STRICTLY CONFIDENTIAL

For restricted circulation

Report

on

Operation of Multinational Network Accounting Firms in India



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
NEW DELHI

INDEX

Para No.	Contents	Page No.
1.	Preamble	1
2.	Composition of the Group	3
3.	Meetings of the Group and Council	4
4.	Observations	5
5.	Summarisation of responses received from CA firms	12
6.	Findings	28
7.	Recommendations made to the Council (as accepted by the Council while approving this report)	31
	Acknowledgements	36
	Annexure - I	37
	Annexure – II	161
	Annexure – III	163
	Annexure – IV	164

STRICTLY CONFIDENTIAL
For restricted circulation

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

REPORT ON OPERATION OF MULTINATIONAL NETWORK ACCOUNTING FIRMS IN INDIA[#]

1. Preamble

1.1 A corporate fraud of huge magnitude had come to light, with the revelation by the then Chairman of M/s Satyam Computer Services Limited ("Satyam") about serious irregularities and mis-statements in the financial statements of Satyam running into several years. The then Chairman of Satyam, in his confessional statement made on 7th January, 2009, had owned up responsibility for having fudged the accounts and having shown inflated figures for a number of years.

1.2 The then President of the Institute vide his letter no. Sectt./MCA/09 dated 29th January, 2009 addressed to the Secretary, Ministry of Corporate Affairs had requested the Government to curb, in its entirety, any undesirable activities/operations of Multinational Accounting Firms (MAFs), in the context of `Satyam' and other related matters, which not only brought disrepute to the profession of Chartered Accountants in India, but also tarnished the image of the country in the eyes of the public world over. The attention of the Ministry was also drawn to the earlier correspondence entered into by the Institute in this regard.

1.3 In response thereto, the Ministry of Corporate Affairs had sent a letter no. 1/10/2003-IGC/PI dated 13th February, 2009 to the Institute seeking clarification as to whether any action had been taken or was proposed by the Institute in the matter. Thereafter, the Ministry had invited the representatives of the Institute for a meeting on 27th February, 2009 to identify the issues to be considered by the Institute in the above context. The meeting was attended by the then President and the Secretary of the Institute, besides other functionaries. Subsequent to the above meeting, the Institute had sent its response vide its letter no. 29-CA/NDM/116 dated 3rd March, 2009 mentioning therein that several initiatives had been taken by the Institute in the past in the matter of functioning of MAFs in India for contravention of the laws of the land. It was further mentioned in the response sent to the Ministry that such initiatives included detailed

---

[#] **The Group has consciously decided not to mention name of any CA firm in this report including in the Annexures with a view to keep up the confidentiality of the matter and to ensure that any observation made herein is not perceived to be against any specific firm(s)**

consideration of the matter by a Study Group constituted in the year 2002 for the purpose in relation to Section 25 of the Chartered Accountants Act, 1949 and submission of the summary of issues and decisions taken thereon by the Council to the Ministry vide letter dated 29th November, 2003 and submission of a detailed letter dated 19th October, 2004 containing the proposals of the Institute for amendments in the Chartered Accountants Act, 1949 and the Regulations framed thereunder. Copies of the said correspondence were once again sent to the Ministry vide Institute's letter dated 3rd March, 2009. A copy of these letters of ICAI are enclosed as ***Annexure I*** for a clear background of the matter.

1.4 At the aforesaid meeting held with the Ministry on 27th February, 2009 and deliberations of the Group arising therefrom, the following issues emerged for consideration by ICAI:

(a) Manner in which certain Indian CA firms hold out to public that they are actually MAFs in India, the manner in which assignments are allotted, determination of nexus/linkage – The representatives of certain Indian CA firms carry two visiting cards – one of Indian CA firm and another of a multinational entity. They represent the multinational entity and seek work for Indian CA firm.

(b) Name used by auditor in his report – The basic question was whether the auditors of M/s Satyam had correctly mentioned the name of their firm in the audit report.

(c) Terms and conditions and cost payable for use of international brand name – No international firm will allow its name to be used by all and sundry. The question is, what is the consideration, whether it is determined as a percentage of fee or profits and whether it is within the framework of Chartered Accountants Act, 1949, Regulations framed thereunder, Code of Conduct and Ethics.

(d) Nature of extra benefits accrued to the Indian CA firms having foreign affiliation.

(e) How the MAFs placed their foot in India – Long back in a meeting with RBI, it was informed that the MAFs entered in India to set up representative offices. No documents are available as regards the terms and conditions set out while granting them permission to operate in India. However, the RBI, vide its letter No. Ref.DBS.ARS.No.744/08:91:008 (ICAI)/2003-2004 dated 23rd March, 2004 inter alia, mentioned that "RBI has not permitted any foreign audit firm to set up office or to carry out any activity in India under the current exchange control regulations".

(f) Contravention of permission originally granted by Government – What was the original permission given for these firms to enter into India

and subsequently whether they are adhering to the terms and conditions of that permission? If contravention was found, to take up with Government/FIPB – For approaching Government or FIPB, ICAI must have information as to the nature of permission given. As already mentioned, no documents are available indicating the nature of permission granted. What is the current position of international trade in accounting and related services? The opening up of accounting and related services can be linked to reciprocal opening up by developed countries.

(g) Additional powers required by ICAI to curb the malpractices – If under the existing legislation, ICAI does not have enough powers to curb this practice, whether they would need more powers. A separate proposal for amendment of Chartered Accountants Act, 1949 has been sent by the Council to the Government, seeking additional powers.

1.5 The above issues had been referred to the High Powered Committee on Satyam Fiasco, which was constituted by the 20th Council at its meeting held on 12th-13th January, 2009 in the aftermath of Satyam fiasco. The said Committee had submitted its Report (Part-I) to the Council, which after deliberations, had forwarded the same to the Ministry of Corporate Affairs vide letter dated 17th July, 2009.

1.6 Thereafter, the draft Report (Part-II) was deliberated in detail by the Council at its special meeting held on 13th March, 2010. After discussions, the Council decided to constitute a Group of Council Members to further modify the said Report integrating the various suggestions made by members across the table during the discussions on the Report.

1.7 The Group constituted by the Council decided that the Report on "Satyam Fiasco" should be submitted to the Council distinct from the "Report on operation of Multinational Network Accounting Firms in India". The said report, after due consideration by the Council, was submitted to the Ministry of Corporate Affairs on 24th May, 2010.

1.8 Accordingly, the issue which now remained before the Group for consideration was Operation of Multinational Network Accounting Firms in India including use of international brand name and all related concerns as detailed in para 1.4 hereinabove.

1.9 In this report, the Group has dealt with Operation of Multinational Network Accounting Firms in India and issues connected therewith.

2. Composition of the Group

2.1 The High Powered Committee on Satyam Fiasco was originally constituted under the Chairmanship of the then Vice President, CA. Uttam Prakash

Agarwal, at the 284th meeting of the Council held on 12th & 13th January, 2009. CA. Uttam Prakash Agarwal continued to be Chairman of the said Committee after taking over as the President of the Institute on 5th February, 2009. Arising out of the deliberations of the draft report prepared by the said Committee, the Council constituted a Group at its special meeting held on 13th March, 2010 to carry forward the work of the Committee. The details of the same are given in para 2 of Report (Part-II) of the said Committee. The said Group was constituted by the Council as under:

CA. Subodh Kumar Agrawal (Convenor)
CA. Vinod Jain
CA. Jayant Gokhale
CA. Madhukar Narayan Hiregange
CA. Sanjay Kumar Agarwal

Shri G. Ranganathan, Deputy Secretary, ICAI was appointed as Secretary to the said Group.

3. Meetings of the Group and Council

3.1 The Group met on the following dates:

1st meeting - 23rd April, 2010 at New Delhi
2nd meeting - 2nd May, 2010 at New Delhi
3rd meeting – 11th May, 2010 at New Delhi
4th meeting – 8th July, 2010 at New Delhi
5th meeting – 14th July, 2010 at New Delhi
6th meeting – 24th & 25th July, 2010 at New Delhi
7th meeting – 29th July, 2010 at New Delhi
8th meeting – 29th March, 2011 at New Delhi

3.2 After the 7th meeting of the Group was over on 29th July, 2010, the draft report on Operation of Multinational Network Accounting Firms in India was placed before the 297th meeting of the Council held from 4th to 6th August, 2010, wherein the same was introduced by the Convenor. The report was thereafter considered by the Council at its 298th meeting held on 20th-21st September, 2010 and continued on 7th October, 2010, when, it was inter-alia decided to request the firms which had masked certain details while sending documents/information to the Group, to submit required details unmasked to the Group.

3.3 The modified report on Operation of Multinational Network Accounting Firms in India was circulated to the members of the Council vide email dated 3rd February, 2011 and again vide email dated 9th March, 2011 with a request to send their comments, if any. Comments have been received from some members of the Council which have been considered by the Group at its 8th meeting held on 29th March, 2011.

4. Observations

4.1 With a view to appreciate the concerns expressed by the Government, the High Powered Committee and the Group constituted subsequently by the 21st Council on 13th March, 2010 have considered the views expressed by members at various forums, press, media, submissions to the Council, correspondence, minutes of the Council and its Committees, Report of the Study Team constituted by the Council in April, 1995 under the Chairmanship of CA. Y.M. Kale, the then President, Report of the Study Group constituted by the Council in February, 2002 under the convenorship of CA. Jayant P. Gokhale, and steps initiated by ICAI with regard to implementation of the decision taken by the Council thereon. It was noted that the Council, at its meeting held in October, 2003, had considered the report of the Study Group and thereafter a summary of the issues concerning MAFs and the decisions of the Council on the Report of the study group were communicated to the Ministry of Corporate Affairs (the then Department of Company Affairs) vide letter dated 29th November, 2003. The same are summarised at ***Annexure – II*** hereto.

4.2 The Council of ICAI has deliberated that some of the MAFs are active in India and are rendering services such as assurance services, taxation services, etc. normally provided by Chartered Accountants, without registration with the Institute and without being subject to any disciplinary and regulatory control on the ethical and independent issues. Certain MAFs either as corporate and/or other juridical persons with the international brand name were given permission by the other regulators/Government for doing consultancy business in India. These entities have established significant commercial presence in India and are rendering assurance services. These private limited companies, in certain cases, solicit professional work including audits by using the international brand name and projecting large experience, infrastructure and international database including turnover, manpower size, technical expertise and experience in other countries. These private limited companies work under the name and style/trade name/brand name of well known MAFs and in certain cases also co-brand multinational name with certain Indian CA firms including by making presentations and organising mega public programmes. In fact these firms and individuals employ with them as Directors or partners or in other capacity and hold out to the public that they are MAFs. In view of their well known brand and presence internationally, the corporate sector, the Government and the society at large and sometimes even the regulators carry a wrong impression as if these private limited companies are in fact MAFs and the services being provided by these private limited companies are actually services being provided by such MAFs.

4.3 Certain Indian CA firms and private limited companies associated with them hold out to public that they are actually MAFs in India whereas to the

ICAI/regulators, they hold out that they are purely Indian CA firms having no relationship with foreign entities.

4.4 It is important for the Government, regulators and the ICAI to ensure that such wrong impression is not permitted and all entities other than Chartered Accountants in practice and CA firms should be actually prohibited directly or indirectly from providing auditing and assurance services, as these are required to be regulated in the public interest. The very objective of having the profession relating to accountancy under specific Act of Parliament, incorporating therein a strict disciplinary and ethical code was to ensure that there is no dilution of the professional standards and services are provided in a regulated manner.

4.5 In certain cases, joint venture agreements, MOUs, foreign collaboration agreements, shareholders agreements, private equity participations and side letters are exchanged between parties mandating appointment of auditors as prescribed by international parent. In certain cases, public sector undertakings, Government departments, Central and State Governments advertise for various professional services, wherein the basic eligibility requirement tends to favour Multinational Network Accounting Firms or other corporate entities. It has also been observed that auditors have been replaced by Indian CA firms networked with Multinational Network Accounting Firms apparently for no professional reasons.

4.6 The ICAI has been pursuing with the accounting bodies in different countries for recognition of its qualification and relaxation for its members for entry level requirements like appearance in certain papers such as accounting, auditing as well as training requirements giving due credit to the ICAI's educational and training curriculum. In addition, the Indian Chartered Accountants face various invisible/non-professional barriers like visa, citizenship and residency requirements, procedural impediments to provide services in such countries. While the Institute has been pursuing vigorously for recognition of its qualification for ensuring level playing field for Indian Chartered Accountants whereas the countries concerned are not showing a sense of seriousness and urgency which these matters deserve. Indian Chartered Accountants are not getting a fair, reasonable and mutual treatment which they deserve. Since MAFs, in corporate or other form, are already commercially present and operating in India on the basis of holding out as MAFs, the Indian CA firms and private limited companies may be dejure owned and managed by Indian Chartered Accountants, whereas defacto these are fully governed by MAFs having headquarters in developed countries, who are denying a level playing field to Indian Chartered Accountants in their country by the restrictions as explained herein. As a result, the negotiating capacity of India for the accounting services favouring the Indian accountants has been significantly reduced. In fact, this has also adversely affected the bargaining capacity of the Government of India for Indian accounting profession under the ongoing negotiations under the WTO/General Agreement of Trade in Services (GATS).

4.7 The following services *inter-alia* are included in the domain of Chartered Accountants as per WTO/GATS:

CPC 862 - Accounting, Auditing and Book keeping services – Accounting and Auditing services is further divided into the following sub-classes:
86211 – Financial auditing services
86212 – Accounting review services
86213 – Compilation of financial statements services
86219 – Other accounting services

CPC 863 - Taxation Services – Further divided into the following sub-classes:
86301 – Business tax planning and consulting services
86302 – Business tax preparation and review services
86303 – Individual tax preparation and planning services
86309 – Other tax related services

CPC 865 - Management Consulting Services – Further divided into the following sub-classes:
86501 – General management consulting services
86502 – Financial management consulting services (except business taxation services)
86504 – Human resources management consulting services

CPC 866 - Services related to Management Consulting – Further divided into following sub-classes:
86601 – Project management services, services other than for construction
86602 – Arbitration and conciliation services
86609 – Other management services

4.8 However, it has been noticed that the entities having similar name as that of MAFs, which entered through Automatic/FIPB route for rendering management consultancy services (as defined in CPC 865), are transgressing the permission so granted and are rendering taxation services (CPC 863), auditing, accounting and book keeping services (CPC 862) and legal services (CPC 861). Instances brought to the notice of the Study Team constituted by the Council in April, 1995 and the Study Group constituted by the Council in February, 2002 are placed at ***Annexure – III***. Extracts taken from the website pages of some of the MAFs are given at ***Annexure – IV.***

4.9 It is noted that as per the policy of the Government of India, foreign direct Investment (FDI) is not permitted in the field of accounting, auditing and book keeping services, taxation services and legal services and no commitment had been made by India for opening of such services under the WTO/GATS. However, some entities were not only providing services through

their own establishment (signifying their commercial presence i.e., Mode-3) in India but also through service providers in India particularly for those services like auditing which cannot be rendered by them under the relevant laws of the country.

4.10 It is further noted that vide revised offer document TN/S/0/IND/Rev1 dated 24th August, 2005, India made a revised offer under WTO/GATS in respect of accounting, auditing and book keeping services as under:

1. Mode 3 has been kept as unbound both under limitations on market access and limitation on national treatment column for accounting and book keeping services.

2. Specific commitments for CPC 862 exclude audit services from the scope of offers.

4.11 In terms of current exchange control policy and foreign direct investment policy, no foreign investment in partnership firms or proprietary firms is permitted except from non-resident Indians or persons of Indian origin. FDI is permitted only in corporate form, if the investment is to come in from foreign citizens or entities outside India. In view of the fact that the Chartered Accountants are prohibited to practise in corporate form to undertake audit and assurance services, FDI in a Chartered Accountant firm cannot be made except by non-resident Indians or persons of Indian origin, subject to regulatory guidelines and restrictions imposed by the Chartered Accountants Act, 1949 and the Regulations framed thereunder.

4.12 The Council of Institute had requested the then Department of Company Affairs vide its letter dated 19th October, 2004 to take necessary action including reference to the RBI and Ministry of External Affairs (MEA) –

(i) for reviewing the existing situation for ensuring reciprocal advantage in favour of the Indian accounting profession;

(ii) to take appropriate action against MAFs if found to be in violation including cancellation/revoking/withdrawal of the permission already granted to such foreign entities;

(iii) to ensure that the non-compliance of the terms & conditions of the permission granted by the Government to such MAFs is dealt with effectively;

(iv) to prohibit the MAFs/consultancy firms which have set up commercial presence either as a corporate entity or otherwise from defying the restrictions in terms of the Government policy both in letter & spirit; and

(v) to ensure that the names of the companies which are same or similar to the names of MAFs should not be allowed to continue to operate in India.

4.13 Further to the meeting with the Ministry of Corporate Affairs on 27th February, 2009, the Committee had decided to call for following information/details from the Indian CA firms perceived to be having international affiliations inter-alia to examine the possibility of financial dealings with MAFs and to examine whether or not they are functioning within the framework of the CA profession:

(a) Agreement/contract with the multinational entity
(b) Terms and conditions for usage of name of multinational entity
(c) Arrangement for sharing of fees/profit with other Indian CA firms with similar/identical name and with the multinational entity
(d) Arrangement for sharing of human resources and infrastructure with other Indian CA firms with similar/identical name and with the multinational entity
(e) Details of remittances made to and received from the multinational entity
(f) Partnership deed
(g) Income-tax assessment orders for the last 3 years. If assessment orders have not been received, then they may submit computation of income and copies of returns
(h) Copies of letterheads and visiting cards generally used

4.14 Accordingly, the following steps were taken:

- During March-April, 2009, letters were written to 94 firms of Chartered Accountants which were perceived to be having affiliations with international entities seeking aforesaid details. These 94 firms included firms having identical/similar firm name, as that of their principal firm.

- An announcement was hosted in the website and was published in July, 2009 issue of the CA Journal, in response to which 20 more firms voluntarily responded to the Committee's requirements.

- A renewed exercise was undertaken in March-April, 2010 to gather information from websites about more Indian CA firms which might be having affiliation with foreign accounting firms/networks. A repeat announcement was hosted in the Institute's website on 16th April, 2010 making it mandatory for all Indian CA firms having international affiliations to submit the afore-mentioned details/documents to the Institute forthwith. The exercise resulted in finding out names of 50 more firms, taking the total number of firms identified to 164. Letters were written to them requesting them to submit the aforesaid details. Another announcement was hosted in the website of the Institute in October, 2010 and thereafter also published in the November, 2010

issue of the Journal, `The Chartered Accountant' and the newsletters of the Regional Councils. Seven more firms have responded to the announcement and have submitted the documents/details sought for in the said announcement. Thus, the total number of firms which have responded to ICAI's announcement is 171.

- Since some of the firms out of the above 171 firms were reluctant in submitting copies of agreements with foreign entities and also copies of their tax returns, their specific attention was drawn to Item (2) of Part III of the First Schedule to the Chartered Accountants Act, 1949.

4.15 The responses received from the firms have been studied and a summarisation of the same has been given in paragraph 5 hereinbelow.

4.16 The 171 firms from whom documents/details were called for, by and large furnished the documents that were called for. However, certain CA firms have submitted the documents by masking certain portions contained in their agreements, partnership deeds and assessment orders/income tax returns claiming confidentiality and commercially sensitive nature of the documents. The financial details were asked with a view to confirm compliance of these firms with the code of ethics in regard to sharing of fees, inward and outward remittances, nature of expenses, financial dealing with non-members, nature of payment, nature of revenue, sharing of fees belonging to non-members and to identify activities not permitted within the framework of the Chartered Accountants Act, 1949, other laws including Foreign Exchange Management Act, 1999 and Foreign Contribution (Regulation) Act, 1976, Code of Ethics and conduct. Masking/omission of certain portions was construed as non-compliance with the directions of the Institute, and such firms which had masked certain portions were asked to additionally submit copies of their financial statements i.e. Income & Expenditure Account and Balance Sheets or Statement of Affairs including tax audit reports for the last 3 years. However, these firms, instead of submitting unmasked and complete information, had been questioning the logic/reasoning behind asking such data, which according to the firms are commercially sensitive/confidential. Despite reminders, some of the firms had not submitted unmasked/complete details.

4.17 The draft of this report was placed on the table of the Council at its 297th meeting held on 4th to 6th August, 2010 and was introduced by the Convenor of the Group constituted by the Council. Thereafter, it was decided to request the members to send their comments on the afore-mentioned draft report so as to reach the office by 15th August, 2010. It was further decided that the afore-mentioned draft report and the comments thereon, if any, received till that date will be collated and will be placed for discussion at the next meeting of the Council to be convened.

4.18 The draft report was thereafter considered by the Council at its 298th meeting held on 20th & 21st September, 2010 wherein the Council considered the

comments received from many members of the Council on the said draft Report. Upon consideration, the Council requested the Group constituted by it to make changes in the report appropriately incorporating the views expressed therein.

4.19 The draft report was thereafter considered at the adjourned 298th meeting of the Council held on 7th October, 2010. At this meeting, further comments received from Council members were also included for consideration by the Council. At the said meeting at the behest of the President, the Council agreed to allow all the members of the Council present to participate in the deliberations including some of the members who were partners of firms/associates with MAFs, based on whose inputs, the draft report had been prepared by the Group constituted by the Council and placed before it for consideration. The Council threadbare deliberated on the above-mentioned report presented before it by the Convenor of the Group constituted by the Council. The Council decided to request the firms which had masked certain details while sending documents/information to the Group, to submit unmasked details to the Group. The Council also decided to publish an announcement as mentioned in para 4.14 above calling upon firms, which have hitherto not disclosed their affiliations/arrangements with foreign firms/entities, to come forward to disclose the same and also submit the documents/details asked for by the Group from such firms. The Council authorised President and Vice President for further changes/modification in the report in the light of the views expressed by the members, and circulate the same to the members of the Council with a request to give their comments, if any, within a week's time. It was further decided that once the report was finalized, the same may be hosted on the website.

4.20 Accordingly, letters were written to those firms which had masked certain data while furnishing the documents/details asked for by them. The reasons, in brief, as to why the documents were being called for, were also given to them. As on the date of report, two of the networks have submitted unmasked particulars, without giving full details as desired from them, whereas two other networks are seeking a personal hearing to show the documents. The Group considered this matter and noted that in pursuance to the directions given at the 298th (adjourned) meeting of the Council held on 7th October, 2010, a detailed letter dated 12th November, 2010 was written to all such firms which had not so far furnished detailed unmasked information. The Group considered the fact that detailed reasoning was also given in the said letter dated 12th November, 2010 as to why the Group actually needs the information. The grant of request for personal hearing to submit the required information was not considered appropriate since there were directions given by the Council to call for required information. It would not be within the power of the Group to override such directions especially granting any concession to certain firms whereas others have already submitted the required information.

