course and for the purpose of his professional engagement.
- 8.2.4 It is observed these days that PCS retains the digital signature of his client along with the password for the administrative convenience of uploading the forms from the office of PCS. It is suggested that in such a situation PCS should retain a formal letter signed by his client authorising PCS to make use of his Digital signature. The reason being once the forms are uploaded they appear on MCA portal and come to public domain. In order to avoid any future possible controversy, such authority letter would come handy for PCS.

### 8.3 Clause (2)

- 8.3.1 Clause (2) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —
- “certifies or submits in his name or in the name of his firm a report of an examination of the matters relating to Company Secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or any employee in his firm or by another Company Secretary in practice.”

- 8.3.2 This clause is intended to imbibe in a member in practice, a higher degree of responsibility and care while certifying any fact or a statement. Either he himself or his partner or any employee of his firm should have examined what is being certified. The words "or by another Company Secretary in Practice" used in this clause envisage a situation where the responsibility for the certification is undertaken by a Company Secretary in Practice, who is neither a partner nor an employee of the Company Secretary concerned, for an examination done by another member in Practice.

This clause prohibits PCS from certifying or submitting in his name a report of an examination of the matters relating to company secretarial practice unless the examination of such statements has been made by him or by a partner or an employee in his firm or by another Company Secretary in Practice. Trainees working in the office of PCS are not to be considered as his employees for the purpose of this item. Reference to "another Company Secretary in Practice" at the end of paragraph refers to any PCS who may or may not be his partner. Thus a PCS would be justified in relying on the search report / examination done by another PCS and such reliance would not violate Clause 1 of the First Schedule.

#### 8.4 Clause (3)

- 8.4.1 Clause (3) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —
- "permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast."
- 8.4.2 This clause underlines the duty of a Company Secretary in Practice to exercise utmost care in associating his name with any report or statement about future happenings or contingencies. A Company Secretary in Practice has to clearly disclose in the report or statement, as the case may be, the sources of his information and the premises on which the forecast is based. He shall further take care that he does not vouch for the accuracy of the forecast. Restraint is therefore required in subscribing to reports/statements, the contents of which may or may not turn out to be true.
- 8.4.3 The future is always uncertain and there is always an element of contingency. PCS can not become a fortune teller. PCS should not certify any possible happening or non happening or give a report about the future e.g. it would be improper for a PCS to certify the future earning capacity, future shareholding pattern, future profitability or similar future figures and numbers. If at all there is any occasion for a PCS to sign such document he should clearly insert appropriate disclaimer clause.

**8.5 Clause (4)**

- 8.5.1 Clause (4) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —

“expresses his opinion on any report or statement given to any business enterprise in which he, his firm or a partner in his firm has a substantial interest;”

- 8.5.2 This clause ensures that a professional has to be independent while expressing any opinion. He should not have any substantial interest in the business enterprise to which the report or statement pertains. That would create a conflict with his duty. Expressing opinion or giving any report with appropriate disclosures about his interest in the report was permitted earlier. However under the new clause there is a total ban on expressing opinion or giving any report about any business enterprise in which he, his firm or a partner in his firm has a substantial interest. ‘Substantial interest’ used in this clause is not limited to financial interest only.

- 8.5.3 In this connection it may be stated that the Council has, pursuant to Regulation 168 of the Regulations passed a resolution in which ‘substantial interest’ has been defined to mean an interest to the extent of 25%. (The same guideline is relevant under the above clause also. If the business enterprise does not have a share capital, say a sports club, which may be a company limited by guarantee without Capital, the question whether PCS has substantial interest in such Club would be a question of fact.

**8.6 Clause (5)**

- 8.6.1 Clause (5) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —

“fails to disclose a material fact known to him in his report or statement but the disclosure of which is necessary in making such report or statement, where he is concerned with such report or statement in a professional capacity.”

- 8.6.2 This clause deals with the paramount duty of a member in practice towards the user of any statement or report. The clause underlines the need for full and complete disclosure as to make any statement or report with which he is associated, true in every possible respect. The aiding or abetting must be with reference to a material fact known to him. If the member in practice does not know a material fact, or he has no reason to come to know a material fact by any means, there cannot arise any liability under this clause; also where a material fact is known to him but in his considered opinion, there is no reason to disclose them, the onus of defense would be on him to prove that the non-disclosure of the material fact has not made the statement misleading.

8.6.3 The expectation provided in this clause is something similar to the golden rule in respect of prospectus. The report / statement signed by PCS should contain truth, whole truth and nothing but the truth. Half truth at times is more disastrous. For example: making a statement that company has continuous track record of dividend declaration since incorporation, when the facts are that for last three years dividend was being declared from accumulated profits and not from current year's profit. Making a statement that company has continuous track record of dividend declaration since incorporation would be half truth. The reader would be made to believe that the company has sound financial health. Thus the full facts should be disclosed by PCS by mentioning the fact that company has continuous track record of dividend declaration since incorporation, however since last three years dividend is being declared out of reserves.

#### 8.7 Clause (6)

8.7.1 Clause (6) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —

“fails to report a material misstatement known to him and with which he is concerned in a professional capacity.”

8.7.2 This clause deals with non-disclosure by a member in practice of a material misstatement known to him in any report with which he is concerned.

8.7.3 What is 'material misstatement' is a question of fact. In a certificate being issued under section 383A of the companies Act, if PCS does not disclose a fact of not distributing dividend in 30 days from the date of declaration would be a failure to report this fact.

#### 8.8 Clause (7)

8.8.1 Clause (7) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —

“does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.”

8.8.2 This clause deals with due care that a member in practice has to exercise in the discharge of his professional duties. The words used in this clause “grossly negligent” imply that purely clerical errors or an omission to give more details in any recommended course of action will not fall within the sweep of this clause. What constitutes gross negligence would depend upon the facts and circumstances of each case.

8.8.3 The ICAI in their booklet 'Code of Conduct' have quoted the following extract from the judgment of the Karnataka High Court, in reference to an identical clause under the Chartered Accountants Act, 1949:

“It is the duty of an auditor to bring to bear on the work he has to

perform that skill, care and caution which a reasonably competent and cautious auditor would use. What is reasonable skill, care and caution must depend on the particular circumstances of each case. An auditor is not bound to be a detective, or, as was said, to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watch dog but not a blood-hound. If there is anything calculated to excite suspicion he should probe it to the bottom; but in the absence of anything of that kind he is only bound to be reasonably cautious and careful. Professional misconduct is a term of fairly wide import but generally speaking, it implies fairly serious cases of misconduct of gross negligence. Negligence per se would not amount to gross negligence. In the case of minor errors and lapses, which do not constitute professional misconduct and which, therefore, do not require a reference to the disciplinary committee, the Council would nevertheless, bring the matter to the attention of its members so that greater care may be taken in the future in avoiding errors and lapses of a similar type”.

- 8.8.4 In *Nemi Chand v. Commissioner, Nagpur Division ILR (1947 Nag 256 at 265 ,AIR 1948 24 at 27)* it was held that gross negligence imports high degree of careless conduct.
- 8.8.5 Where, for instance, a Company Secretary who is not in whole-time practice as defined in section 2(45A) of the Companies Act, 1956 signs the Annual Return of a listed company pursuant to proviso to sub-section (1) of Section 161 of the Companies Act, he would be guilty of being grossly negligent under this clause. Similarly, where a member in practice gives a certificate to a financial institution regarding necessary powers of a company and its directors to enter into an agreement without thoroughly verifying the Memorandum and Articles of Association of the Company, he would be guilty of misconduct under this clause. So also failure to check the resolutions as contained in the minutes book while certifying copies of resolutions would attract liability under this clause.

The difference in between the two expressions “Not exercising due diligence” and “being grossly negligent” - is of degree. In both the situations it would amount to professional misconduct.

Following may be held to be the instances of “Not exercising due diligence” or “being grossly negligent.”

- a. Certifying form 32 for ceasing to be director of a company due to resignation of a particular person as Director of the company, without having verified the resignation letter of such person.
- b. Certifying form 2, return of allotment, without confirming receipt of consideration for issue of shares or without verifying the share applications on record or without ensuring proper compliance of section 81 of the Companies Act, 1956 or the provisions of the Articles of Association.

**8.9 Clause (8)**

- 8.9.1 Clause (8) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —

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

- 8.9.2 The first limb of this clause deals with the duty of a member in practice to obtain sufficient information to warrant expression of an opinion. Issuing of a wrong consumption certificate under the Import-Export Regulations for instance, without obtaining all necessary information required for the purpose, would get attracted to this clause. The second limb of this clause requires that any opinion expressed by a Company Secretary in Practice may be subject to certain exceptions. But, where the exceptions are sufficiently material, he should refrain from expressing an opinion, in other words, the second limb of this clause gives scope for making minor exceptions which are not important /material as to negate the very expression of opinion itself.

**8.10 Clause (9)**

- 8.10.1 Clause (9) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —

“fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice.”

- 8.10.2 This clause deals with the duty of a member in practice to invite attention to material departure from generally accepted secretarial practice. As of now, there have evolved certain widely accepted sound practices in regard to, say, share issue and transfers, share transmission, servicing of corporate securities, meetings procedure and other approvals, which are generally accepted as good secretarial practices. Until the time the standard secretarial practices in respect to any matter are recommended by the Institute for adoption are made mandatory, a member in practice has to, by and large, conform to existing well-recognised secretarial practices and invite attention to departures which are material.

**8.11 Clause (10)**

- 8.11.1 Clause (10) provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he —

“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.”

- 8.11.2 The purpose of this clause is firstly to ensure that the client's money

is separately accounted for and secondly such money is specifically used only for the purpose for which it is paid by the client.

Advance received from clients for expenses like traveling, conveyance to be incurred by PCS need not be kept in a separate account, however advance received from a client for payment of Statutory / filing fees, Stamp duty to be paid by PCS on Client's behalf, must be kept in a separate account. In case client has paid advance for certain specific purpose, say for payment of fees and stamp duty for incorporation of the company or for increase in authorized capital such amount should be used in reasonable time. If the decision to incorporate a company or increase in capital is postponed/ cancelled, PCS should promptly return such advance and should not adjust his fees from the amount so received for services rendered, if any, by him, unless such adjustment is authorized by the client.

## **9. Professional misconduct in relation to members of the Institute generally (Part II of the Second Schedule to the Act)**

9.1 Part II of Second Schedule to the Act covers professional misconduct in relation to members of the Institute generally. The implications of the four clauses included in this Part are explained herein below:

### **9.2 Clause (1)**

9.2.1 Clause (1) of Part II of Second Schedule provides that a member of the Institute whether in practice or not, shall be deemed to be guilty of professional misconduct, if he —

“contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council.”

9.2.2 This clause requires every member to pay due obedience to the Act, the Regulations and Guidelines issued by the council from time to time. For instance, a member of the Institute not having a certificate of practice representing that he is in practice (under section 24) or any violation of the rules relating to the conduct of elections (under Rule 42 of the Rules) would become guilty under this Clause; besides becoming liable for prosecution under section 24 of the Act.

9.2.3 The Council of the Institute, found a member guilty of professional misconduct under this clause for contravention of Section 6 of the Act as he certified an Annual Return of a company without holding a certificate of practice.