5. Summarisation of responses received from CA firms

MAF Network A

5A.1 A group of CA firms comprising of certain number of firms, separately registered with the Institute, have formed a network. However, the network has not been registered with the Institute. Out of these firms, some firms having identical names have claimed to be a member of a Swiss Verein (cooperative). According to these firms, the international entity does not provide direct service to any clients, but only assists the member firms and their affiliates. The international entity does not have any partners or shareholders and that all the member firms spread all across the globe are independent firms as claimed by them. The international entity has granted the participating firms in the network, its permission to use the international brand name. They have claimed that there has not been any sharing of revenue or profits for use of brand name, and that no royalty was payable to the international entity. According to them, the international entity assists the member firms and their respective affiliates in several countries to maintain high levels of quality and integrity and sustain the trust of their clients, the capital markets, their people and the public. They have also mentioned that the international entity provides to the member firms, *inter-alia*, systems, technology, update on global developments, training and consultations on technical matters to enable the member firms to render expert services to their clients and that the benefit of global experience on various technical matters is shared among the member firms. According to these firms, the network makes payment as contribution towards budgeted expenses in the nature of sharing of cost of administration which includes annual subscription and sharing of technology and other costs, which does not exceed **X %** of the network's revenue. Besides, they also share technology cost and other costs which amount to **X %** of network's revenue. The Board of Directors of the multinational entity determine the contribution payable by the member firms towards the budgeted operating expenses of the multinational entity. If no such allocation is effected, then the maximum yearly contribution of member firms shall be **Y** Swiss francs.

5A.2 Though, the said firms with identical name have claimed to be members of the international entity, yet the License Agreement and Verein documents have been signed by one of these firms only. These firms also claim that they do not use the name or logo of the international entity although the trade name of the CA firm is same/similar to brand name of the international network. However, the firms, having come into existence prior to amendment of Chartered Accountants Regulations, 1988, when the requirement of a firm name to be based on the names of partners was not there, got the firm name which is similar to the name of the international entity. ICAI also registered certain more firm of Chartered Accountants with similar names on the basis of interpretation of Regulation 190 during 1995 to 2001. According to these firms, they have received financial grants from the international entity, the aggregate of which has not exceeded **Z %** of the

network's revenue. The purpose of receiving financial grant from the international entity has not been disclosed by these firms.

5A.3 The rest of the firms in the same network, which reportedly do not use the international brand identity, have informed that they have neither made any remittances to nor received any remittances from the international entity.

5A.4 Some of the obligations mentioned in the Agreement with the international entity are that -

(i) Each member firm will refer to the other member firm client work that is to be performed in their jurisdiction and contacts that may lead to such work.

(ii) Each member firm will align national plans, strategies, businesses and operations with global plans, strategies, businesses and operations as appropriate and in consultation with the international entity.

(iii) Each member firm will advise the international entity (network) of the details of all joint ventures, joint practices, proposed mergers, and other combinations of any type with other member firms as well as all practice activity in jurisdictions other than those assigned to such member firms.

5A.5 The firms in the network and all its personnel use the name of the international entity in their email IDs. The said email ID with domain name of the multinational entity is being used in the visiting cards by the partners of these firms and their CA employees also. This clearly support holding out by these firms that they are part of the international network A of MAFs.

5A.6 All the firms have mentioned that they share their human resources and infrastructure with the participating firms in the network, though it is not specifically mentioned whether articled assistants are also being rotated between the firms.

5A.7 The Form D filed by one such firm under the Rules of Network formulated by the Council was perused, wherein the firm has mentioned that the international entity has allowed the firm to use the brand name, but they do not have any network with any foreign entity.

5A.8 <u>Observations:</u>

(i) The multinational entity has granted permission to the participating firms in the network to use the brand name. This is notwithstanding the fact whether the firms have signed the License Agreement with the multinational entity or not. The relationship between members, firms and how these are governed from same offices under common

management and control is not disclosed. The data disclosed on the website, however, clearly brings out the linkage.

(ii) Though some of the participating firms in the Network A have not signed the Verein document or Name License Agreement, yet while making remittances to the multinational entity, the revenue of the entire network is taken into account.

(iii) The Verein Document makes a mention of Supplemental Regulation, but while submitting documents to the Institute, the firms in Network A have not submitted a copy thereof.

(iv) The networking firms in Network A have received financial grants from a non-CA firm. A member of the Institute is prohibited from receiving any part of profits from a non-member of the Institute. Such an act on the part of a member/firm seems to be in violation of Item (3) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(v) The networking firms in Network A have made remittances to the multinational entity, sharing their revenue with multinational entiy, which they have claimed to be towards subscription fees, technology cost including cost of licenses obtained for software, budgeted expenses, cost of administration etc. However, the firms have not provided break-up/computation and whether the cost includes cost towards marketing, publicity and advertising the products and services in India as well as abroad and any other cost which is not allowed as per the Chartered Accountants Act, 1949, Regulations framed thereunder and Code of Ethics. The firms in Network A have also not furnished any data in support of their claim that the money remitted by them to the multinational entity is in respect of above matters only and that the same in no way relates to the volume of business generated through the efforts of the multinational entity and through use of brand name. A total and full disclosure in this regard has not been made inspite of repeated directions by the High Powered Committee/Group on the basis of directions of the Council.

(vi) The Verein document lay an obligation on the member firms in Network A "to make every reasonable effort to refer clients to other member firms". A member of the Institute is prohibited from securing any professional business by means which are not open to a Chartered Accountant. However, they are required to follow the networking guidelines of the Institute. Such an act on the part of a member/firm seems to be in violation of Item (5) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

(vii) The networking firms in Network A and all their personnel are using the domain name identical to the name of the multinational entity in their email IDs and the same is displayed in their visiting cards. This

clearly supports holding out by these firms in Network A that they are part of the international Network A of MAFs. Some of these firms operate from the same premises from where their international affiliate also operates. They share the same telephone and fax nos. thus establishing that they are one and the same. The Indian firms in Network A and MAFs are *defacto* the same entities providing the assurance, management and related services and as such their operations seem to circumvent the provisions of the Chartered Accountants Act, 1949 and Regulations framed thereunder. A member of the Institute is prohibited from disclosing his affiliation with any international entity. In this regard, the Council, at its 172nd meeting held in January, 1995, while agreeing with the recommendation of the then Committee on Ethical Standards and Unjustified Removal of Auditors that the use of expression/words, "In Association with .....", "Associates of .....", Correspondents of ....." etc. on the stationery, letter-heads, visiting cards and professional documents of the firm of C.As., was not permissible in view of the provisions of Item (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949, decided that it should not be permitted irrespective of whether the name sought to be used is the name of an Indian firm or a foreign firm.

(viii) The networking firms in Network A are sharing their human resources with other firms in the network. However, it has not been possible to ascertain whether the articled assistants are also being rotated among the firms. It may be mentioned that articled assistants are assigned to a member, whose obligation is to train them. As such, the articled assistants cannot be allowed to be utilised by any other member. However, to address this issue, there exists a provision under Regulation 54 of the Chartered Accountants Regulations, 1988 enabling secondment of articled assistants with a view to provide the articled assistants the opportunity of gaining practical experience in areas where the principal may not be in a position to provide the same. Such secondment is allowed under the Regulations with certain restrictions and conditionalities and the same is required to be sent to the Institute for records within thirty days from the date of commencement of training on secondment.

MAF Network B

5B.1 Another group of CA firms in Network B having affiliation with another multinational entity, established under Swiss laws, has sent a uniformly worded response to the Institute stating that they have entered into a sub-license agreement with an Indian firm having identical name as that of the multinational entity. This sub-license agreement confers upon the Indian CA firms in Network B the non-exclusive rights, license and privilege to use the name, logo and marks of the multinational entity. By virtue of the agreement, the sub–licensee CA firms in Network B have access to the

international knowledge, tools, knowledge base, management systems and databases of the international entity, which is in fact a global accounting firm. They have stated that they are not sharing their fees or profits with any multinational entity but "reimbursement of costs" relating to certain central facilities and levies are made annually. They have formed a network of firms amongst the group which has been registered with the Institute under the Rules of Network formulated by the Council. It may be noted that as per information provided by the firms in Network B, certain amount of money was payable by them to their international affiliate which would amount to less than **X %** of the gross revenue of the firm annually. The firms in Network B have also mentioned that they had received reimbursement of certain travel costs from their international affiliate.

5B.2 The sub-licensee agreement makes it an obligation on the part of the CA firms in Network B to comply with all the policies and regulations in respect of type of service to be performed by the firm. The agreement also makes it mandatory for the CA firms in Network B to pay premium and other related cost of professional indemnity insurance. It makes obligatory for the CA firms to maintain and submit to the sub-licensor, accurate and complete accounting, financial and regulatory, tax and other records. The CA firms in Network B are required to consult the international board and the sub-licensor before merging or acquiring any entity, practice or assets.

5B.3 The CA firms in Network B and all their personnel are using the name of the international entity in their email IDs. The said email ID with domain name resembling the name of the multinational entity is being used in the visiting cards by the partners of these firms and their CA employees also. This clearly support holding out by these firms that they are part of the international network B of MAFs.

5B.4 As per the terms of sub-license agreement, it is mandatory on the part of the member firms in Network B to refer clients to other member firms.

5B.5 The sub-license agreement also provides for grant of financial assistance from a non-CA Indian firm/Swiss verein to the CA firm in Network B. The full details of actual financial assistance was not provided nor could be ascertained in the absence of supply of information sought by the Committee. These financial assistance may have implications/impact on their independence as auditors.

5B.6 Certain amount has been charged from the Indian CA firms in Network B for execution of the sub-license agreement.

5B.7 <u>Observations</u>:

(i) The CA firms in Network B and all their personnel are using the domain name identical to the name of the multinational entity in their email IDs, and the same is displayed in the visiting cards. This clearly

supports holding out by these firms in Network C that they are part of the international Network C of MAFs. Some of these firms operate from the same premises from where their international affiliate also operates. They share the same telephone and fax nos. thus establishing that they are one and the same. The Indian firms in Network B and MAFs are *defacto* the same entities providing the assurance, management and related services and as such their operations seem to circumvent the provisions of the Chartered Accountants Act, 1949 and Regulations framed thereunder. A member of the Institute is prohibited from disclosing his affiliation with any international entity. In this regard, the Council, at its 172nd meeting held in January, 1995, while agreeing with the recommendation of the then Committee on Ethical Standards and Unjustified Removal of Auditors that the use of expression/words, "In Association with .....", "Associates of .....", Correspondents of ....." etc. on the stationery, letter-heads, visiting cards and professional documents of the firm of C.As., was not permissible in view of the provisions of Item (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949, decided that it should not be permitted irrespective of whether the name sought to be used is the name of an Indian firm or a foreign firm.

(ii) The CA firms in Network B have made remittances annually to the multinational entity sharing their revenue with multinational entity which they have claimed to be towards reimbursement of cost towards central facilities and levies. However, the firms have not provided break-up/computation and whether the cost includes cost towards marketing, publicity and advertising the products and services in India as well as abroad and any other cost which is not allowed as per the Chartered Accountants Act, 1949, Regulations framed thereunder and Code of Ethics. The firms in Network B have also not furnished any data in support of their claim that the money remitted by them to the multinational entity is in respect of above matters only and that the same in no way relates to the volume of business generated through the efforts of the multinational entity and through use of brand name. A total and full disclosure in this regard has not been made inspite of repeated directions by the High Powered Committee/Group on the basis of directions of the Council.

(iii) The networking firms in Network A are sharing their human resources with other firms in the network. However, it has not been possible to ascertain whether the articled assistants are also being rotated among the firms. It may be mentioned that articled assistants are assigned to a member, whose obligation is to train them. As such, the articled assistants cannot be allowed to be utilised by any other member. However, to address this issue, there exists a provision under Regulation 54 of the Chartered Accountants Regulations, 1988 enabling secondment of articled assistants with a view to provide the articled

assistants the opportunity of gaining practical experience in areas where the principal may not be in a position to provide the same. Such secondment is allowed under the Regulations with certain restrictions and conditionalities and the same is required to be sent to the Institute for records within thirty days from the date of commencement of training on secondment.

(iv) The obligations set out in respect of the CA firms in Network B as per the sub-licensee agreement give a clear indication that the CA firms are under the management and supervision of a non-CA firm for matters such as admission of partners, merger, purchase of assets, etc.

MAF Network C

5C.1 Another group of Indian CA firms in Network C having name similar to that of a MAF, have mentioned as under:

- They have entered into an Accession Agreement and Name License Agreement with an English company limited by guarantee.
- National and international networks of the firms have formed partnerships with head office in different cities.
- Separate firms were established because of restriction on number of partners and number of audits.
- Some more Indian CA firms also joined them and became part of their network.
- The firms are having membership with the global network.
- Member firms do not share fees or profits with the global network, but the said global network identifies broad market opportunities for these Indian CA firms, besides developing strategies, strengthening network's internal products and promoting brand name.
- As a member firm, these firms have access to common resources, methodologies, knowledge and expertise of the international entity and other member firms that may include audit methodology, software, guidance, IT platforms and systems, branding and marketing materials.
- These firms share resources like manpower, technology, relevant technical expertise, premises, administrative and other support.
- These firms have entered into a formal agreement for sharing of resources where a firm requiring the resources of another firm within the Indian

network of firms, compensates the relevant firm whose resources are utilised.

5C.2 The above-mentioned group of Indian CA firms in Network C have further mentioned as under:–

(a) they have (or some of them have applied for) an affiliation with the global network, which refers to the network of international member firms.

(b) Each member firm remains a separate and independent legal entity.

(c) Each member firm has agreed to perform its obligations as a member firm as set forth in the organisational documents of the global network and has also agreed to utilise and implement common standards and policies approved by the said global network. Each member firm engages in quality control and compliance monitoring activities, covering the provision of services, ethics and business conduct and independence.

(d) By joining the global network, a member firm gains access to the common resources, methodologies, knowledge and expertise shared among its member firms.

(e) For the services rendered, payment is made by the firm(s) on the actual and allocable cost, not exceeding certain percentage of the firm's revenue.

(f) To obtain a royalty free non-exclusive license to use the international brand name, a member firm of the global network has to obtain a licence from its Business Trust in United States, with the terms that its services will comply with the quality and other requirements established by the said Trust.

(g) Through the global work's mobility program, partners and staff of one member firm can be seconded to another member firm, the terms and conditions for which are negotiated between the member firms.

5C.3 The aforesaid group of firms in Network C have applied for registration of their network with the Institute under the Rules of Network formulated by the Council, but the same are pending owing to completion of certain mandatory procedural formalities.

5C.4 <u>Observations:</u>

(i) The CA firms in Network C have remitted amounts to the multinational entity, which they claim to be on account of actual and allocable cost for activities and services provided. However, the firms have not

provided break-up/computation and whether the cost includes cost towards marketing, publicity and advertising of the products and services in India as well as abroad and any other cost which is not allowed as per the Chartered Accountants Act, 1949, Regulations framed thereunder and Code of Ethics. The firms in Network C have also not furnished any data in support of their claim that the money remitted by them to the multinational entity is in respect of above matters only and that the same in no way relates to the volume of business generated through the efforts of the multinational entity and through use of brand name. A total and full disclosure in this regard has not been made inspite of repeated directions by the High Powered Committee/Group on the basis of directions of the Council.

(ii) The firms in Network C have admitted that the global network identifies broad market opportunities, develops strategies, strengthens network's internal products and promotes international brand. The member firms in India also gain access to brand and marketing materials developed by their overseas affiliate. This amounts to indirectly soliciting professional work and securing professional business by means which are not open to a Chartered Accountant.

(iii) The firms in Network C have mentioned that they have joined the network and formed different firms in different cities to overcome the limitation on number of partners.

(iv) The network CA firms have entered into an agreement for sharing of resources. Sharing of human resources includes articled assistants also, as confirmed by one of their then partners in a statement given by him to the members of the Committee. It may be mentioned that articled assistants are assigned to a member, whose obligation is to train them. As such, the articled assistants cannot be allowed to be utilised by any other member. However, to address this issue, there exists a provision under Regulation 54 of the Chartered Accountants Regulations, 1988 enabling secondment of articled assistants with a view to provide the articled assistants the opportunity of gaining practical experience in areas where the principal may not be in a position to provide the same. Such secondment is allowed under the Regulations with certain restrictions and conditionalities and the same is required to be sent to the Institute for records within thirty days from the date of commencement of training on secondment.

(v) The firms in the Network C and all its personnel are using the MAF's name as part of domain name in their email IDs, which is displayed in the visiting cards of the partners of these firms as well as the CA employees. This clearly supports holding out by these firms in Network C that they are part of the international Network C of MAFs. Some of these firms operate from the same premises from where their international affiliate also operates. They share the same telephone

and fax nos. thus establishing that they are one and the same. The Indian firms and MAFs are *defacto* the same entities providing the assurance, management and related services and as such their operations seem to circumvent the provisions of the Chartered Accountant Act, 1949 and Regulations framed thereunder. A member of the Institute is prohibited from disclosing his affiliation with any international entity. In this regard, the Council, at its 172nd meeting held in January, 1995, while agreeing with the recommendation of the then Committee on Ethical Standards and Unjustified Removal of Auditors that the use of expression/words, "In Association with .....", "Associates of .....", Correspondents of ....." etc. on the stationery, letter-heads, visiting cards and professional documents of the firm of C.As., was not permissible in view of the provisions of Item (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949, decided that it should not be permitted irrespective of whether the name sought to be used is the name of an Indian firm or a foreign firm.

(vi) As per the Name License Agreement, the CA firm in Network C shall be liable for and will indemnify the Business Trust against any and all liability, loss, damage, cost, legal cost and other expenses of any nature suffered or incurred by the Business Trust arising out of any dispute against the Business Trust by a third party.

(vii) The service as defined in the agreement with the Trust granting license for use of name, prescribes the services which will be covered by the said Trust and rendered by the CA firm. This includes audit, assurance as well as tax advisory services.

(viii) The letterheads and the visiting cards furnished by the firm in Network C do not mention anywhere that it is a firm of Chartered Accountants.

MAF Network D

5D.1 Another group of CA firms in Network D has registered a formal network with the Institute under the Rules of Network formulated by the Council. Some of these firms are members of a not-for-profit UK company limited by guarantee. These firms have signed joining agreement and knowledge sharing agreement with a multinational entity, which has identical name with that of a Multinational Accounting Firm. This multinational entity has various other independent entities. One of the firms is in the process of completing the formal execution of the standard form agreements required to complete joining formalities, but the firm has been operating as part of the multinational network and continues to comply with the obligations generally applicable to member firms of the multinational entity and remains committed to the multinational entity's guiding principles.

5D.2 The agreement requires the member firms to make remittances to the multinational entity and its various entities as costs under various heads such as cost for lotus notes, software license cost and global technology cost etc.

5D.3 The Joining Agreement mentions that the membership with multinational entity results in a number of benefits to the member firm in the area of client service. It also mentions that the member firms contribute substantial commercial value to the inter-relationship between the member firms.

5D.4 The Services arrangement spells out the arrangement for developing programs that help the member firms build relationships with targeted clients to generate revenue, developing and improving relationships with key clients, engaging in business pursuits of prospective clients.

5D.5 The Name License Agreement entered into by the firms entitles them to use the multinational entity's name and logo. Though the firms have denied using the multinational entity's name and logo, but in their email IDs, the name of the multinational entity appears as a domain name.

5D.6 Observations:

(i) The firms in Network D have a management services agreement, technical services agreements, regulations and name license agreements with other entities, copies of which have not been furnished by the firms.

(ii) The firms in Network D and all their personnel have been using the name of multinational entity as domain name in their email IDs, which is displayed in the visiting cards used by the partners of these firms as well as their CA employees. This clearly support holding out by these firms that they are part of the international Network D of MAFs. Some of these firms operate from the same premises from where their international affiliate also operates. They share the same telephone and fax nos. thus indicating that they are one and the same. The Indian firms and MAFs are *defacto* the same entities providing the assurance, management and related services and as such their operations seem to circumvent the provisions of the Chartered Accountants Act, 1949 and Regulations framed thereunder. A member of the Institute is prohibited from disclosing his affiliation with any international entity. In this regard, the Council, at its 172nd meeting held in January, 1995, while agreeing with the recommendation of the then Committee on Ethical Standards and Unjustified Removal of Auditors that the use of expression/words, "In Association with .....", "Associates of .....", Correspondents of ....." etc. on the stationery, letter-heads, visiting cards and professional documents of the firm of C.As., was not permissible in view of the provisions of Item (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949, decided that it should not be permitted irrespective of whether

the name sought to be used is the name of an Indian firm or a foreign firm.

(iii) The firms in the Network D have signed an agreement for sharing of human resources. However, it has not been possible to ascertain whether the articled assistants are also being rotated among the firms. It may be mentioned that articled assistants are assigned to a member, whose obligation is to train them. As such, the articled assistants cannot be allowed to be utilised by any other member. However, to address this issue, there exists a provision under Regulation 54 of the Chartered Accountants Regulations, 1988 enabling secondment of articled assistants with a view to provide the articled assistants the opportunity of gaining practical experience in areas where the principal may not be in a position to provide the same. Such secondment is allowed under the Regulations with certain restrictions and conditionalities and the same is required to be sent to the Institute for records within thirty days from the date of commencement of training on secondment.

(iv) One of the network firms in Network D, though is yet to sign the agreement with the multinational entity, but has already been operating as part of the multinational entity's network and complies with the obligations.

(v) The amount of remittance made by firms in Network D to the multinational entity (exceeding Rs. **XXX** million in a year) has been disclosed. However, the firms in Network D have not provided break-up/computation and whether the cost includes cost towards marketing, publicity and advertising the products and services in India as well as abroad and any other cost which is not allowed as per the Chartered Accountants Act, 1949, Regulations framed thereunder and Code of Ethics. The firms have also not furnished any data in support of their claim that the money remitted by them to the multinational entity is in respect of above matters only and that the same in no way relates to the volume of business generated through the efforts of the multinational entity and through use of brand name. A total and full disclosure in this regard has not been made inspite of repeated directions by the High Powered Committee/Group on the basis of directions of the Council.

<u>General observations and findings applicable to various Network Groups:</u>

5E.1 An analysis was made from the records of the Institute as regards the size of the firms. From the said analysis, it was evident that some of the abovestated firms have not developed requisite human resources. It is evident that some of these firms with lesser resources have to count on other firms to fulfil their professional commitments. The ratio of paid assistants to number of partners in some of the firms is very low as compared to other

firms. It was seen from a copy of the assessment order in respect of one of the firms that the assessing officer has recorded that the said firm has an understanding with other sister concerns for getting accounting and auditing work done. He has observed that the firm did not have required infrastructure in the last 8-9 years and therefore, the professional work has been sub-contracted by them to other firms with a marginal benefit plus TDS.

5E.2 The Council has prescribed a maximum limit for statutory audit and tax audit which a member in practice can undertake in a year. However, by way of sub-contracting the entire work of audits to another firm, the firm which actually undertakes the sub-contracted work runs the risk of exceeding the threshold limit, which may also result in deterioration of quality of performance. Another methodology observed to defeat the purpose of these limits was to have firms with similar or almost identical names with only minor variations in suffix where the intent was apparently to project that it is the same firm, but at the same time circumvent the application of such limits.

5F.1 The following information furnished by some other firms are also brought to the notice of the Council:

(i) As per the agreements, member firms (not necessarily Indian CA firms) are required to refer the work among themselves. Further, in respect of some firms, referral fee is payable and receivable as agreed upon between members. In a large number of cases, specific percentage of fee for referred work is payable as mentioned in the agreement.

(ii) Many agreements provide for use of name and logo. A few firms have been found to be using the brand name and logo on their professional stationery.

(iii) Some firms and their personnel use the name of multinational entity as part of their email ID. The said email ID with domain name of the multinational entity is being used in the visiting cards by the partners of these firms and their CA employees also. This clearly support holding out by these firms that they are part of the international network of MAFs.

(iv) Many firms have been making remittances to the foreign entity with whom they have affiliations. However, the firms have not provided break-up/computation and whether the remittance is only towards marketing, publicity and advertising the products and services in India as well as abroad and any other payment cost which is not allowed as per the Chartered Accountants Act, 1949, Regulations framed thereunder and Code of Ethics. In most of the cases, remittances are linked as a percentage to revenue with a minimum and/or lumpsum amount. The firms have also not furnished any data in support of their claim that the money remitted by them to the multinational entity is in respect of above matters only and that the same in no way relates to

the volume of business generated through the efforts of the multinational entity and through use of brand name.

(v) One firm has mentioned the words, "Associated firms throughout the world" in its letterhead, though it claims to be not having any foreign affiliation.

(vi) Some of the firms have received remittances from non-members. However, they have not disclosed what these remittances relate to.

(vii) In respect of certain firms, the agreement itself provides that the multinational entity will provide professional opportunities to the member firms.

(viii) In case of certain firms with identical/similar names, it is observed that the agreement has been signed by one of the firms, but the resultant benefits are being enjoyed by other firm(s) in the group. Inter-se agreements between the group formal/informal has not been disclosed.

(ix) It has been observed that some of the firms have mentioned that though they have an affiliation with a foreign entity, but there is no formal agreement.

(x) Some of the firms have sent copy of the main agreement, but without certain annexures or schedules. When submitting a copy of agreement, a professional firm would be expected to supply complete copy for it to be meaningful. In the absence of the same, the gaps in data and their impact are not capable of identification.

5F.2 As far as payment or receipt of fee on referral work is concerned, the pre-amended Chartered Accountants Act, 1949 completely prohibited payment or acceptance of any share, commission or brokerage in the fees receivable or payable, as the case may be. The said provisions read as under:

Item (2) of part I of the First Schedule (pre-amended Act)
A chartered accountant 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;

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

Item (3) of part I of the First Schedule (pre-amended Act)
A chartered accountant 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 lawyer, auctioneer, broker, or other agent who is not a member of the Institute.

5F.3 The amended First Schedule to the Chartered Accountants Act, 1949 (amended Act of 2006) slightly liberalised the provisions and it read as under:

"Item (2) of Part I of the First Schedule (post amended Act)
A chartered accountant 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 chartered accountant in practice has entered into partnership which is not in contravention of item (4) of this Part;"

"Item (3) of Part I of the First Schedule (post amended Act)
A chartered accountant in practice shall be deemed to be guilty of professional misconduct, 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;

5F.4 The amended provisions in the Act allow a Chartered Accountant in practice to share his fees with a person other than a member of the Institute, who is a member of other professional body or with such other persons having such qualifications as may be prescribed. Similarly, the amended provisions also allow a Chartered Accountant in practice to accept any share, commission or brokerage from a member of other professional body or other person having qualifications as may be prescribed. The amended Regulation 53A(1) specifies the category of members of professional bodies with whom fees can be shared which includes professionals such as Company Secretaries, Cost Accountants, Advocates, Architects and Actuaries professionals. Regulation 53A(2) specifies that the exceptions will also cover those persons having membership of the professional bodies or institutions outside India whose qualifications relating to accountancy are recognised by the Council under sub-section (2) of Section 29. In none of the cases, professionals or firms

outside India have been notified in terms of Section 29(2). Although there are enabling provisions in the Act and the Regulations, these have to be read in conjunction with Regulation 53A which specifies the professionals with whom fees/profits can be shared.

5F.5 Thus, payment or receipt of referral fees per-se is prohibited unless the above exceptions are met. The agreements or arrangements which some of the Indian CA firms have with foreign accounting firms or networks or associations, containing provision for payment or acceptance of referral fee, have been examined in the light of the aforesaid amended Act and the Regulations and no enabling notification under Section 29(2) being there, such payments are prohibited.

5F.6 Notwithstanding payment or receipt of referral fees, the Chartered Accountants Act, 1949 prohibits a member of the Institute from securing professional business by means which are not open to him. The agreements signed by most of the Indian CA firms clearly display that the reasons for entering into the same are to secure professional work, besides knowledge and technology sharing. The statute prohibits Indian CA firms from soliciting professional work. However, most of the agreements reveal that the international entities have taken up the responsibility of finding professional opportunities for their member firms including in some cases, matters such as marketing, brand building etc.

5F.7 Thus, the provisions of Items (2) & (3) of Part I of the First Schedule to the Chartered Accountants Act, 1949 read with Regulation 53A prohibit members in practice from sharing their fees or even agreeing to share their fees with persons not covered under the exceptions mentioned therein. Similarly, the above provisions also prohibit a member in practice from accepting or agreeing to accept any part of profits of professional work of persons not covered under the exceptions mentioned therein.

5F.8 The display of affiliation or association with an international brand name amounts to publicity and is in violation of Item (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

5F.9 It is further pointed out that -

(i) Many consultancy firms with names identical/similar to MAFs are operating in India and are providing risk, financial and business advisory, internal audit, corporate governance, tax and management consultancy services. However, the MAFs provide audit and related services to the clients spread across the globe under the same name.

(ii) In India, entities by foreign names are not allowed to practice the profession of Chartered Accountants, in view of impediment under Regulation 190 of the Chartered Accountants Regulations, 1988, which come in the way of permitting such trade/firm names.

(iii) Since there is an embargo on the above multinational entities including companies to enter into exclusive area reserved for Chartered Accountants, these entities have entered into arrangements with certain Indian CA firms. The rules prescribe for filing of information in the case of affiliation with multinational entities. It is found that all concerned Indian CA firms have not filed the required particulars in Form D resulting in complete data not available on the records of the Institute, though as per Institute's directives, it was mandatory to file the particulars by 30th June, 2009. Whatever names of firms along with names of their international affiliations that the Committee could gather from various sources have been listed out are being forwarded to the Members Section of the Institute for their information, record and necessary action to complete their registration process and also for taking action for non-compliance of ICAI Regulations and guidelines, if any.

(iv) During consideration of the draft Report (Part-II) by the Council on 13th March, 2010, attention was drawn to the Judgement of High Court of Judicature at Mumbai in the writ petition no. 1526 of 1995 filed by Lawyers Collective against Bar Council of India and others, wherein the High Court has held that "RBI was not justified in granting permission to the foreign law firms to open liaison offices in India ..... whether in litigious or in non litigious matters". The same analogy is applicable to the "practice of the profession of Accountancy and Audit" and all the permission granted by RBI or any other authority to MAFs or other consultancy firms should be withdrawn. The point raised by the petitioner in the above application was that the petitioner is not aversed to the foreign law firms practising the profession of law in India, however, the grievance of the petitioner was that the foreign law firms cannot be permitted to practise the profession of law even in non-litigious matters without being enrolled as advocates under the Advocates Act, 1961. It is suggested that the same analogy will hold good as far as CA profession is concerned. In any case, Section 29 of the Chartered Accountants Act, 1949 clearly recognises that the principle of reciprocity is paramount and the operation of MAFs in India should be viewed in that perspective.

6. Findings

6.1 The Committee/Group with a view to ascertain compliance with the various aspects of Code of Ethics had received documents/details listed in para 4.13 hereinabove, from 171 firms. Based on information received, it was found that for various reasons such as closure of firms, absence of affiliation etc., the number of firms actually covered were reduced to 135. Of these, nearly 73% of the firms submitted data in entirety. Other firms submitted most of the data masking or withholding most of the important data, such as financial

figures, profit sharing, capital contribution etc. primarily on the grounds of commercial sensitiveness/confidentiality of the data.

6.2 In the absence of complete set of documents such as complete copy of agreements between some of the Indian CA firms and their international affiliates/network along with annexures referred thereto, networking agreement, internal regulations, service agreements, statute of international affiliate etc., it was not possible to draw conclusive inference as to violation of the Chartered Accountants Act, 1949 with reference to sharing of fees or profits with non-members, sharing profits of non-members, securing business through means not open to Chartered Accountants, solicitation, direct or indirect publicity etc. This shall require proper examination under the relevant provisions of Sections 21, 22 and Schedules framed thereunder.

6.3 Most of these networks are created/established outside India and are functioning under different set of ethical and regulatory guidelines. The Indian CA firms having international affiliations are subject to regulatory jurisdiction of ICAI and are required to follow the Code of Ethics applicable to Chartered Accountants in India. However, due to the dichotomy of other entities operating in close association with the Indian CA firms, often permitting common brand name, using of logos, coupled with leveraging on international resources etc., is vitiating the level playing field with other Indian CA firms.

6.4 Most of these firms have a name license agreement to use international brand name. One of the terms of such agreement is that apart from common professional standards etc., the Indian affiliates shall harmonise their policies etc. with the global policies of the network. In this manner, matters such as selection and appointment of partners, acquisition of assets, investment in capital etc. are regulated through the means of such agreements and at times even the representative voting is held by an aligned private limited company rather than the CA firms themselves. As a consequence of this, the control of the Indian CA firm is effectively placed in the hands of non-members/companies/foreign entities. The desirability of such a practice from the point of view of independence needs to be examined in the light of Code of Ethics and Schedules to the Chartered Accountants Act, 1949 and Sections 21 and 22 thereof.

6.5 In respect of some firms with names approved by Institute e.g. "XYZ & Co, Patna", the partnership deeds sent by the said firm revealed that the name of the firm is given as "XYZ & Co." and not as "XYZ & Co., Patna" which is the name registered by the Institute. This means that the firm has submitted to the Institute, the partnership deed of a firm by the name "XYZ & Co.", whereas the partnership deed supposed to have been submitted should be that of "XYZ & Co., Patna". Letters were written to such firms requesting them to submit the appropriate partnership deed. The firms have replied that it was an inadvertent mistake on their part and on the part of the Institute which had approved a trade/firm name with city name as the suffix.

6.6 The firms, `M/s XYZ, Patna' and `M/s XYZ & Co. Patna', vide form no. 117 sought approval of the Council of the Institute for the firm name, `XYZ, Patna' and `XYZ & Co. Patna' respectively. The subsequent forms 18 filed by the firm, for change in the constitution, also mention the firm name as such. However, the partners of the firm, while affixing their signatures on the audit reports, mention the name of the firm as `XYZ' and `XYZ & Co.' respectively. The audit reports of companies, which were audited by them, have been signed on behalf of M/s XYZ and not M/s XYZ Patna and by M/s XYZ & Co. and not M/s XYZ & Co. Patna. It is an accepted fact that M/s XYZ, Patna and M/s XYZ & Co. Patna have carried out audits of certain companies, whose shareholders have appointed M/s XYZ as the auditors. M/s XYZ and M/s XYZ & Co., by allowing the partners of M/s XYZ, Patna and M/s XYZ & Co. Patna respectively to audit the accounts of clients have rendered the audited accounts invalid ab-initio.

6.7 It is noted that Item (1) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, which deals with professional misconduct in relation to Chartered Accountants in practice, mentions that a chartered accountant 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 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. The auditors, by allowing the audit to be conducted by an unauthorised firm, without the consent of the client, which was not appointed as the statutory auditors, may have allowed all information relating to the audit being passed on to the said firm, thus breaching the aforesaid Item, for which both the firm which was appointed and the one which carried out the audit, may be in violation of the code of ethics.

6.8 In response to Institute's letter, some firms have furnished details/documents after masking or eliminating certain portion such as financial figures, profit sharing ratio, capital contribution etc. The Institute has sent numerous letters to these CA firms for providing the information particularly, copies of agreements/contracts they have with their international affiliates/networks with complete annexures, partnership deed with complete annexures and schedules mentioned therein, assessment orders and/or tax returns, financial statements i.e. income and expenditure statement, balance sheet or statement of affairs including tax audit reports. As stated earlier, most of the firms have submitted copies of agreements/contracts, partnership deeds, assessment orders or income-tax returns, but around 27% of firms have not furnished the information and have masked/blackened/not provided the important information. It may be further stated that some of the firms, instead of complying with the directions of the Institute, have questioned the logic/reasoning behind seeking copies of income-tax returns, which according to them are commercially sensitive/confidential. One group of firms belonging to one network, has cited two legal opinions that they have obtained in this regard and have declined to submit unmasked details.

However they have sought personal hearing. As mentioned earlier, the Group considered this matter and noted that documents have been called in pursuance to the directions given by the Council and that detailed reasoning for calling of documents has also been given to the firms. Hence, the Group felt that it would not be within its powers to override directions of the Council and grant any concession to certain firms.

6.9 Section 2(2) of the Chartered Accountants Act, 1949 defines the term "to be in practice". Pursuant to Section 2(2) above, the Council of the Institute has passed a resolution permitting Chartered Accountants in practice to render entire range of management consultancy and other services. The members of the Institute are governed by a Code of Ethics which is mandatory for every member of the Institute. The services rendered by the multinational entities in India are also in the nature of management consultancy (including financial services, valuation, audit and assurance services etc.) and other related services, which is carried on through the medium of private limited companies which are using the internationally known accounting firms' name. Since these entities employ Chartered Accountants as well as non-Chartered Accountants for discharging various responsibilities, a misleading impression is created that the services rendered by the private limited companies are in fact rendered by a Multinational Accounting Firm. In fact, this is not so as the company rendering such services is neither registered with ICAI nor is governed by any ethical code or regulatory framework.

7. Recommendations made to the Council (as accepted by the Council while approving this report)

Action on the part of ICAI:

7.1 The Council shall consider the course of action in regard to those firms which have only partially supplied the information called for by the Institute or have masked certain portions therefrom. Firms having affiliation with four international entities have not submitted complete information. The office has communicated to all these firms on behalf of Council of ICAI/High Powered Committee that failure to comply with directions given by the Institute would amount to violation of Item (2) of Part III of the First Schedule to the Chartered Accountants Act, 1949.

7.2 The Council shall consider the course of action in regard to those firms that have shared the revenue with multinational entity/consulting entity in India which may include cost towards marketing, publicity and advertising the products and services in India as well as abroad and any other cost which is not allowed as per the Chartered Accountants Act, Regulations framed thereunder and Code of Ethics. Such sharing of fees is clearly prohibited by the Item (2) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

7.3 The Council shall consider the course of action in regard to those firms that have received financial grants from multinational entity/consulting entity, which is in violation of Code of Conduct, Chartered Accountants Act, 1949 and other laws. As per the Chartered Accountants Act, a member/CA firm is not allowed to accept any share, commission or brokerage of a non-member, unless the said non-member is a member of any other professional body or possesses such qualifications as may be prescribed.

7.4 The Council shall consider the course of action in regard to the audit firm(s) for having allowed another firm to conduct the audit and thus allowing them access to all confidential information about the company without the consent of the client.

7.5 The Council shall consider directing the CA firms that they should maintain necessary data and furnish the information relating to remittances made by them to and received by them on account of networking arrangement or sharing of fees from any foreign entity or MAF or members of other professional bodies as allowed as per the CA Act and Regulations, if called for by the Institute, including its Peer Review Board. Further, the firms under Peer Review should show the data to the peer reviewer also.

7.6 The Council shall consider the course of action in regard to the issue where the firms have paid or offered to pay referral fee. Similarly, in respect of cases where part of profits of persons not falling under the exceptions to Item 3 of Part I of the First Schedule to the Chartered Accountants Act, 1949 have been received, the Council may consider the course of action to be taken. Further the firms under peer review should show the data to Peer Reviewer also.

7.7 As per clause 4(iv) of Guidelines of Network formulated by the Council, the firms having networked with a common MAF need not get themselves registered with Institute. This position needs to be modified and it should be made mandatory for all firms which have entered into any kind of affiliation/arrangement with any foreign entity to disclose their international affiliation or network to the Institute every year by way of filing the firm data sheet. For this purpose, the rules and the guidelines governing networking should be amended in such a way that registration of network becomes mandatory and compliance should be enforced.

7.8 The Council shall consider the course of action in regard to those firms which have used the name and/or logo of their international association/network in their letterheads/professional documents, since as per decision of the Council, the members of the Institute are prohibited from using the name and/or logo of any international association/network.

7.9 The Council shall consider action to be taken on firms where it is established that firms concerned have secured professional business by means which are not open to chartered accountants.

7.10 It was expected that in response to ICAI's web announcement, all the CA firms registered with ICAI having international affiliations would disclose their affiliation and also submit the documents/details called for from them. In case on a later date, the office comes to know of any firms which have international affiliations, but yet had not come forward to disclose the same and submit the documents/details called for, then the course of action may be decided by the Council against such firms.

7.11 The Council shall make it mandatory for the CA firms to display in their professional stationery that they are a firm of Chartered Accountants.

7.12 It is noted that in a large number of cases, the provisions of the Chartered Accountants Act, Regulations, Guidelines framed thereunder as well as Code of Ethics are being misinterpreted or the spirit of the Regulations is not complied with. It is considered appropriate that a detailed clarification is issued creating awareness within the profession on issues where non-compliance has been observed so that compliance is ensured in both letter and spirit. Accordingly, the Council may issue the following announcement/public statement clearly stating that :-

(i) Without specific approval of the Council by a notification in terms of Section 29(2) of the Chartered Accountants Act and subject to such conditions as may be prescribed in terms of WTO framework or agreement to which India is a party, no Multinational Accounting Firm can directly or indirectly operate in India either by itself or through any agreement or arrangement with any Indian entity/firm of Chartered Accountants or person or Chartered Accountant.

(ii) Until an enabling notification is issued, no international firm of Chartered Accountants or Certified Public Accountants nor any Indian entity or person or Chartered Accountant is permitted to hold out to public, clients, users of services, either directly or indirectly in any manner that they are operating in India as a Multinational Accounting Firm or part of their network or associate or franchisee or licensee or otherwise to give an impression that they are part of or are representing such Multinational Accounting Firms.

(iii) The CAs or CA firms or other entities owned or controlled or managed by Chartered Accountants having any kind of relationship with a MAF or a foreigner or a foreign entity should disclose the same to ICAI along with full details of agreement or arrangements with them. They are also required to commit in writing by way of an affidavit that they will not hold out to any one that they are MAF or they are representing MAF or partner or network of MAF or are associated with MAF in any manner to any person whatsoever, unless such association is in compliance with Clauses (i) & (ii) above.

(iv) Indian Chartered Accountants or firms or entities under the management, ownership or control of Chartered Accountants are prohibited to use brand name of a foreign firm of Chartered Accountants or Multinational Accounting Firms, either directly or indirectly except to the extent permitted as per international networking rules as notified from time to time.

(v) No person or entity and specially Chartered Accountants can hold out to public that they are operating in India as or on behalf or in their trade name and in any other manner so as to represent them being part of or authorised by MAFs to operate on their behalf in India or they are actually representing MAFs or they are MAFs office/representatives in India, except those registered with ICAI in terms of Clause (iii) as a network, in accordance with network guidelines as notified by the ICAI from time to time.

(vi) No Indian CA or CA firm or any other entity managed or controlled by CAs is permitted to pay any part of their profit or fee or other receipts to any person other than a member of ICAI or a firm owned by them and such payments either as cost or as a percentage of fee is prohibited. The only thing which is permitted is payment for specific professional fee or fee for specific information, knowledge as may be required by the Indian firms.

Action on the part of Ministry of Corporate Affairs, Reserve Bank of India and other Ministries/Departments of Government of India (after due process by the Council):

The Council shall request the Ministry of Corporate Affairs, Reserve Bank of India and other relevant Ministries/Departments of Government of India to take appropriate action so that the following recommendations can be implemented:

7.13 The Council recommends to the Government that financial institutions and Government agencies should as far as possible engage the services of accounting firms registered with ICAI where work involves services that can be handled by accounting professionals (including management consultancy, system audit, internal audit etc.) since by virtue of regulatory mechanism, better standards of performance can be ensured.

7.14 Only Chartered Accountants and CA firms registered with the ICAI should be permitted to provide audit and assurance services and no one other than a CA firm should be able to directly or indirectly hold out to the public at large, industry, regulators and the Government or any other users that he is representing a Multinational Chartered Accountant firm or is providing audit, assurances and other services regulated in India by ICAI.

7.15 The Council shall consider recommending to the Government to see that the management consulting firms that have already come into India or any new entity which is formed should adhere to the terms approved by the competent authority for kind of services it can render and the ownership/patronage should be disclosed by it to RBI or other competent authority and the same should be made available to the Ministry of Corporate Affairs as and when required. The Ministry may recommend to RBI/FIPB/SIA that all cases where MAFs are operating in India either as private limited companies or directly or indirectly defacto as MAF but dejure as Indian CA firms should not engage in audit and assurance services without a no objection and permission from ICAI and followed by RBI permission subject to such guidelines as may be prescribed.

7.16 The Council may consider suitably amending the Chartered Accountants Act, 1949 in such a manner that the Council is vested with same powers as are vested with Director (Discipline) under Chapter V of the said Act.

7.17 Reserve Bank of India and Government of India may be sent list of all Multinational Accounting firms and of private limited companies and Indian CA firms working under supervision and control of such Multinational Accounting Firms. Reserve Bank/FIPB is requested to examine the approvals taken by such firms/remittances being made by them.