9.2.4 Following guidelines have been issued by the council so far

1. Display of particulars on website
2. Approving firm's name
3. Compulsory attendance at PDP



4. Dress Code
  5. Issuing Compliance Certificate
  6. Maintenance of Register of attestation services
  7. Issue of advertisement by PCS
  8. Change of Name of a Concern/Firm
  9. Guideline for use of own Logo by PCS
- 9.2.5 It is necessary for all the members to understand the guidelines and follow the same in spirit and letter. It is also necessary to mention here that contravention of any of the provisions of the Company Secretaries Act, 1980 or the Company Secretaries Regulations, 1982 made there under or any guidelines issued by the council falls within the ambit of clause (1), part II of the Second Schedule to the Company Secretaries Act, 1980 and invites sterner actions.
- 9.3 Clause (2)**
- 9.3.1 Clause (2) of Part II of Second Schedule provides that a member of the Institute whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—
- “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.”
- 9.3.2 The employer and employee relationship is of trust and confidence. This principle is embodied in this clause. The confidential information may pertain to technical secrets, important policy decisions, business strategies or any matter having a bearing on the interest of the employer.
- 9.3.3 Confidential information is a valuable asset for any employer. Confidentiality has to be maintained about members, customers, employees, suppliers, product mix, future plans, proposals, list of associates, affiliates, stake holders, dealers and financial information. All confidential information must be used for the benefit and best interest of the employer. Employee member must maintain the confidentiality of the information which comes to his knowledge / custody except when disclosure is authorized or legally required. Confidential information includes all non-public information that might be harmful or may have potential to cause harm to the employer, if disclosed.
- 9.3.4 The confidential information, discussions, documents and data should be dealt with utmost care and should not be shared or passed on to undesirable persons / outsiders under any circumstances, directly or indirectly.

#### 9.4 Clause (3)

- 9.4.1 Clause (3) of Part II of Second Schedule provides that a member of the Institute whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

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

- 9.4.2 This clause covers situation where a member includes in any statement, return or form to be submitted to the Council any particulars knowing them to be false. The purpose of this clause is to ensure that a member submits accurate particulars, as are required to be furnished by him to the Council. It is pertinent to know that the clause is attracted only when the particulars furnished are known to the member to be false. It was held in *Metropolitan Life Insurance Co. vs. S. Adam* that the word ‘false’ has two distinct and well recognized meanings —

- (i) intentionally or knowingly or negligently untrue;
- (ii) untrue by mistake or accident after the exercise of reasonable care.

It is in the former sense that the term ‘false’ is to be understood in this clause. This is abundantly made clear by the qualifying words, ‘knowing them to be false’. The word false itself implies something more than mere untruth; it would even connote an intention to deceive.

- 9.4.3 Where for instance, while submitting the application for the issue/restoration of certificate of practice under Regulation 10(1) of the Regulations, a member does not disclose that he is engaged in any business/occupation other than the profession of company secretaries when in fact he was so engaged, this clause would be attracted.

#### 9.5 Clause (4)

- 9.5.1 Clause (4) of Part II of Second Schedule provides that :

“a member of the Institute whether in practice or not, shall be deemed to be guilty of professional misconduct, if he defalcates or embezzles moneys received in his professional capacity.”

- 9.5.2 This clause covers defalcation and embezzlement of moneys received in professional capacity by a member and not in any other capacity. The professional capacity referred to here would cover situations contemplated under Section 2(2) of the Act and those specifically covered under Regulation 168 of the Regulations. In as much as the Act deals with professional misconduct, logically the misconduct

must be something having a nexus, direct in that, with the discharge of professional duties. However, this does not mean that other cases of embezzlement are not misconduct. Section 21 of the Act is wide enough to cover other acts not befitting to the member of the Institute.

#### **10. Part III of the Second Schedule**

- 10.1 This part is about other misconduct in relation to members of the Institute generally if 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.
- 10.1.1 Part III does not get attracted at the very first instance of being held guilty but it is attracted only after the final appeal, as it may be, is disposed off and the member is held guilty.
- 10.1.2 It may be observed that this clause does not provide that the offence for which a member is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months involves moral turpitude. Therefore even for an imprisonment for a term exceeding six months in an offence which does not involve moral turpitude would attract the consequences.

#### **11. Conclusion**

- 11.1 The whole gamut of discussion in the preceding paragraphs covering various facets of conduct expected of members in employment and/or in practice reflect in the main:
  - (i) the need for professional independence, integrity and objectivity;
  - (ii) adherence to high standards;
  - (iii) duty towards clients;
  - (iv) responsibilities towards fellow professionals; and
  - (v) responsibility to the public at large.

## **GUIDELINES FOR ADVERTISEMENT BY COMPANY SECRETARY IN PRACTICE**

### **ICSI Guideline No. 4 of December, 2007**

*[Pursuant to Clause (1) of part ii of the Second Schedule to the Company Secretaries Act, 1980 as amended]*

New Delhi, the 29th December, 2007

*In exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 (56 of 1980), as amended by the Company Secretaries (Amendment) Act, 2006, the Council of the Institute of Company Secretaries of India hereby issues the following guidelines:-*

#### **1. Introduction**

- 1.1** The Institute of Company Secretaries of India, (the Institute) constituted under the Company Secretaries Act, 1980 (the Act) is a statutory body to develop and regulate the profession of company secretaries in India. Members of the Institute who hold the Certificate of Practice issued by it are authorised to practise the profession of Company Secretaries and these members are known as Company Secretaries in Practice.
- 1.2** The areas in which the Company Secretaries in Practice can and do render their services and the names, addresses and other particulars of Company Secretaries in Practice are displayed on the website of the Institute.
- 1.3** Members of the Institute are required under the Act to maintain high standards of professional conduct.
- 1.4** Part I of the First schedule of the Company Secretaries Act, 1980, enumerates professional misconduct in relation to a member in practice and inter-alia includes if such a member :
- (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 company secretary from applying or requesting for or inviting or securing professional work from another Company Secretary 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 Company Secretary on professional documents, visiting cards, letterheads 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 Company Secretaries 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;**

- 1.5** The Council of the Institute of Company Secretaries of India at its 178th meeting held on 29th December, 2007 approved the following Guidelines for Advertisement by Company Secretary in Practice.
- 1.6** The Guidelines herein, as issued by the Central Council of the Institute on 29th December, 2007 deal with the manner in which a Company Secretary in Practice can advertise the services provided by him or his firm and the particulars of his firm through a write-up.
- 1.7** Any non compliance or violation of these Guidelines as may be in force from time to time in any manner whatsoever shall be deemed to be an act of professional misconduct and the concerned member shall be liable to disciplinary proceedings under the Act.

## **2. Key Definitions**

For the purposes of these Guidelines,

- 2.1** The "Act" means the Company Secretaries Act, 1980.
- 2.2** "Institute" means the Institute of Company Secretaries of India.
- 2.3** "Advertisement or advertising" means advertisement or advertising in any mode including written, recorded, displayed communication through print or electronic mode or otherwise including in newspapers, journals, internet, online, websites, banners, letters, circulars issued, circulated or published in accordance with these guidelines.
- 2.4** "Company Secretary in Practice" means a member of the Institute who holds a Certificate of Practice issued to him by the Institute.
- 2.5** "Firm of Company Secretaries" means sole proprietorship concern, the sole proprietor of which is a Company Secretary in Practice or a firm, wherein all partners are Company Secretaries and such firm is approved by the Council.
- 2.6** "write up" includes any writing or display setting out services rendered by a Company Secretary in Practice or firm of company secretaries and any writing or display of the particulars of the

Company Secretary in Practice or of firm of company secretaries issued, circulated or published in accordance with these guidelines.

The terms not defined herein have the same meaning as assigned to them in the Company Secretaries Act, 1980 and the rules and regulations made thereunder.

### 3. Prohibition to Advertise

- 3.1** No Company Secretary or a firm of Company Secretaries is permitted to advertise the services as specified in the Act, rules, regulations framed thereunder except through a write-up as defined in Clause 2.6.

### 4. The Write-up shall be made in compliance with the following:

#### 4.1 Applicability

These guidelines shall apply to advertisements issued by a Company Secretary in Practice not only in India but would also apply to those circulated, communicated, published, issued or allowed to be issued abroad.

#### 4.2 Permitted list of information

- 4.2.1 **Name of Company Secretary, Membership number, Certificate of Practice Number and date of issue (for each partner in case of firm)**
- 4.2.2 **Address and website** (if any), telephone, mobile, e-mail, fax number of the member
- 4.2.3 **Name of the firm** in which the member is a partner
- 4.2.4 **Year of Establishment**
- 4.2.5 **Date and place of Issue of Advertisement**
- 4.2.6 **Age**
- 4.2.7 **Gender**
- 4.2.8 **Additional recognized qualifications**
- 4.2.9 **Languages spoken by the partner(s)**
- 4.2.10 **Honours or awards in the field of teaching, research, authorship etc. conferred by nationally accredited institutions**
- 4.2.11 **Current teaching or research appointments** at a university or college of advanced education or professional Institute
- 4.2.12 **Name of firm** in case of partnership
- 4.2.13 **Details of networking through own office or through formal association in other places within & outside India**
- 4.2.14 **Number, name of employees of the firm and their qualifications** and other particulars

- 4.2.15 **Business address, telephone numbers** (including email, fax and other details) of the firm
- 4.2.16 **Office hours** and after office hours availability
- 4.2.17 Advertisement about **setting up of certified filing centers**
- 4.2.18 **Frequently Asked Questions** (FAQs) in conformity to these guidelines
- 4.2.19 **Declaration indicating**
- (a) willingness to accept work, either generally or in particular areas of practice;
  - (b) unwillingness to accept work in particular areas;
  - (c) willingness or unwillingness to accept work directly from clients, either generally or in particular areas of practice.
- 4.2.20 The write-up may display the **passport size photograph of the member** or partners of the firm of Company Secretaries
- 4.2.21 **Fees:**
- (a) Willingness to give written estimates of fees;
  - (b) Methods for determining fees;
  - (c) Mode of Acceptance of Fees.
- 4.2.22 **Speed of Service**
- (a) willingness to give written estimates concerning completion of particular work;
  - (b) maximum time within which specific services will be completed.
- 4.2.23 Write-up may include the **names of clients and services rendered**
- 4.2.24 **Particulars of Services**
- (i) The write-up to be circulated, distributed, published, issued by or on behalf of Company Secretary in Practice shall set out the professional services rendered or to be rendered by the advertiser.
  - (ii) The write-up may explain the nature and usefulness of the professional services rendered by the Company Secretary in Practice.
  - (iii) The write-up may include the names of clients and services rendered provided that the Company Secretary in Practice shall maintain record of his having provided such professional services.

4.2.25 In case of advertisement through website :

- (a) A Company Secretary or a firm of Company Secretaries may display photograph of the Company Secretary or partners of the firm of Company Secretaries in Practice.
- (b) While designing and/or hosting the particulars on the website, certain keywords should be provided so as to enable the search engine/s to locate the website and these keywords will not be visible or displayed on the website. Any one of the following key words may be used for this purpose. Company Secretary/ Company Secretary in Whole-time Practice/ Company Secretary in Practice/Practising Company Secretary/Indian Chartered Secretary/Indian Certified Corporate Secretary/Indian CS/Indian Company Secretary/Corporate Advisor/ Company Law Consultant/Secretarial Auditor/ Secretarial Consultant/Indian Certified Public Secretary/CS/ ACS/FCS/PCS/CSP.