7.18 RBI and Government of India may issue instructions that foreign direct investment in accounting and auditing services is not permitted and no private limited company or any other entity can represent or hold out that they are a Multinational Accounting Firm nor they can hold out directly or indirectly that they are part of any Multinational Accounting Firm.

7.19 RBI and Government of India can consider, under permission route, subject to prior authorisation and approval of Regulator in the field of accounting and auditing i.e. Institute of Chartered Accountants of India, permission to professionals/professional firms from countries notified under Section 29(2) of the Chartered Accountants Act in this behalf to invest or network with Indian CA firms to render services in accounting and auditing services.

7.20 It may be notified that what is proposed to be restricted and be made subject to permission is public practice in the field of –

- Accounting (excluding book keeping)
- Auditing including system audit, special audit, internal audit, management audit and any other type of audit except as may be specifically permitted by any other law.
- Taxation services i.e. advising or representing clients in India for legal and professional aspects before assessing and appellate authorities under the Income Tax Act and various indirect tax laws, as these activities are permitted only to Indian lawyers, advocates (registered with Bar Council) and to Chartered Accountants in practice/ITPs and not

permitted to private limited companies or those representing themselves as part of or associates of foreign accounting firms.

7.21 RBI and Government of India may also issue necessary instructions that any joint venture agreement, MOU, foreign collaboration agreement, stakeholders agreement, private equity fund condition, venture capital fund condition or side letters prescribing for appointment of a specific chartered accountant or a chartered accountant firm or any other entity shall be deemed to be illegal and against public interest.

ACKNOWLEDGEMENTS

The Group wishes to acknowledge the active participation and valuable contribution received from CA. Uttam Prakash Agarwal, the then Chairman of the Committee and the then President of the Institute and CA. Shanti Lal Daga, the then Vice Chairman of the Committee, and other members of the Committee, especially the then two Government nominees, who were willing to meet at short notices at different locations for completion of the task assigned to the Committee. The Group acknowledges the valuable inputs received from members of the Council when the draft Report (Part-I) and (Part-II) were placed before the Council and discussed threadbare. The Group also acknowledges the contribution made by the members of the Group for finishing the unfinished task of the High Powered Committee.

The Group also wishes to place on record its appreciation for the support it received from Shri G. Ranganathan, Secretary to the Committee/Group.

(G. RAMASWAMY)
President,
The Institute of Chartered Accountants of India

Date : 29th July, 2011

Encl.: Annexures I, II, III & IV.

ANNEXURE-T

By Fax

Tele Fax : 2338 9227

No. 1/10/2003-IGC/PI
Government of India
Ministry of Corporate Affairs

5th Floor, A-Wing, Shastri Bhawan,
New Delhi – 110 001
Dated the 13TH Feb., 2009

To

The Secretary,
Institute of Chartered Accountants of India,
ICAI Bhavan, Indraprastha Marg,
New Delhi- 110 002

Subject: Clandestine activities/functioning of Multinational Accounting Firms in contravention of the provisions of the CA Act, 1949 and the Rules and Regulations framed thereunder.

Sir,

I am directed to refer to d.o.letter no. Sectt./MCA/09 dated 29.1.2000 of Shri Ved Jain, the then President of the Institute addressed to Secretary, Ministry of Corporate Affairs on the above subject.

You are requested to clarify if any action has been taken or is proposed by the Institute, under the provisions of CA Act, and the Rules and Regulations framed thereunder.

The information may be furnished to this Ministry latest by 20th February, 2009.

Yours faithfully,

(JAIKANT SINGH)
DIRECTOR

T. Karthikeyan
Secretary



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
ICAI Bhawan
P. B. No. 7100, Indraprastha Marg,
New Delhi - 110 002, India.

SHRI G. RANGANATHAN

No. 29-CA/NDM/116

3rd March, 2009

Shri Jaikant Singh
Director
Ministry of Corporate Affairs
Government of India
5th Floor, A-Wing, Shastri Bhawan
New Delhi – 110 001

Dear Sir,

Sub: Clandestine activities/functioning of Multinational Accounting Firms in contravention of the provisions of the CA Act, 1949 and the Rules and Regulations framed thereunder.

Please refer to our earlier correspondences resting with your letter dated 13th February, 2009 in the cited matter.

In this regard, we wish to bring your kind notice that several initiatives had been taken by the Institute in the past in the matter of curbing the clandestine activities/functioning of Multinational Accounting Firms in India in contravention of the Laws of the Land. Such initiatives include detailed consideration of the matter by a Study Group, constituted for the purpose, in relation to Section 25 of the Chartered Accountants Act, 1949 and submission of the summary of issues and decisions taken thereon by the Council to the Ministry vide our letter of 29th November, 2003 and submission of a detailed letter dated 19th October, 2004 containing the proposals of the Institute for amendments in the Chartered Accountants Act and the Regulations framed thereunder. For ready reference, we enclose the following:

(i) A copy each of our letter dated 29th November, 2003 as well as the Report of the Study Group;
(ii) A copy of our letter dated 19th October, 2004;
(iii) Note on various initiatives taken by the Institute in the past including its views/recommendations which need due support of the Ministries and other Regulators.

Contd....P/2

Tel.: +91 11 30110402, 30110404 ☐ Fax: +91 11 3011 0581 ☐ Email: karthikeyan@icai.in ☐ Website: www.icai.org

Karthikeyan
Secretary

The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
ICAI Bhawan
P.B. No. 7100, Indraprastha Marg,
New Delhi - 110 002, India.

We take this opportunity to apprise you that pursuant to the detailed discussions, the Joint Secretary of the Ministry, Shri Jitesh Khosla has had with our President on 27th Februrary, 2009, a special Group has been constituted (besides the various other initiatives taken in the wake of the Satyam Fiasco), for considering the other related issues and making its recommendations to the Council. The results of the multi-pronged exercises being carried out will be considered at our end and thereafter we will forward to you our detailed submissions for taking appropriate actions at various levels and in different forms.

Yours faithfully,

Karthikeyan

T. Karthikeyan

Tel: +91 11 30110402, 30110404 ☐ Fax: +91 11 30110581 ☐ Email: karthikeyan@cai.in ☐ Website: www.icai.org

PRESIDENT

Annexure. A. 1

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up under an Act of Parliament)
P.B. NO. 7100, Indraprastha Marg,
New Delhi -110 002 INDIA

Confidential
By Courier

No.29-CA/LAW/NDM-116

November 29, 2003

Dear Shri Mehrishi ji,

Kindly refer to your D.O. letter no.1/10/2003-IGC dated 12th November, 2003 (received on 17th November, 2003) addressed to the undersigned asking ICAI to identify the probiem areas arising out of the presence of multinational accounting firms in India and related issues and suggesting solutions thereto, in a tabular statement.

The Study Group set up by the Council of the Institute worked hard in the limited time and gave its report for the consideration of the Council. The Report was considered in the Council at its meeting held on 12th to 14th October, 2003. The summary of the issues and decisions of the Council in this regard are given in the enclosed statement. The decisions of the Council are being considered further for implementation, wherever required. This would include proposal for amendment in the Chartered Accountants Act, 1949 and the Regulations framed thereunder.

With warm regards

Yours sincerely

R BUPATHY

Shri Rajiv Mehrishi, IAS
Joint Secretary to the Government of India
Ministry of Finance
Department of Company Affairs
Room No.507, 'A' Wing, Shastri Bhawan
New Delhi – 110 001.

Incl.: As above.

Summary of issues and decisions taken by the Council at its meeting held on 12th to 14th October, 2003

Sl. No.	Issues/Problems	Decisions of the Council
A	**Presence of Multinational Accounting Firms (MAF) in India and Indian Chartered Accountants' (CA) Firms abroad & related issues.**	
A.1	Certain Corporates, Firms and other juridical persons have been given permission by RBI under FIPB Route for doing consulting business (as per CPC 865) in corporate form. While granting the permission, no reciprocal undertaking has been taken. This has resulted in lowering the negotiating capacity under WTO/GATS negotiations. Further, there are visa, residence and other unwarranted restrictions in foreign countries on entry of Indian CAs.	The Council decided to request DCA to approach RBI/MEA for review of the situation for obtaining reciprocal permission, and to take appropriate action including canceling/revoking/ withdrawing the permission granted.
A.2	Certain Corporates, Firms and other juridical persons which entered through FIPB route for rendering Management Consultancy Services (MCS), as defined in CPC 865 have transgressed the permission and are rendering Taxation services (CPC 863) Accounting, Auditing & Book Keeping Services (CPC 862) and Legal Services (CPC 861). These are exclusive domain of Chartered Accountants and/or advocates.	The Council decided to request DCA to approach RBI/MEA for review of the situation for obtaining reciprocal permission, and to take appropriate action including canceling/revoking/ withdrawing the permission granted.
A.3	ICAI and Government of India have taken a stand that in the field of accounting, auditing and book keeping (CPC 862), taxation services (CPC 863) and legal services (CPC 861), foreign direct investment is not permitted. The commercial presence of foreign accounting firms (Mode 3) is not to be permitted as of now. The movement of natural persons (Mode 4) is also to be permitted subject to reciprocity and removal of certain restrictions by other country placed on Indian CAs.	The Council observed that providing services through service providers in India also amounts to commercial presence. The Council decided to take up with DCA, RBI & other relevant Government Department to ensure that non-compliance is dealt with effectively.
A.4	MAFs already operating in India either through commercial presence (Mode 3) or through movement of natural persons (Mode 4) need to be prohibited to operate in India in defiance of the present policy of the Government?	The Council decided to suggest to the concerned Department of the Government including DCA to see that consulting firms/MAFs which have set up commercial presence either as a corporate entity or otherwise, are prohibited to defy the restrictions in terms of the Government policy, both in letter and spirit.

A.5	In a number of instances, Financial Statements have been attested by persons or bodies who are not CA firms registered with the ICAI. These Financial Statements are not only circulated, but are also used for several purposes in India. A large number of investors, analysts and media also rely on such attested financial statements.	The Council observed that the public interest may severely get affected if unqualified persons (non-CAs) or bodies, which are not registered with the ICAI, are permitted to attest Financial Statements. The Council has decided to issue a notification that all such attestation of financial statements are not permitted in India and only CAs registered with the ICAI, are authorized to attest Financial Statements which are used for any purposes in India. The Council also decided to issue necessary clarification through various regulators including DCA, RBI, SEBI, IRDA and others to avoid any misgivings in this regard.
A.6	Some of the entities rendering MCS are incorporated and/or registered in the name, which is same or similar to MAF. This is resulting into co-branding of the accounting firm and erroneous perception of identity.	The Council decided that the Indian CAs be freely permitted to associate themselves with corporate entities rendering MCS in any manner subject to ensuring that the name of such entity rendering MCS is not same or similar to any MAF and cap on fees, restrictions on undertaking accounting, internal audit and other prohibited services to statutory auditors are not undertaken by such MCS firms held, owned, managed directly or indirectly by CA who is also a partner or a proprietor of an Indian CA firm.
B.	UNREASONABLE CONDITIONS/ RESTRICTIONS FOR APPOINTMENT OF AUDITORS AND/OR CONSULTANTS BY FINANCIAL INSTITUTIONS/BANKS/ GOVERNMENT AGENCIES Financial Institutions/Governmental agencies are prescribing conditionalities to appoint select firms/entities as statutory, internal or concurrent auditor. Further, government agencies, including financial institutions and banks, corporates and ministries are prescribing criteria in respect of turnover, manpower of the firm/entity to oust the middle and small CA firms from the competition. In most of the cases, criteria adopted are not commensurate with the requirements of the assignments. It results into elimination of most of Indian firms all together from being considered for such assignment.	The Council decided to request DCA to approach RBI, Ministry of Finance, C&AG to take appropriate steps so that reasonable criteria commensurate with nature of job be formulated and unreasonable conditionalities/ restrictions be removed for appointment of auditors and/or consultants by Financial Institutions /Banks/Government Agencies. Such entities should be asked to formulate the conditions in such a manner that a larger section of CA fraternity would be able to participate in the process. While awarding an assignment, such entities should also take into consideration the network of firm within India. The

		Council further decided to request the Government to look into the matter where the engagement of statutory auditors is restricted to specified auditors, by providing the same into the articles of association or through the shareholders agreement.
C.	STRENGTHENING OF INDIAN CA FIRMS	
C.1	The brand name and brand image of the Indian accounting firms is to be further enhanced.	The Council accepted the need for further enhancing the brand name and brand image of the Indian CA firms.
C.2	The competitive strength of the Indian CA firms needs to be further strengthened by adopting various protective measures to meet the changing requirements of commercial and economic environment.	The Council, in principle, accepted to encourage networking amongst firms of CAs in India and remitted the matter to its Executive Committee for recommending the necessary modalities.
C.3	For strengthening Indian CA firms and to enable them to provide global services, it may be necessary to recognise networking of Indian firms with MAF. However, it may be necessary to ensure that such networking does not result into an affiliation in a manner so as to constitute commercial presence of MAF in India or otherwise defeats the various regulatory objectives of the profession.	The Council, in principle, accepted to encourage networking of Indian CA firms with MAF provided that such networking does not result into an affiliation in a manner so as to constitute commercial presence of MAF in India or otherwise defeats the various regulatory of the profession. The Council remitted the matter to its Executive Committee for recommending the necessary modalities.
C.4	Networking of the Indian CA firms, as registered with the ICAI, should be appropriately regulated so as to ensure that the same is not misused to defeat in letter or spirit various regulations or statutory requirements.	The Council has, by and large, accepted the restrictions/regulations suggested by the Study Group to appropriately regulate the networking.
C.5	The Indian CAs are required to establish professional entities outside India, which may require getting into partnerships or similar arrangements with locally qualified professionals, who may not be members of the Institute. In certain cases, this requirement may be limited only to sponsorship by a local resident to become part and parcel of the local accounting entity to be created in the host country.	The Council accepted the recommendation of the Study Group regarding permitting partnership or similar other arrangements with locally qualified professionals outside India subject to recommending the modalities by its Executive Committee on a holistic approach.
C.6	The Council has already recommended to the Government for creation of a separate multi-disciplinary firm between CAs and other professionals as may be approved by the Council from time to time. It has to be achieved at the earliest and all necessary steps are to be taken.	The Council accepted the recommendation for creation of separate Multi-Disciplinary firm between CAs and other professionals and remitted the matter to its Executive Committee for recommending the modalities.

	Merger/De-merger/reconstitution of partnership firms.	The Council accepted the recommendation of the Study Group regarding merger, demerger, re-organisation of the Indian CA firms.
D.	INTERNAL AUDIT BY NON-CAs A number of instances have been observed where internal audit of companies is carried out by non-CAs either in corporate or other form. The auditors of the companies also rely on the internal audit and specifically report on its efficacy. The corporate governance mechanism including Audit Committees and investors' interests are directly connected with efficacy and reliability of internal audit function. In case the internal audits are carried out by corporate entities or non-CA, there is no regulatory mechanism and technical framework to ensure a minimum desired standard of professional performance, thereby creating a serious threat to the interest of investors, lenders and public at large.	The Council accepted the recommendation of the Study Group that internal audit should be an exclusive area of practice of CAs. The Council decided to refer the matter to Auditing & Assurance Standards Board (AASB) to issue maximum technical literature on internal audit. The Council further decided to make a request to DCA and other regulators including SEBI, RBI & IRDA that in case internal audit function is outsourced by any entity under their supervision and control, the same can be undertaken by CAs/firms of CAs.
E.	CHARGING FEE ON PERCENTAGE BASIS: In the area of MCS, despite various relaxations that have been granted by the Council, there remains a difficulty in members quoting fees contingent upon the findings/results of the professional work or in certain cases on a percentage basis.	The Council decided to request DCA to expedite passing of the amendment in the Chartered Accountants Act, 1949 already proposed by the Institute.
F.	PRACTICE BY INDIAN CAs IN CORPORATE FORM : Issue of permitting Indian CAs to practise as corporate entity : ▪ For Management Consultancy ▪ For traditional practice also.	The Council decided that corporate form practice in the field of MCS to be freely allowed. CAs may promote and incorporate entities for this. The Council also, in principle, decided to permit the traditional practice in corporate form subject to necessary amendments in the Chartered Accountants Act, 1949. The Council further decided to request the Government to expedite the enactment of Limited Liability Partnership Act.
G.	ISSUE RELATING TO JOINT AUDIT : Ensuring independence and quality audit, as also joint audit system may be considered wherein a big CA firm along with a small/medium CA firms to carry out joint audit beyond a particular size.	The Council, while appreciating the recommendation, was of the view that the feasibility to be explored taking into consideration the other relevant issues such as rotation of auditors, etc.

CONFIDENTIAL

REPORT OF THE STUDY GROUP CONSTITUTED BY THE COUNCIL IN RELATION TO SECTION 25 OF THE CHARTERED ACCOUNTANTS ACT, 1949 AND RELATED ISSUES INVOLVED.

I N D E X

		Page Nos.
	PREAMBLE	i - iv
1.	INTRODUCTION	1 - 7
2.	STRENGTHENING OF INDIAN FIRMS	8 – 17
	2.1 Networking of firms	
	2.2 Knowledge base/Data base at the Institute's level	
	2.3 Interaction with the Government, Corporate World and Regulatory Bodies	
	2.4 Globalization of Indian firms	
	2.5 Multi-disciplinary firms	
	2.6 Professional Development Programme	
	2.7 Consolidation of Indian firms	
	2.8 Nation Building process : a pro-active Institution	
3.	WTO REGIME AND ITS IMPACT ON ACCOUNTANCY PROFESSION	18 - 22
4.	MANAGEMENT CONSULTANCY SERVICES IN CORPORATE FORM	23 - 28
	4.1 Management Consultancy Services	
	4.2 Exclusive areas for the Chartered Accountants	
5.	RECOMMENDATION OF THE STUDY GROUP IN OTHER RELATED AREAS	29 - 30
	5.1 Restrictive conditions on the appointment of auditors & consultants - a threat to the independence.	
	5.2 Trade & Firm name – Need to review the Regulation 190 of C.A. Regulations, 1988	
	5.3 Joint Audits	
	5.4 Advertisement and Publicity.	
6.	CONCLUSION	31
7.	GLOSSARY/ABBREVIATIONS	32 - 37

PREAMBLE

1 The Council at its 169th meeting held in July 1994 recognized the need to constitute a special committee to examine the attempts by foreign accounting firms to operate in India and to make recommendations in respect thereof. Accordingly in April, 1995, a special committee styled "Study Team on issues relating to foreign bodies/firms" was constituted under the Chairmanship of Shri Y.M. Kale, the then president of the Institute. The relevant extracts of the decision are as follows:

"While on the subject, it was pointed out that some of the international firms of accountants were active in India and rendering services in some of the areas falling within the scope of services normally provided by the chartered accountants, without formal registration with the Institute and without being subject to any discipline and control. Further, apprehensions were expressed that in view of India being signatory to GATT and in line with its policy of liberalization of the economy, the Government of India may review its policy in the matter of allowing the international firms of accountants to practice in India. It was therefore decided to constitute a Special Committee to study the issue of: (i) attempts of foreign firms of accountants setting up their offices and practicing in India in their international name without satisfying the requirements of the C.A. Act/Regulations and (ii) reciprocity with foreign accounting bodies in the matter of recognition of each other's qualifications and practice certificates. The Committee should come back to the Council with its recommendations. The President was authorized to constitute the Special Committee."

2 The said Study Team considered the question of scope and interpretation of Section 25 of the Chartered Accountants Act, 1949 as it exists on the Statute Book in the context of activities/attempts made by foreign accounting firms in India. The said Team noted the following decisions of the Council on earlier two occasions;

2.1 Up to 1983, the Council had taken the stand that management consultancy services being rendered by Chartered Accountants could be rendered through the chartered accountancy firms but not in corporate form. This approach was subsequently modified in light of the changing environment.

2.2 In December, 1983 a decision was taken (which is currently in force) that a body corporate shall not be considered to be infringing Section 25 of the C.A. Act, 1949 by carrying out work relating to the field of practice of a chartered accountant as long as that body corporate does not designate itself as *"chartered accountants"*.

3 The Council at its 188th Meeting held on 8th, 9th & 10th December, 1997 considered the recommendations of the Study Team on issues relating to foreign bodies/firms constituted by the Council and after deliberations decided to refer the matter of review of the scope of Section 25 of Chartered Accountants Act, 1949 to the Committee on Ethical Standards & Unjustified Removal of Auditors (CESURA). This review was to include consideration of the recommendations made by the Study Team. The Council also decided that the recommendations of the CESURA be placed before the Council.

4 The CESURA at its 62nd Meeting held on 17th April, 1998 considered the matter. The Committee felt that the main issue was that if a member was in practice and he renders Management Consultancy Services in the corporate form, he will be deemed to be in practice. The Committee was of the view that the practice should be curbed and this objective could be achieved only by adding an explanation to the existing resolution passed by the Council under Section 2(2)(iv) of the Chartered Accountants Act, 1949. The existing resolution which is appearing at Appendix No. 2 [S.No. 2] of the Chartered Accountants Act, 1949, is given hereunder: -

> *"Pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949, the Council hereby reiterates its opinion that the services that may be rendered by a Chartered Accountant in practice include the entire range of Management Consultancy services."*

The proposed explanation was as under: -

Explanation:
A member of the Institute, who is a director of a body corporate or having an indirect interest in any entity shall be deemed to be in practice, if the body corporate or entity is substantially carrying on any of the Management Consultancy Services.

It was also noted by the Committee that if the proposed explanation was added, the guidelines for granting permission to members in practice for being a Director, Managing Director, Promoter/Promoter-Director etc. will have to be suitably modified.

5 The broad recommendations of the Study Team as observed by CESURA and noted by the Council were as under: -

5.1 The decision taken by the Council in December, 1983 was primarily designed to help the members of the Institute engaged in the field of management consulting services without having the inhibitions or limitations that are not applicable to others who are also rendering services in that area;

5.2 Of late, bodies corporate formed for purpose of rendering management consulting services are being used as a vehicle for procuring professional work for the sister firm/s of chartered accountants and some members of the profession in practice have been knowingly associating themselves with such bodies corporate in various capacity such as Directors, Managers etc. in contravention of the provisions of the Chartered Accountants Act, 1949;

5.3 The aforesaid facility extended to members of the profession is being misused now by foreign accounting firms as an escape route;

5.4 The correct interpretation of Section 2(2) of the Chartered Accountants Act, 1949 could be that the functions specified under Section 2(2) of the Chartered Accountants Act, 1949 are all reserved functions subject to those exceptions which have been specifically excluded by a Statute, e.g., cost audit under the Companies Act, 1956;

5.5 Quite irrespective of the amendments proposed by the Council in Section 25 of the Chartered Accountants Act, 1949, this Section as it exists on the statute book is based on the wholesome principle of accounting services being offered and discharged by animate persons and not inanimate bodies.

On the basis of the above reasoning, the Study Team decided to recommend to the Council that the decision taken by the Council in December, 1983 might be reviewed so as to provide for safeguards which could ensure that bodies corporate are not used to bypass the requirements of the Institute's ethical Code of Conduct.

6. The said suggestions, amongst others, were once again considered by the Council at its 217th Meeting held in June, 2001 and the matter was reverted back to the CESURA to appreciate the further developments that have taken place in the meantime. A sub-Group of CESURA under the Convenorship of Shri Jayant P. Gokhale, FCA considered the same and the recommendations of the sub-Group were accepted by CESURA and were placed before the Council at its 223rd Meeting held in February 2002. One of the resolution proposed by the CESURA was relating to ceilings in regard to quantum of fees receivable by an auditor of certain entities for rendering MCS was approved by the Council and a notification no.1-CA(7)/60/2002 dated 8th March, 2002 has been issued. In regard to the resolution proposed by CESURA on the review of the existing decision of the Council on the scope of Section 25 of the Chartered Accountants Act, 1949, the Council broadly agreed in principle with the recommendations of CESURA but since a need was perceived to look into the modalities of enforcing these recommendations, the Council formed this Study Group.

7. The composition of Study Group as constituted by the Council at its 223rd meeting held in February, 2002 was as under: -

(1) Shri Jayant P. Gokhale, FCA, (Convenor), Mumbai.
(2) Shri Manoj Fadnis, FCA (Member), Indore.
(3) Shri Niranjan Saha, FCA (Member), Kolkata.
(4) Shri Pankaj Jain, FCA (Member), Mumbai.
(5) Shri S. Gopalakrishnan, FCA (Member), Hyderabad.
(6) Shri T.N. Manoharan, FCA (Member), Chennai and
(7) Shri Vinod Jain, FCA (Member), New Delhi.

Dr. Alok Ray, Assistant Secretary acted as the Secretary to the Study-Group.

8. The Study-Group constituted by the Council in its 223rd meeting held at Delhi in February 2002 has gone into various issues of concern to the profession which had been raised on more than one occasion before the Council. In doing so, the Study Group has considered the views expressed by members in various quarters, whether by way of correspondence, submissions to the Council/ the President/the Study Group and has also tried to take into consideration in general, the concerns that have been expressed by the members, the public and in the media.

9. Recently, some of the areas relating to the role and functioning of the profession has been the subject of intense public debate and this Study Group has had the task of formulating its conclusions and recommendations keeping in view the general interest of the profession and society at large. It is therefore felt appropriate to give a preamble which will bring out clearly the chronology and sequence of events leading logically to the issues that are being presently addressed.

10. The Study Group was conscious and seized of the issues considered by the CESURA and the Council from time to time. At this point of time, a number of related issues arising out of the President's opening remarks were brought before the Council in its 234th Meeting held in May, 2003. The issues raised by various firms, individuals, Council members and the Chartered Accountants Action Committee for level playing field based at Chennai, to the President by way of a Memoranda/Letters/White Paper/representations dealt with some of the issues that arose out of the report of the Study team.

11. It is in this background that the Study Group has considered the various issues that were to be addressed by it. The Study Group has gone into the issues with a broad-based approach to find solutions to long standing issues and was never intended nor functioned as an enquiry against any of the firms, whether Indian or International.

12. The Study-Group in its 6 (six) meetings held between May, 2003 to September, 2003 addressed the issues arising from this Background/Perspectives and has accordingly framed its recommendations.

CHAPTER 1

INTRODUCTION

1.1 Regulatory Framework

The Chartered Accountants Act, 1949 has been enacted by the Parliament to make provisions for the Regulation of the profession of Chartered Accountants and for that purpose to establish an Institute of Chartered Accountants. For the management of affairs of the Institute and for discharging the functions assigned to it under the Act, there is a Council of the Institute and the function of the Council includes, *inter alia,* (i) the recognition of foreign qualifications and training for purposes of enrolment; (ii) the regulation and maintenance of the status and standard of professional qualifications of members of this Institute (iii) the exercise of Disciplinary powers conferred by the Act. These functions are without prejudice to the generality of the duties of the Council to carry out the provisions of the Act to regulate the profession. The Institute has issued Code of Ethics and various other guidelines, which are mandatory to be followed by its members.

For the purpose of carrying out the object of the Act, the Chartered Accountants Regulations, 1988 have also been enacted.

1.2 Ethical Code

The maintenance of ethical standards is the collective concern of the Institute, members of the profession as well as the society itself. This is so in the case of every profession but more so in the profession of chartered accountancy because the foundation of the attest function is based on the faith and confidence that society reposes in the work done by the profession.

1.3 Review of Ethical Code – A Continuous Process

Regulating a profession is a social engineering job requiring a dynamic regulatory body to keep pace with the changing as well as emerging needs. Accordingly, the Council reviewed its policies, regulations, and procedure periodically to carry out its statutory responsibilities in consonance with the emerging Socio-Economic environment and Legal perspectives and the changing needs of the accountancy profession in a developing country.

1.4 Role of C.A. Directors in Management Consultancy Services – Provisions of the Act

The Study Group when constituted was particularly required to address the issue of framing the modalities whereby members holding a certificate of practice and simultaneously acting as directors of companies engaged in MCS are regulated without unduly fettering their growth as professionals and consultants. The subject has a direct bearing on the view that one takes of the limits imposed or imposable by the Council under Section 25 of the Chartered Accountants Act, 1949. The exact import and the practical application of Section 25 of the Chartered Accountants Act, 1949 has been one of the primary concerns of the profession at large. This issue has been the subject matter of deliberation by the Council and more specifically the Study team referred to earlier. The Study team at Para 3.13 of its report noted that the Council's approach to

this subject which goes to the root of application of the code of ethics has been "chequered". The Study team concluded that in light of the changing perceptions this matter required review. This Section which was at the core of the Study Group's deliberations reads as under:-

> *"Sec. 25 - Companies not to engage in accountancy*
>
> *(1) No company, whether incorporated in India or elsewhere, shall practice as chartered accountants.*
>
> *(2) If any company contravenes the provisions of sub-section (1), then without prejudice to any other proceedings which may be taken against the company, every director, manager, secretary and any other officer thereof who is knowingly a party to such contravention shall be punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent conviction to five thousand rupees."*

Section 2(2) of the Chartered Accountants Act, 1949 defines the term *"to be in practice"* as follows:-

> *"A member of the Institute shall be deemed to be in practice when individually or in partnership with Chartered Accountants in practice, he in consideration of remuneration received or to be received -*
>
> *(i) engages himself in the practice of accountancy;*
>
> *(ii) offers to perform or performs services involving the auditing or verification of financial transactions, books, accounts or records, or the preparation, verification or certification of financial accounting and related statements or holds himself out to the public as an accountant; or*
>
> *(iii) renders professional services or assistance in or about matters of principle or detail relating to accounting procedure or the recording, presentation or certification of financial facts or data; or*
>
> ***(iv) renders such other services as, in the opinion of the Council, are or may be rendered by a Chartered Accountant in practice: and the words "to be in practice" with their grammatical variations and cognate expressions shall be construed accordingly. (emphasis supplied)***
>
> *Explanation:- An associate or a fellow of the Institute who is a salaried employee of a Chartered Accountant in practice or a firm of such Chartered Accountants shall, notwithstanding such employment, be deemed to be in practice for the limited purpose of the training of the articled clerks".*

1.5 Clause (2) of the Appendix No. 2 as appearing at page 37 of the Chartered Accountants Act, 1949 provides: -

> "(2) Pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949, the Council hereby reiterates its opinion that the service that may be rendered by a Chartered Accountant in practice include the entire range of Management Consultancy Services."

1.6 Present Day Concerns

The Council at its 234th meeting held from 30th May to 2nd June, 2003 in the course of its deliberations decided that in light of the serious concerns expressed by various segments of the membership, the Study Group while considering the above subject should also deliberate upon the impact that the increasing globalisation of economy (including Services in the accountancy and auditing sector) is having upon the Accountancy profession in India. Concerns have been raised by a large segment of the membership about the impact of these trends especially because the profession in India has been largely regulated in a manner different from international practices. The Institute of Chartered Accountants of India having carried out its regulatory role has an equal responsibility to ensure that those who adhere to the regulations prescribed are not placed in a situation which is disadvantageous when compared to others (non-members) who are not subject to the same set of rules and ethics but have the freedom to practice their trade or profession within India. The Study Team at para 3.11 of its Report came to the conclusion that "an unregulated practice of permitting bodies corporate to offer services which are otherwise also provided by the members of the Institute may be unfair and detrimental to the public interest apart from manifestly militating against the principal of liberalisation with a level playing field".

1.7 The Study Group noted that some of the concerns expressed by the various segments of the membership from time to time in this regard are as follows: -

(a) Sharing fees with non-members;
(b) Networking and consolidation of Indian firms;
(c) Need to review the advertisement aspect;
(d) Multi disciplinary firms with other professionals;
(e) Commercial presence of multi-national accounting firms;
(f) Impact of similarity of names between accountancy firms and MAFs/Corporates engaged in MCS – Scope for reform and regulation;
(g) Strengthening knowledge base and skills;
(h) Facilitating growth of Indian CA firms & Indian CAs internationally;
(i) Perspective of the Government, corporate world and regulatory bodies and role of ICAI in shaping the view;
(j) Introduction of joint audit system;
(k) Recognition of qualifications under Clause (4) of Part I of the First Schedule to the Chartered Accountants Act, 1949 for the purpose of promoting partnership with any persons other than the CA in practice within Indian or abroad;
(l) Review the concept of exclusive areas for the CAs keeping in view the larger public interest involved so as to include internal audit within it;
(m) Conditionalities prescribed by certain Financial Institutions/Governmental Agencies insisting appointment of select few firms as auditors/concurrent auditors/consultants for their borrowers.

1.8 Underlying Approach

That all persons practising the profession under the regulatory framework of the Institute of Chartered Accountants of India must be placed on equal footing is a *sine qua non*. The challenge before the profession is to evolve methodologies, which will enable the profession in India to adapt to this rapidly changing environment. One way to meet the challenge would be to eliminate all real and perceived threats by strict

53

regulation which will seek to enforce the existing Code of Ethics on all such entities without reference to their organisation structures. In this model of growth, the future of the profession will be secured by trying to build regulatory walls to preserve its traditional turf – even if it means blocking the profession from going beyond the self-made walls. The danger in such a model is that the protective walls should not become restraints in our own growth beyond these parameters.

Another approach to ensure that the profession grows and prosper is to build up the inherent strength of the profession so that although the boundaries are defined by the Code of Ethics and regulations, these remain as guiding points but do not become barriers to growth of the profession.

Recent events have shown that no walls are permanent and few can withstand the winds of economic liberalisation. Therefore, the approach that required to be adopted is probably the latter one which permits dynamic evolution of the profession in an orderly and regulated manner.

This is not to suggest that regulatory framework and ethics need to be dispensed with or subjugated to the compulsions of short-term commercialism. To justify any relaxation in regulations merely because "my competitors do so" is to destroy the foundation of the profession. One must recognise that the profession owes its preeminence and status to the fact that it is a "profession" and not a business. Keeping these factors in mind one has to strike a balance between the well founded ethical code and the changing economic environment as well as the compulsions of market economy and the client's interest.

It is in this perspective that the following were identified as areas where the Government and its agencies, the Regulators as well as the Institute needs to act to guide the profession along the right track:

(a) Strengthening of Indian firms and suggesting measures to build up their competitive abilities;

(b) WTO Negotiations and its impact on Accountancy Profession.
- Align the Regulatory framework to be in harmony with principle of Reciprocity and the approach of the Government in regard to the ongoing WTO Negotiations with particular reference to the Accountancy Profession.
- Commercial presence of multinational accounting firms (MAF) in Mode 3 manner should not be permitted by the Government including RBI, DCA and to permit Mode 4 only to the extent of the commitment of the Government of India to-date and subject to conditions of reciprocity etc.

(c) Management Consultancy Services in corporate form
- Take a clear position in regard to role of Members qua Management Consultancy Services directly or indirectly in corporate form or in any other manner and in doing so, ensure that no undue advantage is gained in either form.

(d) In light of the above, strengthening of Regulations to prevent misuse of existing regulations in a manner as to give unfair advantage to those who violate the ethical code in letter or in spirit.

(e) Ensure that a level playing field is provided to all firms registered with the Institute irrespective of their size or background;

Concerns in regard to MAF's – Their role in India

Another core issue of concern was in regard to the role of various multinational accountancy firms (hereinafter referred to as MAF in brief) play in India. These concerns relate to a number of issues such as, their right to operate in India,

- role in certain accountancy and MCS areas;
- names under which such MAF's operate;
- the applicability as otherwise of the code of ethics to such MAF's

The Group felt that while these issues need to be addressed; one must clearly distinguished between MAF and certain Indian firms which are clubbed with them by reason of their names/affiliation. It was clearly recognised that firms registered with the ICAI are Indian firms. If any such firm has an affiliation with MAF it is hereinafter referred to as an Indian Firm with International Affiliation (IFIA).

1.9 Thus Indian firms may have affiliation/networking with another firm and/or MAF or may not have any such affiliation or networking. Having such networking within or outside the country is however not an issue. Even under the Regulations today, affiliation by itself is not prohibited. Rather the unease seems to be in the manner of operation of some of these Indian firms. The earlier Study Team had observed in Para 3.7 of its Report:

> *"3.7 In cases where a foreign accounting firm operates in India without being a firm in India or as a body corporate incorporated in India, in coordination with a local affiliate, some attempts have been made through advertising or personal meetings or even written communications which suggest an attempt to seek professional work for the local affiliate which would not be a mode available to the members of the Institute in practice. Likewise, even use of similar business cards, stationery, etc. between the two entities may point to an attempt to bypass the ethical code applicable to the members of the Institute in practice."*

After considering the import of Section 2(2) of the Act and the opinion of the Attorney General of India, the Study Team had concluded at para 3.10 as under:

> *"3.10 The Study Team, therefore, recognises that a careful and detailed examination of the foregoing two aspects of the matter needs to be undertaken and thereafter appropriate actions taken by the Council so as to ensure, if possible that the reported bypassing of the ethical code of conduct is suitably dealt with."*

One of the core issues raised was the role that the Multinational Accountancy Firms (MAFs) play in India. Various issues have been raised as to the implications of operations of MAF's in India. Certain grievances have also beer expressed arising out of operations of certain Indian Firms with International Affiliations (IFIA).

1.10 Issues to be addressed

Accordingly, the Study Group after consideration of the past record of deliberations and various representations made to it decided to address the following specific issues: -

To suggest corrective action wherever there is a misuse of the existing Code of Ethics, the Group considered the following with a view to strengthening the competitiveness of Indian firms: -

a) to consider the scope for Networking of firms and to suggest changes in the present procedures and recommendations made by the Committees of the Council in this regard. To consider Inequities arising out of the current rules relating to firm name, seniority etc. which act as an impediment in the process of aggregation;

b) to promote or facilitate the concept of partnership/affiliations/ networking/merger/demerger/reconstituting and where necessary amongst Indian firms and multi disciplinary firms with non-members and to suggest changes as would facilitate the consolidation of Indian firms;

c) to consider strengthening/prescribing regulations in regard to any professional tie-ups/arrangements and to recommend the changes in Act/Regulations that would be necessary to facilitate such networking;

d) to bring out in clear terms the Study Group view on the interpretation of Section 25 of the CA Act, 1949 when read in conjunction with Section 2(2) of the CA Act, 1949; more particularly in the context of the present trend of numerous MCS being rendered by members as also other players engaged in rendering the similar services;

e) to review the restraints applicable today in regard to members carrying on such MCS in light of the relaxation of various requirements by the Council;

f) to stipulate the implications of members with or without COP engaged in MCS through corporate or any other mode or directly/indirectly whether the action of various members engaged in MCS through corporate forms are in any way violative of the Code of Ethics;

g) to consider the advisability of relaxation in regard to restrictions in regard to the advertisement by the member in practice;

h) to appreciate the need of harmonisation of the Institute's approach with the approach of Government of India on the relevant area;

i) to clarify the position in respect of Working Director/Managing Director or Director Simplicitor of a corporate entity;

j) to consider how Council can ensure that Mode 4 is permitted to foreign accounting firms in India only after successful achievement of :

i) mutual Recognition Agreements;
ii) withdrawal of visa, nationality and citizenship requirements;
iii) withdrawal of unreasonable restrictions like mandatory insurance, high registration fee, refusal to register Indian firms without reasonable reasons etc,

k) to consider how to ensure that code of ethics of the CA profession are followed by all those who are operating in India in relation to services being rendered by Chartered Accountants in India.

CHAPTER 2

STRENGTHENING OF INDIAN FIRMS

"The increasing globalization of national economies and their inter-dependence has been reinforced by the creation of the internet, which brings people living in different parts of the world together within seconds. This has had an impact on the working of different professions, and the profession of accounting has not been left unaffected by this global revolution of networking. As business gets globalized, accountants in the future will be expected to not only provide quicker solutions but also solutions that will be globally acceptable."

- History of the Accountancy Profession in India, Volume II, Page 459, 2000 edition, ICAI

2.1 NETWORKING OF FIRMS

2.1.1 The Institute has 112038 members and 46732 number of firms. The firms may be classified into following classes: -

	NATURE		NUMBERS	%AGE
i.	proprietary firms		34524	73.9
ii.	partnership firms having 2 to 3 members		9647	20.6
iii.	partnership firms having 4 to 10 members		2466	5.3
iv.	partnership firms having more than 10 partners		95	0.2
			46732	1

(Members removed & expired and firms closed have not been counted)

The Study-Group noted the historical and regulatory reasons why Indian firms have not grown to a large size and most of the Indian firms are small firms having not more than 3 partners. Almost 74 percent are still proprietary concerns which continues to be the most popular form of organisation for practising Chartered Accountants even today.

2.1.2 In the commercial environment earlier prevalent in India, there was no external economic impetus or regulatory encouragement for networking. Thus the sole proprietory firms/small firms have been the most common form of organisation of CA firms. The present day industry/commercial trends are reflected in

- increasing size of business operations
- mergers, acquisitions and aggregation
- demand for 'single-window' concept in professional services;
- increasing level of international trade and commerce
- increasing complexity of laws and consequent need for specialisation.
- continuing change and the growing complexity of business environment.

All of these factors indicate that users of professional services will look to larger firms to meet their requirements.

2.1.3 The continuity and recognisability of certain firm names internationally has given such names certain characteristics of "brand recognition". This has been possible in an entirely different regulatory environment. A similar situation does not prevail even for

well established Indian firms. The approach of the ICAI has consistently been that the quality of services rendered should be the sole criteria to judge the professional firm. Any departure from this well established norm can be made only with a conscious and considered decision of the Council. The Group felt that given the regulatory and commercial environment prevalent in India, the expertise, value addition and cost effectiveness of services rendered should remain the distinctive characteristics of a professional firm which would contribute to its widespread recognition.

2.1.4 The Study-Group was also conscious that there was no concept of "brand name" amongst Chartered Accountancy firms in India. The Study-Group expressed its concern that it is this particular identity which is creating a perceived inequality amongst Indian firms with international affiliations (IFIA) and other Indian firms. Otherwise the background training and educational qualifications of all the persons practising in India are more or less similar.

2.1.5 In order to strengthen the competitive ability of Indian firms to overcome their limitations, it is necessary to develop and facilitate the concept of networking. It may be noted that the Council has not barred entering into associations. However, the directions and restrictions prescribed at page 81 of Code of Ethics, 2001 edition provides that

> *"The use of expressions/words "In Association with.....", "Associates of.....", "Correspondents of....." etc., on the stationery, letter heads, visiting cards and professional documents etc. of firms of Chartered Accountants is not permissible in view of the provisions of clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949 irrespective of whether the connection bearing name sought to be used was the name of an Indian firm or a foreign firm. The Council has not barred entering into such association and the restriction given under the above clause is to bar any advertisement appearing/derived from such associations".*

Since the Study Group recommends that the Institute should encourage Networking so that all Indian Firms should be in a position to benefit, it is necessary to define what is meant by Network firm. The Study Group noted the ICAI Vision Statement that "The Indian CA may aspire to network with his counterparts in other countries, both for clients in India and abroad. He should achieve the equivalence of their competencies."

As a regulatory body, the Institute has to take pro-active steps to equip and assist the smaller firms to keep pace with the time.

2.1.6 IFAC Code of Ethics has defined the term Network firm as follows:

"An entity under common control, ownership or management with the firm or any entity that a reasonable and informed third party having knowledge of all relevant information would reasonably conclude as being part of the firm nationally or internationally."

The Study Group unanimously agreed that since IFAC Code of Ethics has defined network firms, it would be in consonance with the past practice of the Council to adopt the same with required Explanation/elaboration suitable in Indian context. Accordingly, the following definition of Network firm has been formulated:

> "An entity under common control, ownership or management with the firm or having affiliation with an accounting entity or any entity that a reasonable and informed third party having knowledge of all relevant information would reasonably conclude as being part of the firm nationally or internationally.
>
> [Explanation –
>
> 1. An affiliation as referred to above shall also include: -
>
> (i) having an association with an accounting entity within or outside India such that it results directly or indirectly in a common professional economic or beneficial interest.
> (ii) One or more of the entities holding out that it is so affiliated or networked.
>
> 2. An entity shall not be treated as an affiliate of another merely for the reason that they
>
> (a) share professional knowledge and data base;
> (b) refer certain professional assignments or authorise the other to represent certain specific matters.
>
> 3. If different Indian firms are networked with a common MAF then irrespective of the presence/absence of any 'affiliate' relationship between the Indian firms inter-se, they shall be considered as part of the same network.]

2.1.7 The Study Group noted the coverage that would result from applying the above definition. It was felt that since networking would be for the benefit of the concerned firms the ICAI should adopt the minimum of regulatory powers in this regard. It was, therefore, decided that such networked firms should be required to disclose such relationship by way of a declaration in a prescribed form (which may be similar in approach to Form 18).

2.1.8 To enable the networked firms to function smoothly, the Institute may frame guidelines to assist members in documentation, sharing of responsibility, maintenance of record, etc. However, it was also agreed that matters of inter-se agreement shall be left to the member firms to decide themselves and the Institute has no role to play in the matter.