However, the keywords shall not be materially different from the designations used for a Company Secretary.

- (c) The website may provide a hyperlink to the website of ICSI, its Regional Councils and Chapters and other regulatory bodies of the Government, after obtaining necessary permission from the concerned body.
- (d) A Company Secretary in Practice may provide online advice to their clients or other members/ firms of Company Secretaries who specifically request for the same.

4.2.26 **Changes** in any of the above particulars.

### 4.3 Restrictions

The write-up shall :

- (i) not be false or misleading ;
- (ii) not claim superiority over any or all other Company Secretaries in Practice;
- (iii) not be indecent, sensational or otherwise of such nature as to be likely to bring the profession into disrepute;
- (iv) not contain testimonials or endorsements concerning the Company Secretary in Practice.
- (v) not refer the Company Secretaries in practice in terms such as "specialists" or "experts".



- (vi) In case of advertisement through website :
- (a) A Company Secretary in Practice or a firm of Company Secretaries shall ensure that no information contained in the website is circulated to other websites/e-mail accounts etc. through e-mail or otherwise without the same having been specifically requested for.
  - (b) A Company Secretary in Practice or a firm of Company Secretaries shall not use logo(s) unless otherwise permitted by the Institute.

#### **4.4 Declaration**

The Advertiser shall declare that the contents of the advertisement are true to the best of his knowledge and belief and are in conformity with these Guidelines.

#### **4.5 Disclaimer**

The Advertiser shall also include the following Statement of Responsibility and Disclaimer in the Advertisement :

**Disclaimer** : The contents or claims in the Advertisement issued by the advertiser are the sole and exclusive responsibility of the Advertiser. The Institute of Company Secretaries of India does not own any responsibility whatsoever for such contents or claims by the Advertiser.

### **5. Responsibility for the observance of these Guidelines**

- 5.1** The responsibility for the observance of these guidelines lies with members who commission, create, place or publish any advertisement or assist in the creation or publishing of any advertisement covered under these guidelines. Members are expected not to commission, create, place or publish any advertisement which is in contravention of these Guidelines. This is a self-imposed discipline required to be observed by all those involved in the commissioning, creation, placement or publishing of advertisements.

### **6. EFFECTIVE DATE :**

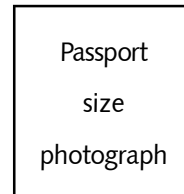
- 6.1** These guidelines become effective from 1st January, 2008 and consequently the existing Guidelines for Display of Particulars on Website by Company Secretaries in Practice stand repealed.

**By order of the Council**

**N K JAIN, SECRETARY & CEO**

**MODEL ADVERTISEMENT**

- (i) Name of Company Secretary
- (ii) Membership number
- (iii) Certificate of Practice number and date of issue
- (iv) Website (if any)
- (v) Name of the sole proprietary concern under which the member is practicing/Name of the partnership in which the member is a partner
- (vi) Age
- (vii) Gender
- (viii) Languages spoken
- (ix) Number, name of employees and their qualifications and other particulars
- (x) Business address telephone numbers (including email, fax and other details)
- (xi) Office hours and after office hours availability
- (xii) Additional recognized qualifications
- (xiii) Current teaching or research appointments at a university or college of advanced education or professional Institute
- (xiv) Honours or awards conferred
- (xv) Frequently Asked Questions (FAQs)
- (xvi) Declaration indicating:
- willingness to accept work, either generally or in particular areas of practice;
  - unwillingness to accept work in particular areas;
  - willingness or unwillingness to accept work directly from clients, either generally or in particular areas of practice.
- (xvii) Fees :
- Mode of Acceptance of Fees
  - Methods for determining fees
  - Willingness to give written estimates of fees
- (xviii) Speed of Service :
- willingness to give written estimates concerning completion of particular work;



- maximum time within which specific services will be completed.
- (xix) Particulars of Services:
- (xx) Declaration : I ..... declare that the contents of the advertisement are true to the best of my knowledge and belief and are in conformity with these Guidelines.
- (xxi) Disclaimer : The contents or claims in the Advertisement issued by the advertiser are the sole and exclusive responsibility of the Advertiser. The Institute of Company Secretaries of India does not own any responsibility whatsoever for such contents or claims by the Advertiser.
- (xxii) Date and Place of Issue of Advertisement : .....

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**EXTRACT OF SECTIONS 21 TO 22E OF  
COMPANY SECRETARIES ACT, 1980**

*(Chapter V of the Act under the heading 'Misconduct')*

CHAPTER V

**MISCONDUCT**

**21. Disciplinary Directorate**

- (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.

**21A. Board of Discipline**

- (1) The Council shall constitute a Board of Discipline consisting of—
  - (a) a person with experience in law and having knowledge of the disciplinary matters and the profession, to be its presiding officer;
  - (b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be the person designated under clause (c) of sub-section (1) of section (16);
  - (c) the Director (Discipline) shall function as the Secretary of the Board.

- (2) The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it.
- (3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—
  - (a) reprimand the member;
  - (b) remove the name of the member from the Register up to a period of three months;
  - (c) impose such fine as it may think fit which may extend to rupees one lakh.
- (4) The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

#### **21B. Disciplinary Committee**

- (1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:  
Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.
- (2) The Disciplinary Committee, while considering the cases placed before it, shall follow such procedure as may be specified.
- (3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—
  - (a) Reprimand the member;
  - (b) Remove the name of the member from the Register permanently or for such period, as it thinks fit;
  - (c) impose such fine as it may think fit, which may extend to rupees five lakhs.
- (4) The allowances payable to the members nominated by the Central Government shall be such as may be specified.

**21C. Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court**

For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) the discovery and production of any document; and
- (c) receiving evidence on affidavit.

*Explanation* – For the purposes of sections 21, 21A, 21B, 21C and 22, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

**21D. Transitional provisions**

All complaints pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to the commencement of the Company Secretaries (Amendment) Act, 2006 shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Company Secretaries (Amendment) Act, 2006.

**22. Professional or other misconduct defined**

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.

**22A. Constitution of Appellate Authority**

The Appellate Authority constituted under sub-section (1) of section 22A of the Chartered Accountants Act, 1949, shall be deemed to be the Appellate Authority for the purposes of this Act subject to the modification that for clause (b) of said sub-section (1), the following clause had been substituted, namely:—

- (b) the Central Government shall, by notification appoint two part-time members from amongst the persons who have been members of the Council of the Institute of Company Secretaries of India for at least one full term and who is not a sitting member of the Council;

**22B. Term of office of members of Authority**

A person appointed as a member shall hold office for a term of three years from the date on which he enters upon his office or until he attains the age of sixty two years, whichever is earlier.

**22C. Procedure, etc. of Authority**

The provisions of section 22C, section 22D and section 22F of the Chartered Accountants Act, 1949 shall apply to the Authority in relation to allowances and terms and conditions of service of its Chairperson and members, and in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Chartered Accountants Act, 1949.

**22D. Officers and other staff of Authority**

- (1) The Council shall make available to the Authority such officers and other staff members as may be necessary for the efficient performance of the functions of the Authority.
- (2) The salaries and allowances and conditions of service of the officers and other staff members of the Authority shall be such as may be prescribed.]

**22E. Appeal to Authority**

- (1) Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorised by the Council, within ninety days:

Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

- (2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (3) of section 21A and sub-section (3) of section 21B and may —
  - (a) confirm, modify or set aside the order;
  - (b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
  - (c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or
  - (d) pass such other order as the Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.

**EXTRACT OF FIRST AND SECOND SCHEDULES TO THE ACT****THE FIRST SCHEDULE**

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

*PART I***Professional misconduct in relation to Company Secretaries in Practice**

A Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he—

- (1) allows any person to practice in his name as a Company Secretary unless such person is also a Company Secretary 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 Company Secretary 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 Company Secretary in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (e) 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 company secretary or who is not his partner or by means which are not open to a Company Secretary, 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 company secretary from applying or requesting for or inviting or securing professional work from another company secretary 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 Company Secretary on professional documents, visiting cards, letterheads 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 Company Secretaries 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 a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing;
- (9) 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 result of such employment, except as permitted under any regulation made under this Act;
- (10) engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a Company Secretary from being a director of a company except as provided in the Companies Act, 1956;

- (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, anything which he is required to certify as a Company Secretary, or any other statements relating thereto.

*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, profits or gains from a lawyer, a Company Secretary 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 Company Secretary 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 –

- (1) he 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.

**THE SECOND SCHEDULE**

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

*PART I***Professional misconduct in relation to  
Company Secretaries in Practice**

A Company Secretary 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 the matters relating to company secretarial practice 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 Company Secretary in practice;
- (3) permits his name or the name of his firm to be used in connection with any report or statement 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 any report or statement given to 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 in his report or statement but the disclosure of which is necessary in making such report or statement, where he is concerned with such report or statement in a professional capacity;
- (6) fails to report a material mis-statement known to him and 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 relating to the secretarial practice;
- (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 there under 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.]

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**COMPLAINTS AND ENQUIRIES AGAINST MEMBERS****Complaints and enquiries relating to professional or other misconduct of members**

<sup>1</sup> "(Applicable to a complaint or information pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to 17.11.2006.)".

- (1) Subject to the provisions of this regulation, any complaint received against a member of the Institute under Section 21 shall be investigated, and any enquiry relating to misconduct of such member shall be held, by the Disciplinary Committee.

Provided that if the subject matter of a complaint is, in the opinion of the President, substantially the same as or has been covered in any previous information of complaint received, the Secretary may file the complaint without any further action or inform the complainant, accordingly, as the case may be.

- (2) A complaint under Section 21 shall be made to the Council in the appropriate form, duly verified as required therein.
- (3) Every complaint shall contain the following particulars, namely-
  - (a) the acts or omissions which, if proved, would render the member complained against guilty of any professional or other misconduct;
  - (b) the oral and/or documentary evidence relied upon in support of the allegations made in the complaint.
- (4) Every complaint other than a complaint made by or on behalf of the Central or any State Government, shall be accompanied by a deposit of rupees fifty which shall be forfeited, if the Council, after considering the complaint, comes to the conclusion that no prima facie case is made out and, moreover, that the complaint is either frivolous or has been made with mala fide intention.
- (5) The Secretary shall return a complaint which is not in the proper form or which does not contain the aforesaid particulars or which is not accompanied by the deposit of rupees fifty to the complainant for resubmission after compliance with such requirements and within such time as the Secretary may specify.

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1. Inserted by the Company Secretaries (Amendment) Regulations, 2010, Notification No. 531: legal : 710/1/M/1, published in the Gazette of India, Extraordinary, Part III, Section 4, dated 26.07.2010.

- (6) Ordinarily within sixty days of the receipt of a complaint under Section 21 the Secretary shall,-
- (a) if it is against an individual member send particulars of the acts or omissions alleged or a copy of the complaint, as the case may be, to such member at his address as entered in the Register;
  - (b) if it is against a firm, send particulars of the acts or omissions or a copy of the complaint, as the case may be, to the firm concerned at the address of the head office of the firm as entered in the Register of offices and firms which a notice calling upon the firm to disclose the name(s) of the member(s) concerned and to send particulars of acts or omissions or a copy of the complaint, as the case may be to member(s).