2.1.9 The information to be taken on record shall be only such as would prevent the unauthorised use of any other firm name as a network firm. The information would accordingly be supported by a declaration by the networking entities so as to record the networking in a transparent manner.

2.1.10 An issue has been raised that when networking and affiliation is being permitted with multi-national accountancy firms (MAF), the concerned MAF should also be required to furnish particulars about their ownership, persons responsible and other financial particulars. This was justified on the ground that the question of interested parties and independence cannot be decided unless one knows the identity of the beneficial owners of such multi-national entities. These particulars are not obtained with the motive of launching fishing enquiry and, therefore, a mere declaration from such affiliated MAF should suffice. The Institute may require additional particulars about MAF from time to time from the Indian firms so affiliated with MAF and such Indian firms shall provide the same in the manner prescribed.

2.1.11 On the similar ground, another issue has been raised in regard to sharing fees by the Indian Firm with international affiliates (IFIA). Whether such sharing of fees amounts to violation of the Code of Ethics since the Act prohibits sharing of fees with persons other than members of the Institute [Clause (2) of Part I of the First Schedule of the Chartered Accountants Act, 1949]. It is, therefore, felt necessary to clarify that while the Group recognises that when availing of benefit of certain inputs and expertise of the international affiliates, the IFIA may be required to pay to their affiliates certain costs for obtaining such assistance/advice. However, making such payment is quite distinct from sharing of fees. It is, therefore, clarified that no firm or member can pay or agree to pay any consideration for the mere act of affiliation or any royalty, fee or a share of profits in regard to clients/work introduced to the IFIA by their international associates. This restriction would apply to payment/sharing of fees either directly or indirectly to such international affiliates. It is once again reiterated that this is as per the clear provisions of the Clause (2) of Part I of the First Schedule of the Chartered Accountants Act, 1949, which prohibits such sharing of fees with any person and not being a member of the ICAI.

2.1.12 Accordingly, it was decided where such networking is with a MAF, the declaration to be filed annually by each of the Network entities as well as the Multinational Accounting firms shall include

(a) Statement of ownership of the entity;

(b) Confirmation that no payment of fees in violation of Clause 2 part I of First Schedule of the Chartered Accountants Act, 1949 is contemplated directly or indirectly and that other aspects of the Code of Ethics shall be complied with in so far as they may apply to the networked entities activities in India;

(c) The MAF which is part of the Network shall not participate directly or indirectly in an Indian entity in a manner as to constitute a commercial presence in India or in any way result in a Mode 3 or Mode 4 presence in India.

2.1.13 The above declarations are intended to provide a safety net for the Indian accountancy firms so as to prevent the firms from loosing their independence and/or control to a multi-national accounting firm. The preservation of independence of every Indian firm is equally the concern of the Institute. While the Group recognises that an IFIA may be required to adhere to certain bench mark in regard to audit procedures, documentation, quality standards etc. (and this trend needs to be encouraged) the Indian firm cannot be permitted to sacrifice its independence. If the decision making and real control of an IFIA lies with the multi-national accounting firm than it would be tantamount to permitting the multi-national accounting firm to set up operations in India through the

2.1.17 The Group agreed that the independent legal status of the firms, which are part of network, shall, however, not be affected. Accordingly, the ceiling of number of audits shall be determined qua-partner of each firm and all the existing regulations/guidelines shall continue to comply qua-firm/qua partner as at present.

2.1.18 The Study-Group considered whether mentioning of the names of associate Chartered Accountant firms on official stationery tantamount to advertisement. The Study-Group was of the view that mentioning the affiliation with any persons not being a member of the Institute would not be permissible under the existing framework. The mentioning of name of firms registered with the Institute may not be objectionable even in conceptual terms because a firm which has mentioned that it has numerous branches or a firm which has numerous partners, is even today permitted to mention the places of its various branches and the names of partners on its letter-heads. The Study-Group was of the view that in light of the above analogy, such mentioning of associate firms on the professional stationery be permitted provided that the names of the firms so mentioned are of all those firms which are entered in the register of Institute as Indian CA firms and in regard to whose affiliation, appropriate declaration as mentioned above has been furnished to the Institute in the prescribed manner. However, the mentioning of the same is optional. This should lead to a favorable ground for building up of larger professional networks which may ultimately culminate in partnerships; paving the way to handle the large assignments using the strength and confidence of such networking. Accordingly the restriction prescribed at page 81 of Code of Ethics, 2001 edition may be reviewed and amended. There is no prohibition on entering into networking with foreign firm having no commercial presence in India but mentioning the same on the professional documents should not be permitted. The Study Group is of the view that this is a reasonable classification and not discrimination.

2.2 Knowledge base/Data base at the Institute's Level

"Standards are constantly rising. Knowledge obsolescence is taking place at an increasing rate. The Indian CA has to benchmark himself with the best of his class in India and abroad. He has to be at the frontier."

- ICAI Vision Statement

2.2.1 The Study-Group was conscious that the Indian firms with international affiliation certainly have an edge in terms of better knowledge and related practices. The Study-Group also appreciated the various area of MCS and emerging area of accountancy profession in the context of opening up of the economy and globalization. It is not out of place to say that the present day competition is the competition of intellect and knowledge power. This knowledge base is the intellectual capital of an organization and a regulatory body can hardly ignore this knowledge management aspect.

2.2.2 The Institute shall continue to develop knowledge base not only with respect to areas covered under "Management Consultancy" but also all related spectrum with reference to their professions and this knowledge base be available to the members in the manner to be prescribed. The Study-Group while appreciating the Institute's initiatives in this regard, noted that these knowledge base are something to be improved upon continuously.

This knowledge/data base shall equip members with relevant International Treaties, WTO literatures, knowledge portal in respect of various emerging areas of Assurance services as well as MCS.

2.2.3 To empower the Indian firms, the Institute of Chartered Accountants of India shall explore limited work based alliances with the national institutions like IITs, IIMs, ICWAI, ICSI, National Law Schools, Universities and International Professional and other institutions such as London School of Economics, Institute of Chartered Accountants of England & Wales, AICPA.

2.2.4 The Study Group also felt the need to develop data base at the Institute level regarding the man power, infrastructure, arrangement of sharing of fees, nature of work of the Indian firms so that systematic approach can be developed to overcome their limitations and to develop their competence; infrastructure, effective deployment and efficient utilization of their resources to cope up with the challenges of fiercer global competitions.

2.2.5 The Study Group was of the view that the Institute may include in their current virtual Institute project a knowledge portal covering the above in addition to data base and knowledge about :

i) Several macro and micro economic matters impacting trade, commerce and professional services;

ii) International Regulatory frarmework of all possible countries;

iii) International tax laws;

iv) International corporate laws;

v) Tax treaties across third countries;

vi) International money market;

vii) Internatioinal Capital Market;

viii) International finance including operations, methodology and processes of multilateral, bilateral agencies and international institutional framework;

ix) Accounting and Auditing Standards;

x) Similar information, knowledge and its updation on regular basis for all Indian laws, finances, regulations, frame work, policies, processes etc.

2.3 Interaction with Government, Corporate World and Regulatory Bodies

The Study-Group was conscious of the implications of the regular interaction with the various Ministries of the Government, Corporate World and Regulatory Bodies such as IRDA, C&AG, RBI to gain their faith and confidence in Indian firms. The Study Group was of the view that all these organizations should be invited to various in-house Programmes on various subjects such as Accounting Standards (AS), Corporate Governance, Scope of Management Consultancy Services, etc.

2.4 Globalization of Indian Firms

The Study Group noted the ability of the Indian Chartered Accountant to reach out the distant parts of the globe to avail the emerging professional opportunities. The Group noted that the Regulatory requirements placing restrictions on members from sharing fees or entering into partnerships with non-Chartered Accountants have a negative effect on members prospects outside the country. An example of the conditions applicable in UAE was cited in this regard.

The Study Group also noted that the Clause (4) of Part I of the First Schedule to the Chartered Accountants Act, 1949 has empowered the Central Government and the Council to recognise such qualifications for permitting partnership with any person other than a Chartered Accountant in practice. The Study Group felt the need to consider the issue to permit the members to enter into limited purpose partnership with local people in U.A.E. and in other countries as may be specified by the Council from time to time. The modalities of such partnership may be formulated by the Council taking into consideration the requirements of a particular country.

2.5 Multi-Disciplinary Firms

2.5.1 While appreciating the varied nature of MCS and the emerging need of the profession to provide integrated service to the society, the Study-Group was of unanimous view that Multi-Disciplinary partnership between the Chartered Accountants and other professionals would enable Indian firms to grow in their competitive strength. The Government other professional and Regulatory Bodies and the Institute should take initiative towards permitting and encouraging such Multi-Disciplinary partnership. The Study-Group noted that numerous modalities would have to be worked out in this regard. The Study-Group noted that a Working Group under the convenorship of Shri T.N. Manoharan, Council Member had already suggested the inclusion of the following proviso to Clause (4) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

> *"Provided that nothing herein contained shall be construed as prohibiting a member from entering into partnership with other professionals for rendering professional services as permitted by the Council from time to time provided a separate firm is formed for this purpose."*

2.5.2 The Study Group also noted that the amendment of the Act is a time consuming process and considering the imperative need of the hour, the Study Group was of the view that the Council may explore the possibility of such partnership firm with other professional being recognised within the power conferred on it under Clause (4) of Part I of the First Schedule to the Chartered Accountants Act, 1949. The Group felt that a legal opinion, if necessary, may be obtained on the issues involved and suitable action may be taken thereafter. Alternatively, suitable clarification may be obtained from the DCA in this regard.

2.6 Professional Development Programme

2.6.1. The Institute has already taken various initiatives to train and equip the members with knowledge. To achieve this objective, the professional development Programme may be re-oriented keeping in view a long term strategy for professional development. This

knowledge encompasses not just matters relating to accounting but includes knowledge of other related disciplines, e.g., taxation, information technology, company legislation etc. The concept of "nodal competence development centre" may also be explored and some prescribed branches may be entrusted to become such centres. The ICAI-Accounting Research Foundation may play a crucial role in this professional development Programme.

2.6.2 The Institute should arrange conferences, seminar & training programmes for Statutory auditors, Directors of MCS and representative of Indian firms to achieve the desired competence keeping in view that issues of accountability and independence of the profession are criteria of public interest.

2.7 Consolidation of Indian firms

2.7.1 The Study Group has noted the following Recommendation no. 5.7 of the Naresh Chandra Committee on Corporate Audit and Governance:

"ICAI should propose to the Government a regime and a regulatory framework that encourages the consolidation and growth of Indian firms, in view of the international competition they face, especially with regard to non-audit services."

2.7.2 The Study-Group considered the imperative need of the consolidation of partnership in the competitive era and was of the view that the Institute may formulate guidelines, documentation responsibility and structuring of Special Purpose Vehicle (SPV) for the members to enable them to consolidate and grow.

2.7.3. The Study Group noted the need of merger/reconstitution of partnership firms and a need to review the Council's decision in respect of the seniority of firms in case of merger/re-constitution of firms. The Study Group was of the view that in case of merger/demerger the seniority and experience of the partner concerned could be merged into the new entity or the resultant entity. The seniority of partners and their credit for such experience could be considered with one of the firms where he is a partner.

2.7.4 Every profession operates in a dynamic environment, characterised by change. Recent years have seen a significant expansion in the body of knowledge required by the professional accountant. The Study Group was of the view that consolidation of Indian firms through networking, multi-disciplinary firms, globalisation of firms will strengthen the Indian firms "to be a provider of world class audit and related financial and business solutions to clients, to help them meet the demands of increasingly stringent regulations, fiercer competition, technological and other challenges with excellence." (Firm Vision – Vision for the 21st Century – ICAI)

2.8 Nation building process : A pro-active Institution.

The Study Group, being consensus of the role of the accountancy profession in the national building process, felt the need that the Institute should play a pro-active leading role. The Study Group unanimously decided that the Institute in consultation with the Central Government/State Government should arrange orientation and training programmes for the members of the Parliament and members of the State Legislatures, Municipal Councilors, Panchayat Members and other representative bodies of the society

in the area of economic reforms, globalisation, economic planning, rural economic planning, financial laws, corporate governance etc. The Institute should also take initiative in conducting training programmes for the independent Director as well as officials of RBI, Multi National Companies and Public Sectors on regular basis.

CHAPTER 3

WTO REGIME & ITS IMPACT ON ACCOUNTANCY PROFESSION

3.1.1 *"In the past developing countries have been told time and again that they stand to benefit from trade liberalization and that they must open up their economies. They have done so, often at great cost. For the poorest countries the cost of implementing trade commitments can be more than a whole year's budget. But, time and again, they have found the results disappointing – not because free trade is bad for them, but because they are still not getting enough of it."* -- Kofi Annan, the Secretary General, United Nations.

['Laying foundation of a fair free trade system' compiled in "The Role of the World Trade Organization in Global Governance", edited by Gary P. Sampson and published by Bookwell – 2002].

3.1.2 The reasons of disparities, inequalities between the developed and developing countries and the absence of reciprocal relationship in service sector may have anthropological, historical, economical and geographical reasons. The reality is that the non- professional inhibitions and as well as restrictions circumscribe the opening up of the opportunities in the developed countries for the Indian professionals.

3.1.3 The Study Group noted that under the General Agreement on Trade in Services (GATS) 'commercial presence' means any type of business or professional establishment, including through :-

(i) the constitution, acquisition or maintenance of a juridical person, or
(ii) the creation or maintenance of a branch or a representative office.

within the territory of a Member for the purpose of supplying a service.

3.1.4 The Study Group noted the following 4 modes of rendering service amongst the Members of WTO regime :-

Mode 1 : Cross-border practice – Where the service provider remains in one country and the client in another. Most often such trade takes place electronically.
Mode 2 : Consumption Abroad – Where the client travels from his home country to the country of the service provider to obtain the service.
Mode 3 : Commercial Presence – Where services are provided through establishment of an office in the other country.
Mode 4 : Movement of Natural Persons - Where the professional accountant travels from one country to another to deliver a service.

3.1.5 The Study Group noted that the Council of the Institute has recommended to the Government to not to permit "Mode 3" commercial presence to foreign accounting firms in India and has also recommended to permit "Mode 4" of movement of natural persons before "Mode 3". Even Mode 4 is also to be permitted subject to reciprocity and removal of certain restrictions by developed countries e.g. visa, recognition of Indian qualification, nationality, residency, mandatory insurance and other similar unreasonable restrictions affecting the freedom to provide services globally on reciprocal recognition basis.

3.1.6 The Study Group noted that some of the MAF have already established Mode 3 presence in India in the MCS area which is taken to include internal audit and such similar services. This has been done apparently with the permission of RBI/Government of India. As a result, the impetus on part of other governments to reciprocally remove barriers for movement of accounting services and accountants does not appear to be strong.

The Study Group also noted that a number of multinational accounting firms (MAFs) appear to have set up their commercial presence in India by incorporating limited companies in the names that are similar to the names of MAFs. These companies incorporated in India are representing themselves as part of a MAF network.

3.1.7 The Study-Group examined the implication of 4 modes and observed so far as Modes 1 and 2 are concerned, there was no difficulty but mode 3 and mode 4 are two technical modes where the technical aspects of compliance needs further consideration. The Study-Group noted that the Committee on WTO negotiations recommended to the Government to open up financial sector and movement of natural professional persons on reciprocal recognition basis but so far as commercial presence was concerned, as in Mode 3, there was consensus that the same should not be allowed.

3.1.8 The Study Group noted that the following services are included in the domain of Chartered Accountants :-

CPC 861 - Legal Services

Sub-classification 8612-legal advisory and representation services in statutory proceedings, judicial tribunals, boards, etc.

Sub-classification 8613 – legal documentation and certification services.

CPC 862 - Accounting, Auditing and Book keeping Services-Accounting and Auditing services is further divided into the following subclasses :-

- 86211 – Financial auditing services
- 86212 – Accounting review services
- 86213 – Compilation of financial statements services
- 86219 – Other accounting services

CPC 863 - Taxation Services - Further divided into the following subclasses :-

- 86301 – Business tax planning and consulting services
- 86302 – Business tax preparation and review services
- 86303 – Individual tax preparation and planning services
- 86309 – Other tax related services

CPC 864 - Market Research and Public Opinion Polling Services - Further divided into the following sub-classes :-

- 86401 – Market research services
- 86402 – Public opinion polling services

CPC 865 - Management Consulting Services - Further divided into the following sub-classes :-

- 86501 – General management consulting services
- 86502 – Financial management consulting services (except business taxation services)
- 86503 – Marketing management consulting services
- 86504 – Human resources management consulting services
- 86505 – Production management consulting services
- 86506 – Public relations services
- 86509 – Public relations services

CPC 866 - Services related to Management Consulting – Further divided into following subclasses :-

- 86601 – Project management services services other than for construction
- 86602 - Arbitration and conciliation services
- 86609 – Other management services n.e.c.

The Study Group also noted that as per the current policy in vogue regarding FDI levels permitted under mode 3 as per services classifications under WTO (GATS), CPC 862 (Accounting, Auditing and Book-keeping Services), CPC 863 - (Taxation Services), FDI is not allowed. On the other hand FDI is fully allowed for CPC 865 (MCS) and CPC 866 (Services related to Management Consulting) as well as for NBFC activities except that there is minimum capital inflow requirement for NBFCs.

The Study Group also noted that FDI is clearly prohibited in CPC 862 (Accounting, Auditing and Book-keeping services) as well as CPC 861 (Legal services) and CPC 863 (Taxation services). There are certain corporate and firms and other juridical persons who brought in FDI on foreign ownership as non-banking financial services companies (NBFC) or as MCS but are actually providing services in the field of legal services (CPC 861), accounting, auditing and book-keeping services (CPC 862) and taxation services (CPC 863). This does not seem consistent with the areas permitted as per Government Policy.

The Study Group also noted the position of the Institute in this regard that the service providers providing services under various modes should be subjected to the Code of Conduct and Ethics of the Host Country/Country where such services are finally provided/consumed and the services under mode 1, 2 and 4 should be permitted for execution through/by a natural person and not a Juridical person.

3.1.9 The Study Group was not suggesting/debarring any Indian firm from entering into association with MAF but the commercial presence of the International firms in India is not allowed under the present policy of the Government of India. The Study-Group is of the view that commercial presence either de-facto or de-jure should not be allowed and the foreign firm shall not be permitted to operate in India as mode 3 (commercial presence) as it is not permitted by the Government of India.

3.1.10 The Study Group noted that Section 106 (1) of the Sarbanes Oxley Act, 2002 enacted in the U.S.A prescribed that any foreign public accounting firm that prepares or furnishes an audit report with respect to any issuer, shall be subject to this Act and the rules of the Public Company Accounting Oversight Board and the Securities & Exchange Commission issued under this Act, in the same manner and to the same extent as a

public accounting firm that is organised and operates under the laws of the United States or any State, except that registration pursuant to Section 102 shall not by itself provide a basis for subjecting such a foreign public accounting firm to the jurisdiction of the Federal or State courts, other than with respect to controversies between such firms and the Board.

Section 106 (2) further empowered that

"The Board may, by rule, determine that a foreign public accounting firm (or a class of such firms) that does not issue audit reports nonetheless plays such a substantial role in the preparation and furnishing of such reports for particular issuers, that it is necessary or appropriate, in light of the purposes of this Act and in the public interest or for the protection of investors, that such firm (or class of firms) should be treated as a public accounting firm (or firms) for purposes of registration under, and oversight by the Board in accordance with, this title."

This Section also provides (i) for production of Audit work papers for the Board or the Commission in connection with any investigation by either body with respect to that audit report and (ii) to exempt any foreign public accounting firm from any provisions of this Act or the rules of the Board or Commission issued under this Act.

The Study Group also noted that Section 106 (2) (d) defined 'Foreign Public Accounting Firm' means a public accounting firm that is organized and operates under the laws of a foreign government or political sub-division thereof. The Study Group noted that Section 102 prescribes procedure for registration of foreign public accounting firm with the Board. The Study Group noted that Section 102 prescribes procedure for registration of foreign public accounting firm with the Board. This would require registration of Indian Chartered Accountant Firms with the SEC/Board in case they render services to a company incorporated in US or to Indian Companies listed on US stock exchanges.

3.1.11 The Study Group was conscious of the fact that many Multinational Companies having branch or subsidiary in India are appointing multi-national accounting firms (MAF) to provide audit services in such branch or subsidiary. The Study-Group was of the view that the appointment of multi-national accounting firms (MAF), to meet overseas requirement may not be permitted unless the said firms get themselves registered with FRRB of ICAI to bring these multi-national accounting firms (MAF) within the regulatory functions of the Institute. Such registration be made mandatory in case such attestation or audit or authentication of financial statements are used for any purpose in India. The Institute should frame a guideline in this respect to be complied with by such multi-national accounting firms (MAF). The Group noted the aforesaid registration requirements of foreign public accounting firm with the Public Accounting Oversight Board in USA. The Group was of the view that this is a measure in public interest. It was, therefore, felt that a recommendation to take necessary steps in this regard may be made to the DCA.

3.1.12 The Study Group was also of the view that the Council may by a resolution prohibit any such authentication/audit or attestation of financial statements of any Indian entity by an non Indian Chartered Accountant. A separate resolution may permit registration of non Indian CA firms or persons subject to restrictions on reciprocal basis similar to those which are imposed by host country on Indian Accountants.

3.1.13 The Study-Group considered that numerous MAFs are having a de facto existence through companies incorporated in India using the similar International known names of such firms.

3.1.14 The Study Group was of the view that in so far as dealing with the presence of these entities in the context of their carrying on purely MCS activities may also be a direct concern of ICAI. It will clearly be noted that in the larger context the ICAI has been called upon to assist the working group for suggesting negotiation strategy in the accountancy sector for consideration by the Government of India in formulating positions and strategies in ongoing Negotiations on Trade in Services. Accordingly, it would be appropriate for the ICAI to ensure that these consulting firms which have set up a corporate presence fall within the understanding reached by the Government of India in regard to Mode 3 (Commercial Presence – Where services are provided through establishment of an office in the other country.), Mode 4 (Movement of Natural Persons - Where the professional accountant travels from one country to another to deliver a service).

CHAPTER 4

MANAGEMENT CONSULTANCY SERVICES IN CORPORATE FORM

4.1 MANAGEMENT CONSULTANCY SERVICES

4.1.1 Pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949, the Council has permitted the Chartered Accountants in practice to render entire range of Management Consultancy Services (MCS) and other services. The definition of the expression "MCS and Other Services" have been detailed at pages 8 to 10 of the Code of Ethics, 2001 edition under 25 heads. Sections 25 of the Chartered Accountants Act, 1949 provides, inter alia, that no Company whether incorporated in India or elsewhere shall practice as Chartered Accountants.

4.1.2 The fact that Chartered Accountants in practice can engage in carrying out MCS is statutorily recognised. The issue for consideration has been whether Chartered Accountants can engage in MCS in corporate form or any other form. Before one considers this aspect, it needs to be recognised that MCS is not an exclusive area available to Chartered Accountants. However, when it comes to Chartered Accountants, being engaged in this activity, carried on not in their capacity as practising Chartered Accountants, but in a corporate entity, then various issues arise.

The Study Group was conscious of the fact that some of the multi-national accounting firms (MAF)/corporate entities are already present in India rendering entire range of consultancy services and audit related services. The Study Group expressed concern that some of these entities claim that they can execute certain attest functions through affiliates. It appears that certain multi-national accounting firms (MAF) made indirect entry in India, without any reciprocal arrangement for Indian Accountants and Indian firms in countries outside India. As a consequence, the Indian Accountants continue to face professional and non-professional barriers in rendering services in those countries.

Such firms/entities are responsible for undue competition and lack of level playing field vis-à-vis the Indian firms.

4.1.3 The Study Group noted the present position which is as under :

a) The Study-Group noted that various Indian firms having international affiliation are carrying on MCS in India and these services are carried out either through the firms registered with the ICAI or through other corporate bodies.

b) There is no embargo on such MCS being rendered by the firm of Chartered Accountants so long as the ethics and the regulations as prescribed are complied with by Chartered Accountants firms in carrying out such MCS.

c) A member in practice is permitted generally to be a Director Simplicitor in any company including a board-managed company and as such he is not required to obtain any specific permission of the Council in this behalf irrespective of whether he and/or his relatives hold substantial interest in that company. Where, however, such a member in practice seeks to associate with a company engaged in MCS as a Managing Director or a whole time Director, then he has to seek special permission in this regard, under Appendix No.9(B)(3).

4.1.4 Where, however, a member not in practice carries on such a tivity, the matter involves some interpretation of the Chartered Accountants Act. This is because the member in

question being engaged in pursuing MCS in corporate form, is effectively performing an act that a member in practice can perform, without being subject to the disciplinary and ethical jurisdiction which is otherwise applicable to a member in practice. In this regard, the Study Team had looked into this issue and its findings are recorded in the concluding part of para 3.8 and para 3.9 of its report. The conclusions reached by the Study Team makes specific reference to the wording in Section 2(2)(ii) which refers to **"holds himself out to the public as an accountant"**. Based on this logic, the Study Team had concluded that under such circumstances, a member engaged in rendering MCS in corporate form whether as a Director or in any other capacity, is deemed to be a member in practice by virtue of the doctrine of holding out based upon the interpretation of Section 2(2)(ii) –

"whether or not such person actually holds a certificate of practice."

4.1.5 The above referred findings of the Study Team were considered by the Study Group and they have reached the same conclusions as was reached by the Study Team, viz. that a member rendering services in corporate form without holding a certificate of practice is not permissible. If a member wishes to do so, the proper course of action is to seek a certificate of practice and thereafter apply for specific permission of the Council to carry on such services, if applicable. The Study Group was of the view that no change in the present position is warranted. It may however be necessary to issue a clarification to clearly lay out ICAI views in line with 4.1.4. and 4.1.5 in this regard.

4.1.6 The Study Group was of unanimous view that even in non-exclusive area, the same brand of a multi-national accounting firm (MAF) should not be permitted to operate in India and Institute should have the power to regulate such firms operating in India even if they are operating only in non-exclusive area.

4.1.7 The Study Group recognised that the position of a member employed by a company/entity rendering MCS is entirely different. Such employment option is always open to a member and again no change in this regard was considered necessary.

4.1.8 Another issue which has been the subject of debate is the name under which such management consultancy services can be carried out. The observations of the Study Team in this regard indicate the strong feelings that have been prevalent amongst the members on this issue, for quite sometime. Para 3.2 of the Study Team's Report makes specific reference to this situation. Numerous representations have been received and membership at large is concerned with the situation where, such entities rendering MCS are having a name similar or identical to the name of a multinational accounting firm. Use of such a name for such an MCS entity results in an impression that certain accountancy firms were indulging in advertising or a brand building exercise (whether or not this is the intention). This sort of a similarity of name has also led to a situation where certain statements and positions taken by the management of such MCS entities have been erroneously perceived to be a position taken by an accountancy firm. Numerous instances were considered by the Study Group where certain observations were made on behalf of such entities engaged in MCS and which dealt with matters concerning the profession, leading to a belief that this was a statement issued by a member of the profession when the reality was not so.

It may be appreciated that when numerous members have been mislead by the similarity of such names, the fact that the public at large would not be in a position to distinguish the fact from impression would be apparent.

4.1.9 This underlines the need that entities engaged in MCS may carry on their activities in India so long as their names are not similar to the names of an accountancy firm. This is to prevent an erroneous impression in the eyes of regulators, users of financial statements and the public at large. Such entities of course need to comply with other laws of the country and the requirements prescribed by RBI or concerned Ministry from time to time.

4.1.10 The Study-Group also noted that the Chartered Accountants Act, 1949 does not vest with the Council any jurisdiction over the Corporate bodies as such. In light of this, it was decided that a strong representation be made to the Department of Company Affairs to draw their attention to the adverse consequences of permitting such entities the use of names similar to or closely resembling the names of multinational accounting firms and the DCA would be requested to instruct concerned Registrars to disallow/prohibit the use of such names as they are likely to create misunderstanding about the true nature of such entities and are therefore, not in public interest. Necessary corrective steps should also be suggested even where such names have already been granted as the Registrar has powers under the Companies Act, 1956 to take such action if the circumstances so require.

Shri S. Gopalakrishnan, FCA strongly opposed such move. He expressed his dissenting views on the conclusion that no prohibition should be imposed on multi-national accounting firm (MAF) in doing MCS through a corporate entity having similar name. The Study Group decided to refer the matter to the Council with a majority view that such a move is necessary to achieve de-facto or de-jure prohibition of Mode 3 presence of MAF in India.

4.1.11 Since the above is only in the form of a recommendation, the Group deliberated at length on whether a further direction from the Council is desirable to prescribe that members should not associate with any entity having the same or similar name as an Indian firm or MAF. However, despite the intensive deliberations, no conclusion was reached by the Group on this issue.

4.1.12 Arising out of the above conclusions, certain further issues were considered. The Group felt that although it was desirable that a separation of identity between an Indian accounting firm and such corporate entities is necessary, it would not be practically possible to regulate that the physical separation of premises and infrastructure must take place. Since these entities are not under the jurisdiction of the Institute, it would be left to the members of the accounting firms to take such measures as to avoid the creation of a common identity with such entities. Members should be directed to observe this in letter and spirit, but no specific parameters, such as physical separation, needs to be specified. A simple illustration where separation of identity can be insisted upon is in regard to email identities and Website addresses of Indian accountancy firms. Members should be required to refrain from using names of multinational accounting firms or such MCS entities in their email identity or web addresses or telephone directory as would indicate such common identity or association.

4.1.13 The Study-Group also noted that certain members display logos or names of the corporate entities engaged in MCS in their academic presentations. Similarly, the names of such corporate entities are stated on the visiting cards of partners of Chartered Accountants firms and are also mentioned in the correspondence by auditee companies, instead of the names of the statutory auditors. Although, this may happen by

acceptance or by design, the conclusion is obvious that there is a misuse of names of Corporate entity in situation where the names of the accountancy firm was appropriate. The Study Group reiterated that such practices were not permitted for any member of the Institute. The Council may issue a detailed clarification and a self regulatory code in this regard.

4.1.14 The Institute having recognised earlier that networking and affiliation is not only permitted, but may also be desirable, has encouraged formation of such affiliations for professional purposes. This, however, should not be taken to mean the promotion of brand identity of such multinational entities and accountancy firms. In response to the feeling expressed in some quarters that the above approach amounts to an unfair restriction on the growth of Indian accountancy firms which are also engaged in rendering services in non-exclusive areas, it may be noted that the Council is responsive to the competitive realities and in light thereof, has already granted certain relaxations in exclusive as well as non-exclusive areas in respect of responding to Tenders, Advertisements and circulars.

4.1.15 The nature of the MCS is competitive, result oriented and sometime contingent upon the finding. The Group is of the view that to ensure a competitive edge to the profession in this non-exclusive area, some relaxation is required. The Study Group noted the deliberation of the Council at its 219th meeting held in August, 2001 in respect of proposed amendment of Regulation 192 and the following suggested proviso (d) and (e) of Regulation 192:

> *"(d) in the case of certain Management Consultancy Services as may be specified by the resolution of the Council from time to time, the fees may be charged on percentage basis which may be contingent upon the findings, or results of such work; and*
>
> *(e) in the case of any other work or services as may be specified by the resolution of the Council from time to time, the fees may also be charged on percentage basis or which may be contingent upon the findings, or results of such work."*

The Study Group noted the following amendment suggested by the Working Group chaired by Shri T.N. Manoharan, FCA in place of existing clause (10) of the Part I of the First Schedule of the Chartered Accountants Act, 1949 would give more flexibility in the approach then the suggested provisos to Regulation 192

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

x x x x

(8). Charges or offer to charge, accepts or offers to accept in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or results of such employment, ***except in cases which are permitted by the Council from time to time (emphasis provided);"***

The Study Group concurred with the Manoharan Committee Recommendation which would empower the Council to act in a pro-active manner in the emerging liberalized scenario. It was felt that representation should be made to the DCA to expedite implementation of the Committee's recommendations.

4.1.16 The Study Group was of the view that the members may be freely permitted to undertake MCS in corporate form. However, the following are not permissible: -

(i) The name of MCS company is not same or similar to any Indian or Foreign Accounting Firm;
(ii) Co-branding and promoting of attest function directly or indirectly by the Management Consultancy Companies;
(iii) Doing internal audit, writing accounts for audit client;
(iv) Other business or professional relationship with the audit client which are prohibited for a CA firm;

4.2 Exclusive areas for the Chartered Accountants

4.2.1 The provisions of Section 25 of the Chartered Accountants Act, 1949 read with other provisions of the Act provide that the practice of profession of accountancy is restricted to Chartered Accountants only. However, there has been some debate on exactly which area may be treated as the exclusive area of operation of Chartered Accountants.

4.2.2 The Study Group noted that owing to a conservative view prevalent in the past, numerous other entities have started rendering services which may be considered to be the domain of Chartered Accountants alone. It is a well known fact that numerous such activities go under the collective label of management consultancy services. This fact was very highlighted in the representations before the sub-Group. In the case of a company having thousands of crores as turnover, it is technically possible to have some of the audit functions done by an unqualified person. This exposes the company as well as investors, creditors and lenders to a great risk because such unqualified person who signs an internal audit report is not governed by any Code of Ethics and other civil law liabilities and is not accountable to any regulatory body. The principles of objectivity, independence and excellence are the imperative need of any attest or assurance function including internal audit.

4.2.3 The Study Group was of unanimous view that it is possible to interpret the C.A. Act so as to include the internal audit within the umbrella of exclusive area. This view was based on the concept of what constituted an attest function. Thus, the underlying concept was that any assurance/certification or attestation which involved examination of the financial statement or a part thereof with or without the examination of the related documents, supporting bills and other evidences constitute an audit/assurance service.

4.2.4 The Study Group was of the view that if regulatory measures are not imposed on service as internal audit, it is possible that the internal audit may be done in a non-professional way circumventing the very purpose of internal audit. Such persons may also lack the technical skills and training to carry out such task effectively. This was all the more important as increasing reliance is placed on the internal audit function even in the technical literature of the Institute. The statutory auditors are also required to comment on the efficacy of the internal audit as per CARO.

4.2.5 The Study Group noted that the corporate entities engaged in MCS are also simultaneously rendering services in attest related areas. These include carrying out internal audit and other forms of special purpose audit such as system review, operational audit, etc. In the age of increasing interest of society in regard to attest function, accountability and transparency are the pre-conditions for such a service.

Therefore, the Study Group is of unanimous view that the internal audit functions should be exercised only by a Chartered Accountant in practice because he has the necessary education and technical availability as well as training and is subject not only to Accounting Standards, Guidance Notes, SAPs but also to regulatory/ethical jurisdiction of the Institute.

4.2.6 In light of the above considerations, the Study-Group was unanimously of the view that The Council may clarify that the functions of attestation as (a) internal audit; (b) audit/attestation of general purpose financial statement, (c) other audit/assurance prescribed by any law in India falls within the exclusive area of Chartered Accountant. To further strengthen the existing technical framework; the Council may consider setting up an Internal Auditing Standard Board to formulate the guidelines in this regard.

4.2.7 Alternatively, the DCA may also be approached to clarify this by a notification to set at rest any doubt on this, although even the current legal position support recommendation in 4.2.6.

CHAPTER 5

RECOMMENDATION OF THE STUDY GROUP IN OTHER RELATED AREAS

5.1 Restrictive conditions on the appointment of auditors – A threat to independence

The Study-Group noted that certain Government Authorities and other non-Governmental entities have in the past evolved the criteria for giving consultancy assignments and audit related work in a manner that would render only a select few firms eligible. Such criteria primarily centre around the financial parameters like turnover and no. of staff kept at a very high level. The Study Group also noted that certain financial institutions, which are providing finance for setting up projects were putting conditions upon the borrowing company to appoint certain big firms as auditors of the company. The Study Group unanimously decided that such compulsion was prejudicial to the auditing practice and would affect the right of the borrowing company to exercise its discretion bonafide while appointing his auditor. The Study Group, while appreciating the imperative need of the profession to ensure the independence of auditors, was of the view that such conditionalities are undesirable. The Study Group noted that the choice of the service provider is undoubtedly that of the client. However, where issues of public interest are involved, it is not out of place to suggest to the Government, PSUs, Insurance Companies, Corporates, NBFC's and Banks that the criteria adopted should be commensurate with the requirements of the assignments. The Study Group was of the view that such conditions imposed by such authorities whereby borrowers are required to appoint one of the select few firms as statutory or internal or concurrent auditor should be immediately deleted and the Institute should make representations to the RBI, Ministry of Finance and C&AG to ensure that such practice be discontinued and to ensure that all the Indian firms can avail the opportunity to participate in the nation building process.

5.2 Trade & Firm Name – Need to review the C.A. Regulation 190 of C.A. Regulations, 1988

5.2.1 The Study-Group is of the view that no change is required as the Study-Group has gone further and decided that companies engaged in MCS should not have same or similar name of Indian or MAFs.

5.2.2 The Study-Group is of unanimous view that Institute should request the concerned authorities to ascertain the position in respect of the permission granted to foreign firms operating in India and to confirm that permission so granted are in consonance with the stated policy of the Government and the entities so permitted are complying with the terms and conditions stipulated when granting such permission and with the laws of the land.

5.3 Joint Audits

The Study-Group considered whether there should be joint audit system in which there would be a big firm along with a small firm and is of the view that a framework or guideline could be issued to mandate that the audit of beyond a particularly size would not be done by a single auditor and it had to be done by the joint auditor. The Group noted that this issue was considered in the light of 'independence'. However, there are

many other facets to this concept; and modalities would have to be evolved if such a concept is to be implemented. Therefore, it was felt appropriate to suggest that the Council may look at this issue in greater detail in conjunction with other related matters presently under consideration.

5.4 Advertisement and Publicity

The Study Group noted that the concept of prohibiting advertisement amongst professional firms is founded on and very well established and well thought out background that such advertisement is harmful to the cause of the profession at large. Users of professional services are to be guided by the intrinsic quality of work/professional services that are rendered and not by self- proclaimed abilities and achievements. It was also noted that the Institute keeping pace with the changing times has relaxed various rules in this regard including permitting statement of services rendered on the Website of members through using the pull method. The client and the users of professional services needs to be aware of the services one can perform. He should not be influenced by the self promotion or visibility of the firm, etc. Representations were received by Group suggesting that advertisement has been opened up for the members of the profession in certain countries abroad and, therefore, the Institute should keep pace with these trends. The group considered this point of view but after evaluation of the situation noted that there is a move even in advanced countries to introduce certain restraints to the Chartered Accountancy profession as is evidenced by the thrust in Sarbanes Oxley Act. It would be, therefore, realistic to consider each issue on merits rather than merely on the ground that advertisement is permitted in certain economies in the Western world. The merits of such a de-regulation need to be carefully assessed and the fact that this relaxation is prevalent abroad may not continue in its entirety in the future also needs to be noted. In the light of above, the Study Group unanimously decided that no change is warranted in the present position in respect of advertisement and publicity.

CHAPTER 6

CONCLUSION

While addressing the issues, the Study Group consciously adopted an approach to consider the same in possible widest perspectives and to arrive at a consensus decision. The Study Group also felt that the Council may consider making the Report (with such modifications as are necessary) available to the members.

The Study Group thanks the President, Shri R. Bupathy and the Vice-President Shri Sunil Goyal for their faith and confidence reposed on the Group. The Group is extremely grateful for their support and guidance.

The Study Group gratefully acknowledges the contribution made by the Secretary, Dr. Ashok Haldia for his valued views and co-operation.

The Study Group thanks Shri G.D. Khurana, Director (Legal) and other officials for their assistance so meticulously rendered.

The Study Group places on record its appreciation for the painstaking efforts and positive inputs provided by Dr. Alok Ray, Secretary of the Study Group and for his contribution and dedicated services.

The Study Group wishes to place on record its appreciation for those who made representations before the Study Group and otherwise contributed to its deliberation.

(Sd/-)
Shri Jayant P. Gokhale
Convenor

New Delhi
Date: 15.9.2003

CHAPTER 7

GLOSSARY/ABBREVIATIONS

General :

C.A. Act	The Chartered Accountants Act, 1949
C.A. Regulations	The Chartered Accountants Regulations, 1988
Code of Ethics	Code of Ethics, 2001 edition issued by the ICAI.
ICAI	The Institute of Chartered Accountants of India, a body set up under an Act of Parliament, i.e. the Chartered Accountants Act, 1949 to regulate the profession of Chartered Accountants.
Council	Central Council of the Institute of Chartered Accountants of India
CESURA	The Committee on Ethical Standards & Unjustified Removal of Auditors - A non-standing Committee of the Council of ICAI to address and recommend the ethical issues relating to the Accountancy profession and to deal with the unjustified removal of auditor cases.
MCS	Management Consultancy Services. The definition of the expression the "Management Consultancy and Other Services" as appearing in the Code of Ethics, 2001 edition at page no. 8 to 10 are as follows: The expression Management Consultancy and other Services shall not include the function of statutory or periodical audit, tax (both direct taxes and indirect taxes) representation or advice concerning tax matters or acting as liquidator, trustee, executor, administrator, arbitrator or receiver, but shall include the following: *(i) Financial management planning and financial policy determination. *(ii) Capital structure planning and advice regarding raising finance. *(iii) Working capital management. *(iv) Preparing project reports and feasibility studies. (v) Preparing cash budget, cash flow statements,

profitability statements, statements of sources and application of funds etc.

(vi) Budgeting including capital budgets and revenue budgets.

(vii) Inventory management, material handling and storage.

(viii) Market research and demand studies.

* Consideration of tax implications while rendering the services at (i), (ii), (iii) and (iv) above will be considered as part of Management Consultancy and other Services.

(ix) Price-fixation and other management decision making.

(x) Management accounting systems, cost control and value analysis.

(xi) Control methods and management information and reporting.

(xii) Personnel recruitment and selection.

(xiii) Setting up executive incentive plans, wage incentive plans etc.

(xiv) Management and operational audits.

(xv) Valuation of shares and business and advice regarding amalgamation, merger and acquisition.

(xvi) Business Policy, corporate planning, organisation development, growth and diversification.

(xvii) Organisation structure and behaviour, development of human resources including design and conduct of training programmes, work study, job-description, job evaluation and evaluation of work loads.

(xviii) Systems analysis and design, and computer related services including selection of hardware and development of software in all areas of services which can otherwise be rendered by a chartered accountant in practice and also to carry out any other professional services relating to EDP.

(xix) Acting as advisor or consultant to an issue, including such matters as:-

(a) drafting of prospectus and memorandum containing salient features of prospectus. Drafting and filing of listing agreement and completing formalities with Stock Exchanges, Registrar of Companies and SEBI.

(b) Preparation of publicity budget, advice regarding arrangements for selection of (i) ad-media, (ii) centres for holding conferences of brokers, investors, etc., (iii)

bankers to issue, (iv) collection centres, (v) brokers to issue, (vi) underwriters and the underwriting arrange- ment, distribution of publicity and issue material including application form, prospectus and brochure and deciding on the quantum of issue material (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).

(c) Advice regarding selection of various agencies connected with issue, namely Registrars to Issue, printers and advertising agencies.

(d) Advice on the post issue activities, e.g., follow up steps which include listing of instruments and despatch of certificates and refunds, with the various agencies connected with the work.

Explanation: For removal of doubts, it is hereby clarified that the activities of broking, underwriting and portfolio management are not permitted.

(xx) Investment counselling in respect of securities [as defined in the Securities Contracts (Regulation) Act, 1956 and other financial instruments.] (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).

(xxi) Acting as registrar to an issue and for transfer of shares/ other securities. (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).

(xxii) Quality audit.

(xxiii) Environment Audit.

(xxiv) Energy Audit

(xxv) Acting as Recovery Consultant in the Banking Sector.

Study Group	Study Group constituted by the Council at its 223rd meeting held in February, 2002 under the convenorship of Shri Jayant P. Gokhale, FCA, Central Council Member.
Study Team	Study Team on 'Issues relating to foreign bodies/firms' constituted in pursuance to the decision of the Council in its 169th meeting held in July, 1994 under the Chairmanship of Shri Y.M. Kale, FCA, the then President of ICAI.
Indian firm	Firms registered with the Institute of Chartered Accountants of India
IFIA	Indian firm with international affiliation

FRRB	Financial Reporting Review Board
MAF	Multinational Accounting Firms
Network Firm	"Network Firm" means an entity under common control, ownership or management with the firm or having affiliation with an accounting entity or any entity that a reasonable and informed third party having knowledge of all relevant information would reasonably conclude as being part of the firm nationally or internationally. [Explanation – An affiliation as referred to above shall include :- (i) having an association with an accounting entity within or outside India such that it results directly or indirectly in a common professional economic or beneficial interest. (ii) One or more of the entities holding out that it is so affiliated or networked. It is, however, clarified that an entity shall not be treated as an affiliate of another merely for the reason that they (a) share professional knowledge and data base (b) refer certain professional assignments or authorise the other to represent certain matters. It is further clarified that if different Indian firms are networked with a common MAF then irrespective of the presence/absence of any `affiliate' relationship between the Indian firms inter-se, they shall be considered as part of the same network.]