*Explanation* - A notice shall be deemed to be a notice to all the members who are partner or employees of that firm.

- (7) A member who has been intimated of the complaint made against him under sub-regulation (6) (hereinafter referred to as the respondent) shall, within fourteen days of issue of such intimation or within such further time as the Secretary may allow, forward to the Secretary a written statement in his defence verified in the same manner as the complaint.
- (8) On a perusal of the complaint and written statement in any, the Secretary may call for such additional particulars or documents connected therewith either from the complainant or the respondent, as he may consider necessary or as may be directed by the President, for perusal of the Council.
- (9) Where on a perusal of the complaint, the written statement, if any, of the respondent and other relevant documents and papers, the Council is prima facie of opinion that any member has been guilty of professional or other misconduct, the Council shall cause an enquiry to be made in the matter by the Disciplinary Committee and where the Council is prima facie of opinion that there is no case against the respondent, the case shall be dismissed and the complainant, if any, and the respondent shall be informed accordingly.

Provided that the Council may, if deemed necessary, call for any additional particulars or documents connected therewith from the complainant, if any, or the respondent.

- (10) (i) Every notice issued by the Secretary or by the Disciplinary Committee under this Regulation shall be sent to the member or the firm concerned by registered post with acknowledgement due.
- (ii) If the notice is returned unserved with an endorsement to the effect that the addressee had refused to accept the notice, it shall be deemed to have been served.
- (iii) If the notice is returned with an endorsement indicating that the addressee cannot be found at the address given, the Secretary shall ask the complainant to supply to him the correct address to

the member or firm concerned and send a fresh notice to the member or firm at the address so supplied.

- (11) The provision relating to a notice shall apply mutatis mutandis to a letter.

<sup>2</sup>**[15A. Fee and procedure for investigation of a complaint or information to be followed by the Director (Discipline), Disciplinary Directorate and procedure for inquiry by the Disciplinary Committee.** [Applicable to a complaint or information received on or after 17-11-2006.]

- (1) Every complaint other than a complaint filed by or on behalf of the Central Government or any State Government, or any statutory authority shall be accompanied by a fee of rupees two thousand five hundred.
- (2) Each such complaint or information shall be dealt with in accordance with the procedure specified in the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.]

#### **16. Information relating to misconduct of members**

<sup>3</sup>(Applicable to the complaint or information pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to 17.11.2006).

The procedure laid down in Regulation 15 shall, so far as may be, apply to any information received under Section 21.

#### **17. Time limit for entertaining complaint or information**

<sup>4</sup>(Applicable to the complaint or information pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to 17.11.2006).

Save in cases of misconduct involving moral turpitude or in cases instituted by the Central Government or any State Government, the Council may refuse to entertain any complaint or information in respect of misconduct made more than ten years after the same was alleged to have been committed, where the Council is satisfied that there would be difficulty in securing proper evidence of the alleged misconduct or

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2. Inserted by the Company Secretaries (Amendment) Regulations, 2010, Notification No. 531:legal:710/1/M/1, published in the Gazette of India, Extraordinary, Part III, Section 4, dated 26.07.2010.

3. Inserted by the Company Secretaries (Amendment) Regulations, 2010, Notification No. 531:legal:710/1/M/1, published in the Gazette of India, Extraordinary, Part III, Section 4, dated 26.07.2010.

4. Ibid.

that the member against whom the information has been received or the complaint has been filed, would find it difficult to lead evidence to defend himself on account of the time lag, or that changes have taken place rendering the enquiry procedurally inconvenient or difficult.

#### **18. Procedure in enquiry before the Disciplinary committee**

<sup>5</sup>(Applicable to the complaint or information pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to 17.11.2006).

- (1) It shall be the duty of the Secretary to place before the Disciplinary Committee all facts brought to his knowledge which are relevant for the purpose of any enquiry by the Disciplinary Committee.
- (2) The Disciplinary Committee shall have the power to regulate its procedure in such manner as it considers necessary and during the course of enquiry, may examine witnesses on oath and receive evidences on affidavits and any other oral or documentary evidence, exercising its powers as provided in Sub-section (8) of Section 21.
- (3) The Disciplinary Committee shall give the complainant and respondent a notice of the meeting at which the case shall be considered by the Committee.
- (4) Such complainant and respondent may be allowed to defend themselves before the Disciplinary Committee either in person or through a legal practitioner or any other member of the Institute.
- (5) Where, in the course of a disciplinary enquiry, a change occurs in the composition of the Disciplinary Committee, unless any of the parties to such enquiry makes a demand within fifteen days of receipt of a notice of a meeting of such Disciplinary Committee, that the enquiry be made de novo report of the Disciplinary Committee shall be called in question on the ground that any member of the Disciplinary Committee did not possess sufficient knowledge of the facts relating to such inquiry.
- (6) The Disciplinary Committee shall after investigation report the result of its enquiry to the Council for its consideration.

#### **19. Procedure in a hearing before the Council**

- (1) The Council shall consider the report of the Disciplinary Committee and if in its opinion, a further enquiry is necessary, may cause such further enquiry to be made and a further report submitted by the Disciplinary Committee.
- (2) After considering such report or further report of the Disciplinary Committee, as the case may be, where the Council finds that the

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5. Inserted by the Company Secretaries (Amendment) Regulations, 2010, Notification No. 531:legal:710/1/M/1, published in the Gazette of India, Extraordinary, Part III, Section 4, dated 26.07.2010.



respondent is not guilty of any professional or other misconduct, it shall record its findings accordingly and direct that the proceedings shall be filed or the complaint shall be dismissed as the case may be.

- (3) After considering such report or further report of the Disciplinary Committee, as the case may be, where the Council finds that the respondent has been guilty of a professional or other misconduct, it shall record its findings accordingly and shall proceed in the manner as laid down in the succeeding sub-regulations.
- (4) Where the finding is that the member of the Institute has been guilty of a professional or other misconduct, the Council shall afford to the member an opportunity of being heard before orders are passed against him in the case. The Council after hearing the respondent, if he appears in person or after considering the representations, if any, made by him, pass such orders as it may think fit, as provided under Sub-section (4) of Section 21.
- (5) The orders passed by the Council shall be communicated to the complainant and the respondent.

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**PROCEDURES OF MAKING COMPLAINTS**

1. A complaint under Section 21 of the Act against a member or a firm shall be filed in Form I, in triplicate before the Director in person or by post or courier.
2. Every complaint received by the Directorate is acknowledged by ordinary post together with an acknowledgement number.
3. Every complaint, other than a complaint filed by or on behalf of the Central Government or any State Government or any statutory authority, shall be accompanied by a fee as prescribed by the Council through regulations. Presently the fee prescribed is Rs. 2,500/- to be paid in the form of a demand draft drawn on any bank in India in favour of the Institute of Company Secretaries of India payable at Delhi. The fee once paid shall not be refunded.
4. No additional fee is payable if the complaint is required to be resubmitted after rectification of defect under sub-rule (5) of rule 5.
5. The Director or an officer or officers authorized by the Director, shall endorse on every complaint the date on which it is received or presented and the Director or the officer or officers so authorized, shall sign on each such endorsement. He shall then scrutinize the complaints so received. If found to be in order, it shall be duly registered and a unique reference number allotted to it, which shall be quoted in all future correspondence.
6. If, the complaint, on scrutiny, is found to be defective, including the defects of technical nature, the Director may allow the complainant to rectify the same in his presence or may return the complaint for rectification and resubmission within such time as he may determine.
7. If, the complainant fails to rectify the defect or defects within the time allowed under sub-rule (5), the Director shall form the opinion that there is no *prima facie* case and present the complaint before the Board of Discipline for its closure.

**Withdrawal of a complaint**

8. Complainant may by writing a letter to the Director withdraw the complaint subject to the approval of the Board of Discipline or the Committee, as the case may be, at any stage, before or after registration of complaint.

**Procedure of Investigation****Procedure to be followed by Director on a complaint**

9. The Director within sixty days of the receipt of a complaint shall, if the complaint is against an individual member, send particulars of the acts of commission or omission alleged or a copy of the complaint, as the case may be, to that member at his professional address; or in

case of a firm at its head office, as entered last in the Register of Offices and Firms maintained by the Institute, with a notice calling upon the firm to disclose the name or names of the member or members concerned and to send particulars of acts of commission or omission or a copy of the complaint, as the case may be, to such members.

10. A member who has been informed of the complaint filed against him (hereinafter referred to as the respondent) shall, within 21 days of the service of a copy of the complaint, or within such additional time, not exceeding thirty days, as may be allowed by the Director, forward to the Director, a written statement in his defense.
11. On receipt of the written statement, if any, the Director may send a copy thereof to the complainant and the complainant shall, within 21 days of the service of a copy of the written statement, or within such additional time, not exceeding thirty days, as may be allowed by the Director, forward to the Director, his rejoinder on the written statement.
12. On perusal of the complaint, the respondent's written statement, if any, and rejoinder of the complainant, if any, the Director may call for such additional particulars or documents connected therewith either from the complainant or the respondent or any third party or parties, as he may consider appropriate: If no reply is sent by the respondent within the time allowed under sub-rule (3) or by the complainant within the time allowed under sub-rule (4), the Director shall presume that the respondent or the complainant, as the case may be, have nothing further to state and take further action as provided under this Chapter.

### **Examination of the Complaint**

13. The Director shall examine the complaint, written statement, if any, rejoinder, if any, and other additional particulars or documents, if any, and form his *prima facie* opinion as to whether the member or the firm is guilty or not of any professional or other misconduct or both under the First Schedule or the Second Schedule or both.
14. Where the Director is of the *prima facie* opinion that the member or the firm is guilty of any misconduct under the First Schedule, he shall place his opinion along with the complaint and all other relevant papers before the Board of Discipline;
15. Where the Director is of the *prima facie* opinion that the member or the firm is guilty of misconduct under the Second Schedule or both the First and Second Schedules, he shall place his opinion along with the complaint and all other relevant papers before the Committee.
16. If the Board of Discipline or the Committee, as the case may be, agrees with the *prima facie* opinion of the Director, then the Board of Discipline or the Committee may proceed further under.
17. If the Board of Discipline or the Committee, as the case may be, disagrees with the *prima facie* opinion of the Director under clause (a)

above, it shall either close the matter or advise the Director to further investigate the matter.

18. Where the Director is of the *prima facie* opinion that the member or the firm is not guilty of any misconduct either under the First Schedule or the Second Schedule, he shall place the matter before the Board of Discipline, and the Board of Discipline, if it agrees with such opinion of the Director, shall pass order, for closure. If it disagrees with such opinion of the Director, then it may either proceed under chapter IV of these rules, if the matter pertains to the First Schedule, or refer the matter to the Committee to proceed under Chapter V of these rules, if the matter pertains to the Second Schedule or both the Schedules, or may advise the Director to further investigate the matter.
19. The Director shall, after making further investigation as advised by the Board of Discipline under sub-rule (2) or (3) of this rule or by the Committee under sub-rule (2), shall further proceed under this rule.

#### **Mode of Sending Notice**

20. Every notice or letter issued by the Director, Board of Discipline, or the Committee under these rules shall be sent to the member or the firm or any other person, by registered post with acknowledgement due or speed post, except where specified otherwise in any rule. If any notice or letter is returned un-served with an endorsement to the effect that the addressee had refused to accept the notice or letter, the notice or letter shall be deemed to have been served.
21. If the notice or letter is returned with an endorsement to the effect that the addressee cannot be found at the address given, the Director shall ask the complainant or any other person who may be in a position to provide another address of the member or firm or person whose address is found to be not correct, and on production of the correct address, a fresh notice or letter shall be issued at such address.
22. Where the notice or letter is returned under sub-rule (3), it may be served by fixing a copy thereof in some conspicuous place at the professional address or residence of the respondent which was last registered with the Institute or in such other manner as the Board of Discipline may think fit and such service shall be deemed to be sufficient service for the purposes of these rules.

#### **Time limit on entertaining complaint or information**

23. Where the Director is satisfied that there would be difficulty in securing proper evidence of the alleged misconduct, or that the member or firm against whom the information has been received or the complaint has been filed, would find it difficult to lead evidence to defend himself or itself, as the case may be, on account of the time lag, or that changes have taken place rendering the inquiry procedurally inconvenient or difficult, he may refuse to entertain a complaint or information in respect of any misconduct made more than seven years

after the same was alleged to have been committed and submit the same to the Board of Discipline for taking decision on it under sub-section (4) of Section 21A of the Act.

### **Board of Discipline**

24. All questions which come up before the Board of Discipline shall be decided by a majority of the members present and voting, and in the event of an equality of votes, the Presiding Officer or in his absence, the person presiding, shall have a second or casting vote.
25. The quorum for any meeting of the Board of Discipline shall be two members.
26. In the event of the Presiding Officer not being able to attend a meeting of the Board of Discipline, the member of the Council appointed under clause (b) of sub-section (1) of Section 21A of the Act shall act as the Presiding Officer.

### **Procedure to be followed by the Board of Discipline**

27. The Board of Discipline shall follow summary disposal procedure in dealing with all cases before it. If the Board of Discipline decides to proceed further under clause (b) of sub-rule (2) of rule 9 or under clause (b) of sub-rule (3) of rule 9, it shall expeditiously cause to deliver to the respondent and the complainant, a copy each of *prima facie* opinion formed by the Director; and particulars or documents relied upon by the Director, if any, during the course of formulation of *prima facie* opinion.
28. The Board of Discipline shall inform the respondent to file a written statement, within such time as may be specified. One time additional time for submitting written statement may be given to the the respondent on his adducing sufficient reasons to the satisfaction of the Board of Discipline .
29. The respondent shall send a copy of his written statement, along with supporting documents, to the Director and the complainant within the stipulated time.
30. The complainant or the Director may, after receipt of the written statement, submit a rejoinder to the Board of Discipline, with a copy to the respondent, along with supporting documents, if any.
31. The Presiding Officer of the Board of Discipline shall fix a date, hour and place of hearing, which shall not ordinarily be later than 45 days from the date of receipt of *prima facie* opinion and the Board of Discipline shall cause a notice to be sent of such date, hour and place to the Director, respondent and complainant and require them to appear before it in person to make oral submissions, if any.
32. Appearance by an advocate or through any authorized representative, who may be a Chartered Accountant, Cost Accountant or Company Secretary is permitted.

33. On the date of hearing, if the respondent, in spite of the service of notice, under sub-rule (6), does not appear either in person or through his authorized representative, the Board of Discipline may proceed *ex-parte* and pass such orders as it may think fit or direct fresh notice to be served.
34. The Board of Discipline may, on such terms as it thinks fit, and at any stage of the proceedings adjourn the hearing.
35. The Board of Discipline shall consider the written representations, including the written statements, rejoinder and supporting documents, and the oral submission, if any made by the Director, the complainant and the respondent, and arrive at a finding on whether the respondent is guilty or not of any professional or other misconduct.

**Orders of the Board of Discipline**

36. On arriving at a finding that the respondent is guilty of professional or other misconduct, the Board of Discipline shall give the respondent an opportunity to be heard before passing any order under sub-section (3) of section 21A of the Act.
37. If the respondent is not guilty of professional or other misconduct, the Board of Discipline shall pass orders closing the case.
38. The Board of Discipline shall send, free of charge, to the Director, respondent and the complainant, a certified copy of the final order.

**Disciplinary Committee**

39. The Council has constituted a Committee presently located in Delhi.
40. All questions which come up before the Committee are decided by a majority of the members present and voting, and in the event of an equality of votes, the Presiding Officer or in his absence, the person presiding, shall have a second or casting vote.
41. The quorum for meeting of the Committee shall be three members, of which at least one shall be a member nominated by the Central Government under sub-section (1) of section 21B of the Act
42. In the event of the Presiding Officer not being able to attend a meeting of the Committee, the senior most member amongst the members nominated by the Central Government under sub-section (1) of Section 21B of the Act shall act as the Presiding Officer.
43. The Committee shall, subject to the other provisions of the Act and these rules, regulate its own procedure for matters not covered by the Rules.

**Procedure to be followed by the Committee**

44. The Committee shall be guided by the principles of natural justice and

shall follow the procedure in dealing with all cases before it, as laid down in the rules which is similar to that followed by Board of Discipline.

45. If the respondent pleads guilty, the Committee shall record the plea and take action as per provisions under rule 19.
46. If the respondent does not plead guilty, then the Committee shall fix a date for examination of witnesses and production of documents.
47. Committee may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.
48. The witnesses summoned is not eligible for reimbursement of expenses incurred for attending the hearing except where a witness summoned before the Committee under sub-rule (11) of rule 18. who shall be eligible for reimbursement of expenses, as may be determined through guidelines laid down by the Council.
49. After evidences have been presented, the Director and the respondent shall present their arguments before the Committee.
50. The complainant and the respondent shall have the right to attend the hearings of the Board of Discipline or the Committee, as the case may be, unless ordered otherwise by the Board of Discipline or Committee, for reasons to be recorded in writing.
51. The complainant and the respondent shall not be eligible for reimbursement of expenses incurred for attending the hearing.

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**GIST OF DISCIPLINARY PROCEEDINGS AGAINST MEMBERS****(I) Clause (6) of Part I of the First Schedule**

A member was charged with contravention of clause (6) of Part I of the First Schedule to the Company Secretaries Act, 1980, vide complaint dated 18.4.1989, for sending circular letters indirectly soliciting professional assignment from certain companies. The respondent in his written statement submitted that neither he nor his partner were in whole-time practice entitled to sign annual returns and that the letter under reference was issued by him with the only intention of informing the listed companies of a newly introduced provision of Companies (Amendment) Act, 1988, with regard to certification of annual return. There was no intention to solicit professional work either directly or indirectly, he stated.

The Disciplinary Committee pointed out that although the respondent was not qualified to sign the annual returns and he had submitted that he had no intention to solicit business but only to educate the various companies about the new provision of law, the issuing of circulars to companies listed at the Stock Exchange with whom the respondent had no business relationship, can be calculated to indirectly secure publicity and solicit clients as the recipients of the circular may be lured to contact the respondent for the assignment or further details. Such a circular is not proper and attracts clause (6) of Part I of the First Schedule to the Company Secretaries Act, 1980.

It is, however, not denied that the concept of Company Secretaries in practice is in nascent stage and members at large may not have been fully aware of the implications of soliciting business, after the provisions relating to certification of annual returns came into force.

In issuing the circular to persons who were not in professional relationship with the respondent, the respondent violated, may be unwittingly, clause (6) of Part I of the First Schedule to the Company Secretaries Act, 1980. He was therefore, guilty of professional misconduct in terms of the said clause.

However, as the respondent has admitted that he had absolutely no intention to advertise himself or solicit business from any quarter and that it had been out of sheer over enthusiasm and in view of the fact that he has tendered unqualified regrets and that he is not qualified to undertake the certification work being not in whole-time practice, the Committee recommended that the Council may take a lenient view of the case.

The Council concurred with the findings of the Disciplinary Committee and held the respondent guilty of professional misconduct and passed an order of 'Reprimand' against him in accordance with sub-section (4) of section 21 of Company Secretaries Act, 1980.



*Comment* : Now the concept of Company Secretaries in practice is no more in nascent stage and members are fully aware of the implications of soliciting business and hence lenient view may not be expected anymore.

**(II) Clause (8) of Part I of the First Schedule**

A complaint was filed against a member for violation of clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980, on the grounds of:

- (a) signing of the Annual Return of a listed company for the financial year ended on 31.3.1989, without first communicating in writing with the complainant who had certified the annual return of the said company earlier; and
- (b) accepting the position as company secretary in practice in the aforesaid company which was previously held by the complainant, in such conditions which clearly amounted to under cutting as the respondent raised a bill of Rs. 1,000 only for the certification of annual return for which in the ordinary course, the bill should not have been less than Rs. 5,000.

The respondent in his written statement stated with regard to allegation (a) that he had not snatched any assignment made in favour of the complainant but admitted that the said mistake of non-communication occurred through oversight and not intentionally.

Regarding allegation (b) he stated that the object of undercutting was to compete and get professional work but he only relied upon the information given by the Company and the fee was accordingly charged.

The Disciplinary Committee after enquiry found that the respondent was guilty of professional misconduct under clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980, in having accepted and commenced the certification of 1989 annual return for the said company without first communicating with the complainant in writing. The Disciplinary Committee observed that a perusal of clause (8) of Part I of the First Schedule clearly established that it was a mandatory provision and not recommendatory as evident from the word 'shall' used therein. The Guidance Note on Signing of Annual Return did not say that the communication with the earlier incumbent in case of signing of annual return was recommendatory but it only stated that it was recommendatory to make the communication by way of registered post. So far as the communication was concerned that mandatory requirement existed and the respondent admittedly did not communicate by any available means as required by the Act [*J.S. Bhati v. Council of ICAI* (SB. Civil Misc. Appeal No. 136 of 1973) - referred to].

As regards the allegation regarding undercutting of fee the Committee

pointed out that the fee charged for any work is dependent *inter alia* upon the work load, time involved, standing, seniority and reputation of the person concerned. A lower fee charged by a new incumbent may not *ipso facto* amount to undercutting. For want of evidence the Committee came to the conclusion that the charge could not be substantiated and that the respondent was not guilty of undercutting.

\* *Comment* : due to deletion of clause 11 of the First Schedule as it existed prior to amendment in 2006 , undercutting is no more a case of misconduct.

The Council concurred with the findings of the Disciplinary Committee and held the respondent guilty of professional misconduct in not ensuring advance communication and passed an order of 'Reprimand' against him in accordance with sub-section (4) of section 21 of the Company Secretaries Act, 1980.

### (III) Clause (8) of Part I of the First Schedule

In yet another case a similar complaint was made against a member for signing of the annual return of a listed company for the financial year ended on 31.3.1989, without first communicating in writing with the complainant who had certified the annual return of the company earlier. The respondent in his written statement admitted that for the year 1988, the complainant had signed the annual return of the company while for 1989 the respondent had signed return of the said company. He stated that he had duly intimated to the complainant at his official address by a letter under certificate of posting dated 20.9.1989 and had waited for more than a month and then certified the annual return on 29.11.1989. He also forwarded with his written statement a photocopy of the intimation letter and certificate of posting.

The Disciplinary Committee found that the facts of the case were similar to those of *J.S Bhativ. Council of ICAI* (S.B. Civil Misc. Appeal No. 136 of 1973) where the Rajasthan High Court while interpreting a similar provision relating to Chartered Accountants Act pointed out that the expression "communicate with him in writing", could not be interpreted to mean that the provision simply casts a duty in the incoming auditor to accept his new assignment. He has to do something more to discharge his obligation. The expression 'communicate with him' requires more than mere intimating his intention by dispatching a letter under certificate of posting. The Disciplinary Committee pointed out that mere posting of a letter should not be sufficient compliance but acknowledgement by the addressee of the same was also essential. On the basis of materials available it could not be proved that the complainant received that letter of intimation. Hence, it was held that the respondent was guilty of violating clause (8).

The Council concurred with the finding of the Disciplinary Committee and held the respondent guilty of professional misconduct and passed the order of 'Reprimand' against him in accordance with, sub-section (4) of section 21 of Company Secretaries Act, 1980.

**(IV) Clause (10) of Part I and Clause (3) of Part III of the First Schedule (Now Clause 2 of Part III of the First Schedule and clause 3 of Part II of the second Schedule after 2006 amendment.)**

In another case a complaint was made against a member for violation of clause (10) of Part I and clause (3) of Part III of the First Schedule to the Company Secretaries Act, 1980, on the grounds of:

- (a) holding the Certificate of Practice of both the Institutes i.e. the Institute of Company Secretaries of India and the Institute of Chartered Accountants of India which has not been permitted by the Council of the former and Practicing both the professions on whole-time basis; and
- (b) the information that he was holding the Certificate of Practice of the Institute of Chartered Accountants of India was not disclosed by him to the Council of ICSI which was required to be given at the time of renewal of Certificate of Practice.

The respondent in his written statement had admitted his mistake of holding certificates of practice of both the Institutes simultaneously but he stated that his intention was not *mala fide* and that he had not enjoyed any *extra benefit* of such dual holding of certificate of practice. Regarding allegation (b) it was stated that he had informed the ICSI in reply to its letter dated 18.11.1989 that he had already surrendered certificate of practice of ICAI but so far he had not received any communication from ICAI about the cancellation of his certificate of practice.

The Disciplinary Committee after enquiry found that the information regarding holding of certificate of practice of ICAI was given by the respondent to the ICSI only when the ICSI vide its letter dated 25.9.1989, specially asked the respondent to confirm whether he was holding certificate of practice from the ICAI / ICWAI.

When the respondent had given a declaration that he had surrendered the certificate of practice from ICAI, it was obligatory on him to make sure that his certificate of practice of ICAI had been cancelled in their records. But the respondent did not care to confirm from ICAI whether his certificate of practice had been cancelled in their records as request made by him to it on 1.9.1989. Therefore, on the basis of material made available on record, it was clear that the respondent had violated the provisions of Clause (3) { now Clause 2 of Part III of the First Schedule and clause 3 of Part II of the second Schedule after 2006 amendment } of Part III of the First Schedule to the Company Secretaries Act, 1980.

So far as allegation at (b) is concerned the contention of the respondent that he never used the certificate of practice of ICSI cannot be accepted as it was used by him for admission as Fellow Member of ICSI.

The Council concurred with the above finding of the Disciplinary Committee and held the respondent guilty of professional misconduct and passed an order to the effect that 'the name of the respondent be removed from the Register for a period of one year' as provided in sub-clause (b) of sub-section (4) of section 21 of the Act.

**(V) Clause (10) of Part I and Clause (3) { Now Clause 2 of Part III of the First Schedule and clause 3 of Part II of the second Schedule after 2006 amendment} of Part III of the First Schedule**

In another case a complaint was made for violation of clause (10) of Part I of the First Schedule and Clause (3) of Part III of the First Schedule to the Company Secretaries Act, 1980, on the grounds of:

- (a) holding the Certificate of Practice of both the Institutes i.e. Institute of Chartered Accountants of India and Institute of Company Secretaries of India without the permission of the Council of the latter and also Practicing both the professions on whole-time basis simultaneously;
- (b) Signing of annual return in excess of the limit fixed by the Institute, during the year 1989-90;
- (c) holding of post of Company Secretary under section 383A of the Companies Act, 1956; and
- (d) filing of Form 32 in respect of his appointment under section 383A of Companies Act, 1956.

The respondent in his written statement stated with regard to allegation (a) that he was holding only a part-time certificate of practice from the Institute of Chartered Accountants of India which was later surrendered in October 1990. Regarding allegation (b) he submitted that he did not sign annual return of any company during the year due to his continuous ill-health. Regarding allegations (c) and (d), the respondent denied that he held any post of company secretary under section 383 A of the Companies Act, 1956, or filed any Form No. 32 with any Registrar of Companies in India showing his appointment as such.

The Disciplinary Committee after, enquiry found that admittedly, the respondent's case was that he was holding the Certificate of Practice of Institute of Chartered Accountants of India from 1987 but in his application dated 11.5.1988 for issue of certificate of practice made to the Institute of Company Secretaries of India, he did not disclose that he was holding part-time certificate of practice of ICAI. In his application for issue of certificate of practice, he had given a declaration that he was engaged in the profession of company secretaries and not in any other profession, business or occupation. Further, on 21.6.1988, he gave an undertaking/declaration to the Institute that as long as he was holding certificate of practice of the ICSI, he would not hold the certificate of practice from any other professional body or institution. In his statement given before the Disciplinary Committee the

respondent had categorically admitted that he had a certificate of practice of ICAI since February 1987, and he also held Certificate of Practice on whole-time basis till May 1988. With regard to his declaration dated 11.5.1988, he stated that while giving the said declaration he meant that he was not in whole-time practice as Chartered Accountant but was in part-time practice as Chartered Accountant on the date of declaration but in the first part of his statement he clearly admitted that he was Practicing as a Chartered Accountant on whole-time basis till May 1988. Therefore, the Committee found that the respondent was guilty of violation of the provisions contained in Clause (10) of Part I of the First Schedule and Clause (3) { Now clause Clause 2 of Part III of the First Schedule and clause 3 of Part II of the second Schedule after 2006 amendment . } of Part III of the First Schedule to the Company Secretaries Act, 1980. As allegations (b) to (d) were not referred to the Committee by the Council, it did not look into them.

The Council concurred with the above finding of the Disciplinary Committee and held the respondent guilty of professional misconduct and passed an order that 'the name of the respondent be removed from the Register for a period of one year' as provided in sub-clause (b) of sub-section (4) of section 21 of the Act.

#### **(VI) Clause (6) and (7) of Part I of the First Schedule**

A complaint was filed against a member for violation of clauses (6) & (7) of Part I of the First Schedule to the Company Secretaries Act, 1980 on the grounds of:

- (a) printing and circulating visiting cards in a manner which is prohibited by the Code of Conduct; and
- (b) misusing the Institute's letterhead, brochures, circulars etc. mentioning his name with designation, description and the Practicing field other than as prescribed and thus misleading the reader by not mentioning his whole-time employment.

The respondent in his written statement denied all the allegations and stated the same were untrue. Regarding visiting cards the respondent had stated that the cards in question were not printed by him or used by him and the souvenir and the brochures were published by Regional Council Office and not by him and he also stated that there was nothing to indicate personal canvassing and misleading of the readers by him in the souvenir, brochure or visiting cards, as alleged.

The Disciplinary Committee after enquiry found that the respondent was guilty of professional misconduct under clause 7 of Part I of the First Schedule to the Company Secretaries Act. 1980 and observed that the respondent's plea that he had not printed or circulated or used the visiting cards cannot be accepted on the bases of the facts and circumstances of the case. Since the respondent had held a certain office in the Regional Council at the relevant point of time, his plea

that what was printed in the souvenir, brochures and other materials was done by the Regional Council Office without his knowledge and consent cannot be accepted, particularly as he said that he had nothing more to add, when the Committee had asked him what steps he took to prevent circulation of such material.

The Council concurred with the finding of the Disciplinary Committee and held the respondent guilty of professional misconduct and passed an order of 'Reprimand' against him in accordance with sub-section (4) of section 21 of the Company Secretaries Act, 1980.

**(VII) Clause (6), (7) and (8) of Part I of the First Schedule**

In yet another case a complaint was filed for violation of clauses (6), (7) & (8) of Part I of the First Schedule to the Company Secretaries Act, 1980, on the grounds of:

- (a) accepting a certification work from a company without first communicating with the earlier incumbent;
- (b) misrepresenting by issuing his association with the complainant;
- (c) circulating visiting cards against the Code of Conduct; and
- (d) addressing a letter to a company indirectly soliciting professional assignment.

The respondent in his written statement stated with regard to allegation (a) that he had not snatched any assignment made in favour of the complainant but admitted that there was delay in communicating the acceptance of assignment from the named company for certification of annual return for 1989 and the delay was not intentional but was due to inadvertence. Regarding allegation (b), it was submitted that at no time he had any association with the complainant and hence had not misrepresented. Regarding allegation (c) about visiting cards, he submitted that the visiting cards under question were printed in a very small quantity and the same were used by him only for limited purpose in connection with the business of a company in whose service he was and that too only for a short period. Regarding allegation (d), he had denied having solicited any professional assignments through any unfair means.

The Disciplinary Committee held as under:

- (a) The respondent is guilty of violation of the provisions contained in Clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980, on his own admission that he had not communicated with the complainant prior to accepting the 1989 Annual Return Certification work for the company but the respondent is absolved of the charge of snatching assignment from the complainant as the complainant had not been assigned the Certification of Annual Return of the company for the year 1989.
- (b) In the absence of deposition of witnesses or written evidence in

this regard, the complaint regarding misrepresentation against the respondent was not held proved.

- (c) On the admission of the respondent it was clear that the visiting cards were circulated in violation of rules of the Code of Conduct laid by the Institute albeit for a short duration. However, the fact that the respondent had taken corrective steps in this regard, may be kept in mind while taking further action.
- (d) In the absence of deposition of witnesses or furnishing of suitable evidence, the letter on record dated 8.12.1989, from the respondent to the company secretary of a company speaks for itself that the respondent in having issued this letter has violated the provisions of Clause (6) and/or (7) of Part I of the First Schedule to the Act.

Accordingly, the Committee concluded that the respondent was guilty of professional misconduct under Clauses (6), (7) and (8) of Part I of the First Schedule to the Company Secretaries Act, 1980— (a) in having accepted and commenced the 1989 Annual Return Certification work without first communicating with the complainant; (b) circulating visiting cards against the Code of Conduct though for a short duration only, (c) in addressing a letter dated 8.12.1989 to the company secretary of a company indirectly soliciting professional assignment and (d) in addressing a letter to the company, in violation of the relevant provisions contained in the First Schedule to the Company Secretaries Act, 1980.

The Council concurred with the above findings of the Disciplinary Committee and held the respondent guilty of professional misconduct and passed an order of 'Reprimand' to the respondent in accordance with sub-section (4) of section 21 of the Company Secretaries Act, 1980.

#### **(VIII) Clauses (6) and (7) of Part I of the First Schedule**

A complaint was filed against a member alleging misconduct as envisaged under clauses (6) and (7) of Part I of the First Schedule to the Company Secretaries Act, 1980. The allegations were that the Member:

- (a) had personally met officers of the ABC Ltd. on various occasions for soliciting business;
- (b) had used the influence of a Management Consultant to solicit business;
- (c) had written a nasty letter to the Senior President of ABC Ltd. which was against the Code of Conduct;
- (d) had described himself in visiting cards and letter heads as "Advocate, High Court" which was also against the Code of Conduct;
- (e) had sent undated circulars to companies to solicit professional work by unfair means.

In his written statement the respondent denied the allegations. His contention was that the complaint was based on documents produced in another complaint where the respondent was himself the complainant and that till such time the other complaint was disposed of, the documents could not be used in the present complaint. He denied meeting the senior executives of the ABC Limited since he was never appointed to carry out the work of certification of annual returns for the year 1989. Allegations (b) and (c) were based on the evidence produced by the Member himself in the earlier complaint filed by him. According to him, describing himself as Advocate in his visiting card while being a Practising Company Secretary did not amount to misconduct. Regarding allegation (e) the respondent stated that there was no circular as alleged but what was produced by the complainant as evidence was only a copy of the acknowledgement receipt from the company.

The Disciplinary Committee found that the respondent did resort to unfair means in soliciting professional work and that the letter written by respondent to ABC Limited were violative of professional standards of behaviour. In spite of the clarification from the Institute that no one, using the designation 'Company Secretary', was to use any other designation to describe himself, the respondent had used both the designations "Company Secretary" and 'Advocate, High Court' and this was clearly against the Code of Conduct. The Committee categorically held that there was nothing wrong in relying upon evidence or documents which may have formed the basis of any other complaint. In matters of professional conduct it is necessary for the Institute to uphold high values so that the image of the Institute is not impaired and technical points ought not to influence the findings in such matters. The Committee held the respondent guilty of professional misconduct under Clauses (6) and (7) of Part I of the First Schedule to the Company Secretaries Act, 1980.

The Council after considering all the documents and the representations of the parties both written and oral, confirmed the findings of the Disciplinary Committee. Thereafter hearing was afforded to the respondent member as envisaged under section 21(4) of the Company Secretaries Act, 1980, and the Council passed an order directing the removal of the name of the respondent member from the Register for a period of one year.

The respondent member preferred an appeal in the Court under section 30 of the Act. The Court, without expressing any opinion on merits of the matter, accepted the respondent Members' apology tendered in the Court, and in view of the apology and considering all factors, the Court set aside the order passed by the Council. Thereafter, the respondent member's name was reinstated in the Register of Members as Associate Member from the date of removal. Now appeal can be made before the Appellate Authority and from there to the Supreme Court.



**(IX) Clause 10 of Part I of the First Schedule**

A complaint was filed against a member of the Institute ( hereinafter referred to as 'Respondent') for professional misconduct alleging the following—

- (a) that he has been employed as a company secretary on remuneration while holding a certificate of practice of the Institute;
- (b) he had disclosed information confidential and other acquired by him in the course of his professional engagement;
- (c) he was grossly negligent in the performance of his professional duties and failed to fulfill the requirements of the Companies Act, 1956 and other Acts;
- (d) he was carrying several other business other than full-time employment while holding certificate of practice.

The Respondent in his written statement submitted with regard to allegation (a) that his association with the company was an interim measure and he was appointed to the post of Company Secretary on certain remuneration even without discussion/obtaining any prior consent from him. Regarding allegation at (b) the Respondent submitted that the same is absolutely vague, false and motivated. Regarding allegation at (c) he stated that he performed his duties completely in accordance with the Articles of Association of the Company and the applicable provisions of the Companies Act. Regarding allegation (d) the Respondent stated that he had not indulged in any business / occupation.

The Disciplinary Committee after enquiry found the Respondent guilty of professional misconduct under clause (10) of Part I of the First Schedule to the Company Secretaries Act, 1980, for engaging himself in employment while having a certificate of practice from the Institute. The explanation / justification of the Respondent that at the time he had resigned from the services of the Company and in anticipation of his being relieved from employment, he had applied for renewal of certificate of practice for the year 1992-93. The Disciplinary Committee observed that the said explanation/justification of the Respondent is not acceptable and it is for the member having certificate of practice of the Institute to ensure the prior approval of the Council before engaging in any business, occupation, employment or other profession and found the Respondent guilty of professional misconduct under clause (10) of Part I of the First Schedule to the Act.

As regards the other allegations, the Committee held that the same have not been proved as were neither proved, by the Complainant by evidence nor the documents on record substantiated the said allegations.

The Council after considering the report of the Disciplinary Committee,

all the relevant documents, circumstances and representations of both the parties, endorsed the findings of the Disciplinary Committee that the Respondent was guilty of professional misconduct under clause (10) of Part I of the First Schedule to the Act and passed an order of 'Reprimand' against the respondent.

**(X) Clause (1) of Part II of Second Schedule**

A *suo-motu* enquiry was initiated by the Institute against the member (hereinafter referred to as 'Respondent') on receipt of information that he had certified the annual returns of one company without having a certificate of practice issued by the Institute and the same was signed by him fraudulently stating himself as a Company Secretary. The act on the part of the member amounted to professional misconduct under clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980.

The Respondent in his written statement stated that — (a) the Institute's letter regarding cancellation of his certificate of practice could not come to his notice due to misplacement by his family member. The said annual returns had been signed by him under the belief that he had been holding the certificate of practice during that period; (b) after realizing the mistake, he rectified the same by getting the said annual returns re-certified by some other company secretary at his own expenses. The Council after forming the *prima facie* opinion referred the matter to the Disciplinary Committee for an enquiry.

The Disciplinary Committee after enquiry from the documents and information on record observed that it was clear that the Respondent had certified the annual returns without holding a certificate of practice from the Institute. The Respondent had also admitted his said mistake. The contention of the Respondent that he had signed the annual returns under the belief that he had been holding the certificate of practice during that time had not been substantiated by any document or other evidence on record. The Respondent's another contention that he had not received the Institute's letter regarding cancellation of certificate of practice at his request was not tenable as, it was obligatory on the Respondent to be sure that his Certificate of Practice had been cancelled in the records of the Institute and also the date of cancellation while holding Certificate of Practice on whole-time basis from ICAI. The Disciplinary Committee found the Respondent guilty of professional misconduct under clause(1) Part II of the Second Schedule to the Company Secretaries Act, 1980 for contravention of section 6 of the Company Secretaries Act, 1980.

The Council after considering the report of the Disciplinary Committee and the representation of the Respondent found that the Respondent was guilty of professional misconduct for signing the annual returns of a company without holding a certificate of practice under clause (1) of Part II of the Second Schedule to the Act though the said act might

have been committed by him *bonafide* and forwarded the case to the High Court under sub-section (5) of section 21 of the Act, along with its recommendations that in view of the respondent having admitted his guilt and also apologised for the same he be reprimanded.

The Hon'ble High Court of Rajasthan vide its order dated 10th March, 1997 accepted the reference of the Institute wherein he was recommended to be 'Reprimanded'. Accordingly, the punishment of 'Reprimand' was recorded in the Register of Members against his name. { now after 2006 amendment there is no need for making reference to the High court . Matters covered by second schedule are dealt with by the Disciplinary Committee. }

**(XI) Clause (6) of Part I of the First Schedule**

A *suo-motu* enquiry was initiated by the Institute on receipt of information against the member (hereinafter referred to as 'Respondent') that he had solicited professional work of signing the Annual Returns of a company through a letter, which amounted to professional misconduct under clause (6) of Part I of the First Schedule to the Company Secretaries Act, 1980. The Respondent in his written statement admitted that he had been negligent in drafting and sending few letters to the company and also requested for condonation of lapse of any violation. However, the Respondent submitted that the letter under reference was issued by him in connection with some assignment entrusted to him by one bank for the preparation of search report, verification of charges and detailed inventory audit, including the company to which he had sent the letter under reference.

The Disciplinary Committee after enquiry observed that though the Respondent tried to explain and justify his act of omission, yet there was no substance in his explanation / justification and being a senior member of the Institute his statement that the omission was committed by him accidentally and without any intention on his part was not acceptable. The Committee found that the Respondent was guilty of professional misconduct under clause (6) of Part I of the First Schedule to the Act for issuing a letter to the Managing Director of the company for soliciting professional work.

The Council after considering the report of the Disciplinary Committee, representation of the Respondent and all the relevant documents and circumstances endorsed the findings of the Disciplinary Committee and held that the respondent was guilty of professional misconduct under clause (6) of Part I of the First Schedule to the Act, and after affording an opportunity of hearing to the Respondent passed an order of 'Reprimand' against him.

**(XII) Clause (6) of Part I of First Schedule**

It was brought to the notice of the Institute that a Member had issued a circular letter offering secretarial services and soliciting professional

work which amounted to professional misconduct under clause (6) of Part I of the First Schedule to the Company Secretaries Act, 1980 (hereinafter referred to as the 'Act').

On receipt of the information, the Institute initiated *suo-motu* enquiry against the Member. The Member in his written statement admitted to have issued a circular letter and stated that the same was issued inadvertently due to absence of knowledge of such prohibition.

The Disciplinary Committee after enquiry found the member guilty of professional misconduct under clause (6) of the Part I of the First Schedule to the Act for issuing the circular letter for soliciting professional work.

The Council considered the report of the Disciplinary Committee, representation of the member and all other relevant documents available on record and attended facts and circumstances, recorded its findings that the respondent was guilty of professional misconduct under clause (6) of Part I of the First Schedule to the Act and passed the order of 'Reprimand' against him.

**(XIII) Clause (8) of Part I of First Schedule**

A complaint was filed against a member for violation of clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980 on the ground that the respondent has accepted the assignment of certification of Annual Return of a Company for the year 1994-95 without first communicating his acceptance of his position to the complainant in writing. The respondent in his written statement stated that he had accepted the position with prior intimation to the complainant through a letter at Complainant's official address and also stated that due date for filing the annual returns for the period ended on 30.9.1995 was 30.11.1995 and there was no time left with him not to sign them on or before 30.11.1995. Otherwise the company has to face the default notice under the provisions of the Companies Act, 1956. The Disciplinary Committee after enquiry found the member guilty of professional misconduct under clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980 in having accepted the certification of Annual Return of the company for the year 1994-95 without first communicating with the complainant in writing.

The Disciplinary Committee observed that mere posting of the letter is not sufficient to comply with the requirement of clause (8) of Part I of First Schedule to the Act, but acknowledgement by the addressee of the same is also essential.

The Council considered the report of the Disciplinary Committee, representation of the member and other relevant documents available on record and attendant facts and circumstances recorded its findings that the respondent was guilty of professional misconduct under clause (8) of Part I of the First Schedule to the Act and passed the

order of 'Reprimand' against him in accordance with sub-section (4) of Section 21 of the Act.

**(XIV) Section 21 read with section 22 of the Company Secretaries Act, 1980**

A complaint was filed against a member for professional or other misconduct under section 21 read with section 22 ( prior to 2006 amendment ) of the Company Secretaries Act, 1980 on the ground that the respondent had misappropriated the funds of the Institute, by placing on a printing press an order for printing of brochures and souvenirs for the Regional Members Conference and passing the bill of the printer at a rate which was abnormally high and for a quantity more than the actual supply in spite of strong objections from the concerned Regional Council Members.

The Disciplinary Committee, after enquiring into the complaint held that the respondent was guilty of professional or other misconduct under section 21(1) read with section 22 of the Company Secretaries Act, 1980 in committing an act of gross negligence in awarding the printing contract and passing the bills for payment without following the prescribed procedure and especially so as he was an office bearer of a Regional Council of the Institute.

The Council concurred with the findings of the Disciplinary Committee and after taking into consideration the facts on record, held the respondent guilty of professional or other misconduct and passed an order of removal of respondent's name from register of members of the Institute for one month in accordance with sub-section (4) of section 21 of the Company Secretaries Act, 1980.

**(XV) Clause (8) of part I of the First Schedule**

A complaint was filed against a member for professional misconduct under section 21 of the Company Secretaries Act, 1980 for signing the annual returns of eleven companies without first communicating in writing with the complainant who had been earlier signing the Annual Returns of these companies.

The Disciplinary Committee after enquiring into the complaint held that the respondent was guilty of professional misconduct under Clause (8) of Part I of the First Schedule to the Act for signing of Annual Returns of eleven Companies without first communicating in writing with the complainant.

The Council after considering the report of the Disciplinary Committee, the written representation of the parties, documents on record and all the facts and circumstances of the case, concurred with the findings of the Disciplinary Committee and found the respondent guilty of professional misconduct under Clause (8) of Part I of the First Schedule to the Act and after considering the representation of the respondent

passed an order of reprimand against the respondent in accordance with sub-section (4) of section 21 of the Act.

**(XVI) Clause (8) of Part I of the First Schedule**

In another case, a complaint was filed against a member for professional misconduct under Section 21 of the Company Secretaries Act, 1980 for signing the annual returns of a company without first communicating in writing with the complainant, who had been signing the annual returns of the said company for the past many years.

The Disciplinary Committee after enquiring into the complaint held that the respondent was guilty of professional misconduct under Clause (8) of Part I of the First Schedule to the Act for signing the Annual Returns of the Company without first communicating in writing with the complainant.

The Council after considering the report of the Disciplinary Committee, documents on record and all the facts and circumstances of the case concurred with the findings of the Disciplinary Committee, found the respondent guilty of professional misconduct and after affording the respondent an opportunity of hearing, passed an order of reprimand against the respondent in accordance with Sub-section (4) of Section 21 of the Company Secretaries Act, 1980.

**(XVII) Clause (6) of Part I of the First Schedule**

A suo-motu enquiry was initiated by the Institute under section 21 of the Company Secretaries Act, 1980 against the respondent on receipt of information that the respondent had given an advertisement in the newspaper in contravention of the provisions of the Company Secretaries Act, 1980.

The Disciplinary Committee after enquiring into the matter held that the respondent was guilty of professional misconduct under Clause (6) of Part I of the First Schedule to the Act for giving an insertion in the newspaper. The Council after considering the report of the Disciplinary Committee, all records and circumstances, concurred with the findings of the Disciplinary Committee and found the respondent guilty of professional misconduct under Clause (6) of Part I of the First Schedule to the Act and after considering the written representation of the respondent passed an order of removal of respondent's name from the Register of members of the Institute for a period of six months, in accordance with sub-section (4) of section 21 of the Act.

ABOVE CASES WERE DECIDED PRIOR TO THE YEAR 2006 AND HENCE THOUGH THE PROCEDURES MAY HAVE CHANGED DUE TO AMENDMENT TO THE ACT, THE PRINCIPLES (RATIO OF THE CASE) HAD REMAINED SAME HENCE THESE HAVE BEEN REPORTED.

**CASES DECIDED POST 2006 BY THE BOARD OF DISCIPLINE.****(XVIII) Clause (8) of part I of the First Schedule to the Act**

The complainant had alleged that the respondent had given the Compliance Certificates to two HE Pvt. Ltd. and WE Pvt. Ltd. for the financial years 2006-07 without any prior information in writing to the complainant.

The respondent in reply had submitted that earlier the respondent made great efforts to trace the company secretary who had previously given the certificate and came to know that the complainant had given the certificate to the two companies. The complaint was known to him and he personally went to the complainant's residence at Lucknow, UP and informed him regarding the same. The complainant informed the respondent that no formal notice required since most of the member of the Institute do not follow the guidelines. The respondent relying complainant's statement, did not given any formal written notice. He further submitted that he got married on 6-12-2007 and due to lack of time and having faith in the words of the complainant, became careless in giving written communication before filing the compliance certificate.

The respondent admitted that he had not given any communication in writing to the complainant prior to filing the Compliance Certificates.

After providing another opportunity of hearing, the Board passed the Order of " Reprimand "

**(XIX) Clause 8 of Part I of the First Schedule to the Act .**

The complainant had alleged that the respondent had accepted the position of Company Secretary previously held by the complainant without first communicating him in writing and certified the Annual Return as on date of the AGM held on 21-09-2006.

The respondent vide e-mail dated 4th October, 2007 submitted as under:-

- (a) According to the First Schedule a Company Secretary in practice shall be deemed to be guilty of professional misconduct if he accepts the position of Company Secretary in practice previously held by another company Secretary in practice without first communicating with him in writing.
- (b) The Institute has clarified the provision in its book "Guidance Note on Code of Conduct for Company Secretaries (Second Edition). The relevant parts of the provisions are quoted below:-
  - (i) the primary requirement under this clause of prior communication with the previous incumbent is intended for reasons of professional courtesy. The clause is not intended to prevent a client from changing over to another company secretary for his own reasons. The client as of right has full freedom to change over to another company secretary.

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- (ii) It would be desirably for the new incumbent to obtain a letter from the company that no other company secretary has been appointed for the same assignment.
- (iii) It is further clarified that though communication is a must, obtaining consent will not apply in 'cases of certification of Annual Returns for different years.
- (iv) The respondent was assigned the task of certification of the Annual Return of WF Services Ltd., for the year 2005-2006, when the company was satisfied after discussion with the Respondent.
- (v) Due communication in writing in this regard pursuant to the First Schedule to the Company Secretaries Act, 1980 was sent by registered post by the Respondent to the address of the Petitioner.
- (vi) There is no provision in the Company Secretaries Act, 1980 under which the Respondent was under any obligation to obtain a consent or no objection from the petitioner. The respondent drew attention to 4 (iii) and 4 (iv) above.
- (vii) A letter dated 30th October, 2006 from the company's to the respondent regarding the appointment of the respondent was received.
- (viii) As the relevant provisions of the First Schedule to the Company Secretaries act, 1980 were duly complied with by virtue of the written communication by the respondent to the petitioner and no 'consent' or 'no objection' of the Petitioner was necessary the complaint of the petitioner is liable to be rejected.

The respondent submitted that through e-mail dated 4th October, 2007 a copy of letter of communication (scanned copy) was sent by registered post to the complainant on dated 3rd November, 2006 but despite a number of reminders the respondent has not submitted any postal receipt for having sent the communication.

Since the respondent has failed to send the proof of having sent the communication by registered post and the complaints has denied to have received any such communication, the board held the respondent is *prima facie* guilty of professional misconduct under clause (8) of Part I of the First Schedule to the Act. What was the punishment?

**(XX) Clause (8) of part I of the First Schedule to the Act**

The complainant had alleged that the respondent had issued Compliance Certificate to M/s. ST Pvt. Ltd. for the financial year ended 31-03-2007 without prior communication in writing to the complainant. The said certificate has been issued at Ludhiana where the respondent has no office. The complainant has further alleged that the respondent



has solicited professional work by personal communication through the mediator. The complainant has also alleged the respondent has not intimated his professional address to the Institute.

The respondent submitted that he had sent a letter dated 4-10-2006 to the complainant intimating him of his appointment as Compliance Officer. The complainant denied to have received any such letter from the respondent. The respondent denied of soliciting professional work. The respondent submitted that he was in a rented premises (changed recently) but had not changed the correspondence address which is his permanent residence at Yamuna Nagar.

The respondent was requested to provide the mode of having sent the letter dated 4th October, 2006 to the respondent and the proof of having sent the said letter. However, the respondent did not provide any proof.

After considering the allegation and the defence, the Board was of the opinion that the respondent has not effectively communicated with the respondent before accepting the assignment and therefore guilty of professional or other misconduct under clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980.

**(XXI) Clause (8) of part I of the First Schedule to the Act**

The respondent had informed to have intimated the Complainant by a letter under Certificate of Posting which the respondent denied to have received. The UPC does not provide positive evidence of having received the letter by the respondent. Hence, the respondent is *prima-facie* guilty of Professional or other misconduct.

**CASES DECIDED POST 2006 BY THE DISCIPLINARY COMMITTEE**

**(XXII) Clause 1 of Part II of the second Schedule to the Act**

A Complaint was received against a PCS alleging that he was holding Certificate of practice while being in employment which was in contravention of the resolution passed by the Council.

The Complaint was enquired into by the Disciplinary Committee and the charge was proved. The Committee after providing the opportunity of hearing removed the name of the respondent for the period of 90 days.

**(XXIII) Clause 7 of Part I of the second Schedule to the Act**

A Complaint was received against a PCS alleging that PCS was negligent in discharging her professional duties.

The respondent provided explanation to the various allegations made by the complainant, however, the respondent accepted that a wrong date of resignation in respect of one of the Directors was inadvertently

mentioned. Respondent PCS also accepted to have made similar mistakes on more than one occasion for which she has not provided any justification including Form No.2 which was filed on three occasions.

**(XXIV) Clause 7 of Part I of the second Schedule to the Act .**

It was alleged that the respondent issued certificate No.178240 for 34,00,000 shares and certificate No.178241 for 6,00,000 shares in lieu of certificate No.178197 for 40,00,000 shares. These shares were issued on 12th September, 2003, although the same was approved by the Shares Transfer and the Grievance Committee in its meeting held on 27th February, 2004. Also there was no superscription on the certificate No. 178240 and 178241 to the effect that these certificates were issued in lieu of certificate No.1 74197. This lead to circulation or two sets of certificates (No.178240 for 34,00,000) shares.

The respondent during her deposition before the investing authority of SEBI had identified the three sets of certificates issued by PGL in the name of VAPL. She also admitted the lapse, which she attributed to her in-experience.

The Committee after providing the opportunity of hearing to the member decided that The name of a member be removed from the Register of Members for the period of 30 days.

**(XXV) Clause 7 of Part I of the second Schedule to the Act**

The Complainant has alleged that the respondent has manipulated the challans and falsified the information in the MCA21 portal service. The respondent had generated two challans and the third challan was created manually superimposing the data of the second challan. The third challan was presented to a Bank along with transfer cheque of Rs.25,000/-. However, the verification procedure laid down in the reconciliation of the payments in the MCA21 system had trapped the modifications and rejected the challan with the error back to the bank. After this the respondent approached ROC, Chennai on 3rd October, 2006 for Master Data correction and upon rectification filed a fresh Form 5 paying Rs.25,000/- as the fee.

The respondent in his written statement accepted the allegation

“ I have made my submissions in this matter. Whatever mistake has happened . I request the Disciplinary Committee to be lenient and close the matter. I assure you that I will hold the professional ethics of the Institute.”

After providing another opportunity of hearing , the Committee passed the Order of “ Reprimand”.

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