Chapter 3 :

GATS	General Agreement on Trade in Services, 1995.
FDI	Foreign Direct Investment.
Commercial Presence	"Commercial Presence" means any type of business of professional establishment, including through :- (i) the constitution, acquisition or maintenance of a juridical person; or (ii) the creation or a maintenance of a branch or a representative office; within the territory of a member for the purpose of supplying a service.

Juridical person	"Juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or Governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association.
Juridical person of another Member	"Juridical person of another Member" means a juridical person which is either : (i) constituted or otherwise organized under the law of that other Member, and is engaged in substantive business operations in the territory of that Member or any other Member: or (ii) in the case of the supply of a service through commercial presence, owned or controlled by: 1. natural persons of that Member; or 2. juridical persons of that other Member identified under subparagraph (i).
A juridical person	A juridical person is : (i) "owned" by persons of a Member if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Member; (ii) "controlled" by persons of a Member if such persons have the power to name a majority of its directors or otherwise to legally direct its actions. (iii) "affiliated" with another person ;when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
Natural Person of another Member	"Natural person of another Member" means a natural person who resides in the territory of that other Member or any other Member, and who under the law of that other Member; (i) is a national of that other Member; or (ii) has the right of permanent residence in that other Member, in the case of a Member which: (a) does not have nationals; or (b) accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, as notified in its acceptance of or accession to the WTO Agreement provided that no Member is obligated to accord to such permanent residents treatment more favourable than would be accorded by that other Member to such permanent residents. Such notification shall include the assurance to assume, with respect to those permanent residents, in accordance with its laws and regulations, the same responsibilities that other Member bears with respect to its nationals.

Supply of a Service	Supply of a Service includes the production, distribution, marketing, sale and delivery of a service.
Financial Auditing Services	Financial Auditing Services means examination services of the accounting records and other supporting evidence of an organization for the purpose of expressing opinion as to an whether financial statements of the organization present fairly its position as at a given date and the results of its operation for the period ended on that date in accordance with generally accepted accounting principles.
Accounting Review Services	Accounting Review Services means reviewing services of annual and interim financial statements and other information. The scope of a review is less than that of an audit and therefore, the level of assurance provided is lower.
Compilation of Financial Statement Services	Compilation of Financial Statement Service means compilation services of financial statements from information provided by the client. No assurances regarding the accuracy of the resulting statements are provided. Preparation services of business tax returns, when provided as a bundle with the preparation of financial statements for a single fees, are classified here, however, it excludes business tax preparation services when provided as separate services, are classified in CPC 863.
Other Accounting Services	Other Accounting Services such as attestations, valuations, preparation services of pro forma, statements, etc.
Book Keeping Services	Book keeping services except tax returns consisting in classifying and recording business transactions in terms of money or some unit of measurement in the books of accounts excluding book keeping services related to tax returns, are classified under CPC 863.

HPL-846

PRESIDENT

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
[Set up under an Act of Parliament]
P.B. N0. 7100, Indraprastha Marg,
New Delhi -110 002 INDIA

Confidential
By Courier

No.: 29-CA/LAW/NDM-116

19th October, 2004

Dear Shri Khosla Ji,

Sub: Functioning of Multinational Accounting Firms (MAFs)

The Institute has been from time to time taking up the issues concerning the functioning of the Multinational Accounting Firms (MAF) resting with the meeting held on 26th June, 2003 under the Chairmanship of the then Secretary, Department of Company Affairs (DCA) and my predecessor's letter no. 29-CA/Law/NDM-116 dated 29th November, 2003. The summary of the issues concerning MAF and decisions of the Council on the report of the Study Group constituted by the Council were communicated by the above referred letter dated 29th November, 2003. It was also mentioned therein that the decisions of the Council are being considered for implementation wherever required and this would include proposals for amendments in the Chartered Accountants Act, 1949 and the Regulations framed thereunder. A copy of the aforesaid letter is enclosed at **Annexure-'A'** for your ready reference.

The issues that have emerged from the exercise as aforesaid, have already been brought to the notice of the Government. The Council suggested to bring the same again to the kind notice of the Government.

1. Functioning of MAFs

1.1 Certain foreign entities like MAFs, Corporates and other juridical persons such as Pricewaterhouse Coopers, KPMG, Ernst & Young were given permission by the Reserve Bank of India (RBI) under automatic/FIPB route for doing consultancy business in India. These entities have established their significant commercial presence in India. The RBI, while according the permission, did not ensure that the accounting profession in India is allowed to provide accounting and related services in other countries on reciprocal basis. This has far-reaching implications in current ability of the Indian Chartered Accountants to provide services in these countries. The Institute of Chartered Accountants of India (ICAI) has been pursuing with the Accounting Bodies in different countries for recognition of its qualification and relaxation for its members for entry level requirements like appearance in certain papers such as accounting, auditing as well as training requirements giving due credit to the ICAI's educational and training curriculum. In addition, the Indian Chartered Accountants face various non-professional barriers like visa, citizenship and residential requirements, procedural impediments to provide services in such countries. While the Institute has been pursuing vigorously for recognition of its qualifications for ensuring level playing field for Indian Chartered Accountants, the countries concerned are not showing a sense of seriousness and urgency, these matters deserved. Since MAFs are already commercially present and operating in India, the negotiating capacity of India for the accounting services

Tel. : 23370317, 23370195, 23370731, 23370166 ☐ E-mail : president@icai.org ☐ Fax : 91-11-23370365

87

SIDENT

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
[Set up under an Act of Parliament]
P.B. NO. 7100, Indraprastha Marg,
New Delhi -110 002 INDIA

favouring the Indian accountants has been significantly reduced. In fact, this has also adversely affected bargaining capacity for the Government of India for Indian accounting profession under the ongoing negotiations under the WTO/General Agreement of Trade in Services (GATS).

1.2 It has been noticed that the MAFs, entered through the RBI Automatic/FIPB route for rendering consultancy services (as defined in CPC 865), are transgressing the permission so granted and are rendering taxation services (CPC 863), auditing, accounting and book keeping services (CPC 862) and legal services (CPC 861). Instances brought to the notice of the Study Group constituted by the Council of the Institute and website pages of such MAFs are placed at **Annexure-`B'**.

1.3 It may be added that as per the policy of the Government of India, Foreign Direct Investment (FDI) is not permitted in the field of accounting, auditing and book keeping services, taxation services and legal services and no commitment so far has been made by India for opening of such services under the WTO/GATS. These entities are not only providing services through their own establishment (signifying their commercial presence i.e. Mode-3) in India but also through service providers in India particularly for those services like auditing which cannot be rendered by them under the relevant laws of the country. The Annexure-'B' suggests that Indian firms and MAFs are *defacto* the same entities and their operations are designed to circumvent the provisions of the Chartered Accountants Act, 1949 and Regulations framed thereunder. This is in addition to the violation of the terms & conditions of the permission given by the RBI under Automatic/FIPB route.

1.4 The Institute has taken up the matter with the RBI from time to time. In a letter dated 18.10.2000 addressed to Dr. Bimal Jalan, the then Governor, Reserve Bank of India, Institute took up the issue of functioning of such certain foreign companies like KPMG, Price Waterhouse Coopers etc. in India and requested him to reconsider the Government of India's policy for the entry of foreign Chartered Accountants in India in such a way so that the Indian Professionals are permitted to render similar professional services abroad without any barriers. In this regard, we may also draw your attention to a letter no. Ref.DBS.ARS.No. 368/08.91.008/2002-2003 dated 29th November, 2002 from Shri R.M. Thakkar, General Manager, Reserve Bank of India in respect of the complaint filed by one of the members of the Institute with RBI alleging that certain Indian audit firms affiliated to large international audit firms are rotating the audit of private/foreign banks among themselves (members of the same group) and that such firms share the same office premises as well as resources of the organization in the country and the assistants who are actually conducting the audit are inter-changeably used within the member firms, thereby defeating the very purpose of independence of auditor. In our reply dated 7th March, 2003, Shri Thakkar was requested to make certain details/documents available, if those were in possession and/or in the knowledge of the RBI. In response, we have received a letter no. Ref.DBS.ARS.No. 744/08:91:008(ICAI)/2003-2004 dated 23rd March, 2004 from Shri P.K. Janardanan, Deputy General Manager, Reserve Bank of India wherein it has been, inter alia, mentioned that "RBI has not permitted any foreign audit firm to set up office or to carry

Tel. : 23370317, 23370195, 23370731, 23370166 ❑ E-mail : president@icai.org ❑ Fax : 91-11-23370365

88

PRESIDENT

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
[Set up under an Act of Parliament]
P.B. N0. 7100, Indraprastha Marg,
New Delhi -110 002 INDIA

out any activity in India under the current exchange control regulations. Further, M/s KPMG & M/s Price Waterhouse & Coopers are basically Indian partnership firms. The former had obtained permission from the Secretariat for Industrial Assistance, Ministry of Finance, Government of India to undertake taxation, audit related services etc." It may be mentioned that M/s KPMG and M/s Price Waterhouse & Coopers are not partnership firms of Chartered Accountants registered with the Institute but are ostensibly active in rendering audit related services.
Copies of the letters dated 18th October, 2000, 29th November, 2002, 7th March, 2003, 23rd March, 2004 and reminder dated 4th February, 2004 along with its annexures are enclosed herewith at **Annexure - 'C'.**

1.5 In view of the foregoing, the Council of the Institute decided to request the Department of Company Affairs (DCA) to take necessary action including reference to the RBI and Ministry of External Affairs (MEA) (i) for reviewing the existing situation for ensuring reciprocal advantage in favour of the Indian accounting profession; (ii) to take appropriate action against MAFs including cancellation/revoking/withdrawal of the permission already granted to such foreign entities; (iii) to prohibit the MAFs/consultancy firms which have set up commercial presence either as a corporate entity or otherwise to defy the restrictions in terms of the Government policy both in letter & spirit; (iv) to ensure that the names of the companies which are same or similar to the names of MAFs should not be allowed to continue to operate in India; and (v) to ensure that the non-compliance of the terms & conditions of the permission granted to such MAFs is dealt with effectively.

2. Discrimination against Indian firm by some organizations

2.1 We have also observed certain practices adopted by some organizations including Financial Institutions and Governmental Authorities to the detriment of Indian accounting firms. The Financial Institutions like IDBI stipulates following conditions as a part of their loan agreement which are not only against the spirit of the law for appointment of auditors but also against the provisions of the Companies Act, 1956 and structured in a manner favouring appointment of MAFs or their Indian surrogate firms to the exclusion of Indian accounting firms :-

> "Auditor(s) shall mean such firm of chartered accountants of recognized international standing acceptable to the Facility Agent, as the Borrower may, with the consent of the Facility Agent, from time to time appoint as auditors of the Borrower."

x x x x

Tel. : 23370317, 23370195, 23370731, 23370166 ❑ E-mail : president@icai.org ❑ Fax : 91-11-23370365

ITPC-849

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
[Set up under an Act of Parliament]
P.B. NO. 7100, Indraprastha Marg,
New Delhi -110 002 INDIA

"agree to appoint reputed firm of Chartered Accountants like Price Waterhouse, S.R. Batliboi & Company, A.F. Ferguson etc., as concurrent auditors with direct reporting system during the period of the loan;"

The ICAI taken up the matter with the Financial Institutions. Their response has, however, not been very encouraging. Copies of the letters written by the Institute & the replies received from some of them are enclosed at **Annexure-`D'**

2.2 Some of the State Governments and the Governmental Authorities have stipulated the eligibility requirements for appointment of consultants which would in real sense, exclude the participation of the Indian firms. We are enclosing copies of the following advertisements as some of the instances to emphasize the issue:

(i) By Government of Maharashtra for appointment of Consultants for implementation of VAT at **Annexure-`E'.**

(ii) By Government of Delhi for appointment of Consultants for implementation of VAT at **Annexure-`F'.**

(iii) By certain domestic non-Life Insurance Corporation for appointment of Consultants for Management Audit at **Annexure-`G'.**

(iv) National Highway Authority of India (NHAI) for appointment of Internal Auditors at **Annexure-`H'.**

You would kindly appreciate that the conditionalities like the following in the case of NHAI do not stands the test of reasonableness: -

(i) 15 years of experience either as Statutory Auditors and/or Internal Auditors; and

(ii) 15 full time partners; and

(iii) 50 Qualified Chartered Accountants in full time employment; and

(iv) Offices in New Delhi, Kolkata or Bhubaneswar, Hyderabad or Chennai or Bangalore; Mumbai or Pune or Ahmedabad; and

(v) Average annual turnover of Rs. 10 crores during the last three years.

2.3 It is obvious that such requirements are, per-se, discriminatory against the Indian Accounting firms. The Indian firms are capable of undertaking assignments, by themselves and wherever required, by hiring foreign expertise for specific purpose not available within the country. The foreign firms, in any case, are also completing the assignments by hiring complimentary services and expertise from the local accountants. Thus, the arguments that in certain emerging areas, Indian firms may not have the

Tel. : 23370317, 23370195, 23370731, 23370166 ❑ E-mail : president@icai.org ❑ Fax : 91-11-23370365 90

HPC-850

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
[Set up under an Act of Parliament]
P.B. N0. 7100, Indraprastha Marg,
New Delhi -110 002 INDIA

expertise, does not stand to the test of logic. Needless to add that the assignments of the foreign accounting firms results in high cost of consultancy, the significant portion of which is repatriated in one or the other forms from the country. We would request you to kindly take up the matter with the Ministry of Finance, Government of India and also with the Comptroller & Auditor General of India (C&AG) for appropriate initiatives so that various authorities in Government of India, in the State Governments, and Public Sector Undertakings prescribes the eligibility requirements in such a manner that the Indian Accounting firms are able to participate in the process in letter as well as spirit. Networking amongst the Indian accounting firms should also be given due weightage.

2.4 Further, the ICAI has already brought to the notice of the Department vide its letter no. Sectt./DCA/03 dated 21st October, 2003 an instance, where a Multinational Company through its Articles of Association stipulated for appointment of auditors from a set of accounting firms which were either the MAFs or their Indian surrogate. Such stipulations are against the provision of the Companies Act and prejudicial to the Independence of the Auditors. MAFs, as per the Indian laws, in fact, cannot be appointed as auditors. We would urge upon you to kindly take appropriate action against such Companies acting as aforesaid in violation of the Companies Act, 1956 and issue general directions so as to check proliferation of wrongful practices. A copy of the said letter dated 21st October, 2003 is enclosed at **Annexure 'I'.**

In the last, I would mention that the accounting profession in India in general and the Institute in particular, are not averse to opening up of the accountancy services. What it is looking for is the level playing field for the Indian accountants and a suitable reciprocal initiative for allowing entry of the accountants and accounting services from India, in other countries. The Council of the Institute is contemplating new initiatives for strengthening the accounting profession in India. We shall apprise you of the same from time to time for guidance and support.

With kind regards,

Sincerely yours,

(SUNIL GOYAL)

Encls. : As above.

Shri Jitesh Khosla
Joint Secretary,
Ministry of Company Affairs,
Room No. 507, 'A' Wing, Shastri Bhavan,
Rajendra Prasad Road,
NEW DELHI – 110 001

Tel. : 23370317, 23370195, 23370731, 23370166 ❑ E-mail : president@icai.org ❑ Fax : 91-11-23370365 91

HPC-851

ANNEXURE – 'A'

Contents:

1. Letter No. 29-CA/Law/NDM-116 dated 29.11.2003 enclosing the summary of the issues concerning MAF and decisions of the Council on the report of the Study Group constituted by the Council. (Pages 1 – 5)

WPL-852

Annexure A. 1

IDENT



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
[Set up under an Act of Parliament]
P.B. N0. 7100, Indraprastha Marg,
New Delhi -110 002 INDIA

Confidential
By Courier

No.29-CA/LAW/NDM-116

November 29, 2003

Dear Shri Mehrishi ji,

Kindly refer to your D.O. letter no.1/10/2003-IGC dated 12th November, 2003 (received on 17th November, 2003) addressed to the undersigned asking ICAI to identify the problem areas arising out of the presence of multinational accounting firms in India and related issues and suggesting solutions thereto, in a tabular statement.

The Study Group set up by the Council of the Institute worked hard in the limited time and gave its report for the consideration of the Council. The Report was considered in the Council at its meeting held on 12th to 14th October, 2003. The summary of the issues and decisions of the Council in this regard are given in the enclosed statement. The decisions of the Council are being considered further for implementation, wherever required. This would include proposal for amendment in the Chartered Accountants Act, 1949 and the Regulations framed thereunder.

With warm regards

Yours sincerely

R BUPATHY

Shri Rajiv Mehrishi, IAS
Joint Secretary to the Government of India
Ministry of Finance
Department of Company Affairs
Room No.507, 'A' Wing, Shastri Bhawan
New Delhi – 110 001.

Encl.: As above.

Summary of issues and decisions taken by the Council at its meeting held on 12th to 14th October, 2003

Sl. No.	Issues/Problems	Decisions of the Council
A	Presence of Multinational Accounting Firms (MAF) in India and Indian Chartered Accountants' (CA) Firms abroad & related issues.	
A.1	Certain Corporates, Firms and other juridical persons have been given permission by RBI under FIPB Route for doing consulting business (as per CPC 865) in corporate form. While granting the permission, no reciprocal undertaking has been taken. This has resulted in lowering the negotiating capacity under WTO/GATS negotiations. Further, there are visa, residence and other unwarranted restrictions in foreign countries on entry of Indian CAs.	The Council decided to request DCA to approach RBI/MEA for review of the situation for obtaining reciprocal permission, and to take appropriate action including canceling/revoking/ withdrawing the permission granted.
A.2	Certain Corporates, Firms and other juridical persons which entered through FIPB route for rendering Management Consultancy Services (MCS), as defined in CPC 865 have transgressed the permission and are rendering Taxation services (CPC 863) Accounting, Auditing & Book Keeping Services (CPC 862) and Legal Services (CPC 861). These are exclusive domain of Chartered Accountants and/or advocates.	The Council decided to request DCA to approach RBI/MEA for review of the situation for obtaining reciprocal permission, and to take appropriate action including canceling/revoking/ withdrawing the permission granted.
A.3	ICAI and Government of India have taken a stand that in the field of accounting, auditing and book keeping (CPC 862), taxation services (CPC 863) and legal services (CPC 861), foreign direct investment is not permitted. The commercial presence of foreign accounting firms (Mode 3) is not to be permitted as of now. The movement of natural persons (Mode 4) is also to be permitted subject to reciprocity and removal of certain restrictions by other country placed on Indian CAs.	The Council observed that providing services through service providers in India also amounts to commercial presence. The Council decided to take up with DCA, RBI & other relevant Government Department to ensure that non-compliance is dealt with effectively.
A.4	MAFs already operating in India either through commercial presence (Mode 3) or through movement of natural persons (Mode 4) need to be prohibited to operate in India in defiance of the present policy of the Government?	The Council decided to suggest to the concerned Department of the Government including DCA to see that consulting firms/MAFs which have set up commercial presence either as a corporate entity or otherwise, are prohibited to defy the restrictions in terms of the Government policy, both in letter and spirit.

A.5	In a number of instances, Financial Statements have been attested by persons or bodies who are not CA firms registered with the ICAI. These Financial Statements are not only circulated, but are also used for several purposes in India. A large number of investors, analysts and media also rely on such attested financial statements.	The Council observed that the public interest may severely get affected if unqualified persons (non-CAs) or bodies, which are not registered with the ICAI, are permitted to attest Financial Statements. The Council has decided to issue a notification that all such attestation of financial statements are not permitted in India and only CAs registered with the ICAI, are authorized to attest Financial Statements which are used for any purposes in India. The Council also decided to issue necessary clarification through various regulators including DCA, RBI, SEBI, IRDA and others to avoid any misgivings in this regard.
A.6	Some of the entities rendering MCS are incorporated and/or registered in the name, which is same or similar to MAF. This is resulting into co-branding of the accounting firm and erroneous perception of identity.	The Council decided that the Indian CAs be freely permitted to associate themselves with corporate entities rendering MCS in any manner subject to ensuring that the name of such entity rendering MCS is not same or similar to any MAF and cap on fees, restrictions on undertaking accounting, internal audit and other prohibited services to statutory auditors are not undertaken by such MCS firms held, owned, managed directly or indirectly by CA who is also a partner or a proprietor of an Indian CA firm.
B.	**UNREASONABLE CONDITIONS/ RESTRICTIONS FOR APPOINTMENT OF AUDITORS AND/OR CONSULTANTS BY FINANCIAL INSTITUTIONS/BANKS/ GOVERNMENT AGENCIES** Financial Institutions/Governmental agencies are prescribing conditionalities to appoint select firms/entities as statutory, internal or concurrent auditor. Further, government agencies, including financial institutions and banks, corporates and ministries are prescribing criteria in respect of turnover, manpower of the firm/entity to oust the middle and small CA firms from the competition. In most of the cases, criteria adopted are not commensurate with the requirements of the assignments. It results into elimination of most of Indian firms all together from being considered for such assignment.	The Council decided to request DCA to approach RBI, Ministry of Finance, C&AG to take appropriate steps so that reasonable criteria commensurate with nature of job be formulated and unreasonable conditionalities/ restrictions be removed for appointment of auditors and/or consultants by Financial Institutions /Banks/Government Agencies. Such entities should be asked to formulate the conditions in such a manner that a larger section of CA fraternity would be able to participate in the process. While awarding an assignment, such entities should also take into consideration the network of firm within India. The

		Council further decided to request the Government to look into the matter where the engagement of statutory auditors is restricted to specified auditors, by providing the same into the articles of association or through the shareholders agreement.
C.	STRENGTHENING OF INDIAN CA FIRMS	
C.1	The brand name and brand image of the Indian accounting firms is to be further enhanced.	The Council accepted the need for further enhancing the brand name and brand image of the Indian CA firms.
C.2	The competitive strength of the Indian CA firms needs to be further strengthened by adopting various protective measures to meet the changing requirements of commercial and economic environment.	The Council, in principle, accepted to encourage networking amongst firms of CAs in India and remitted the matter to its Executive Committee for recommending the necessary modalities.
C.3	For strengthening Indian CA firms and to enable them to provide global services, it may be necessary to recognise networking of Indian firms with MAF. However, it may be necessary to ensure that such networking does not result into an affiliation in a manner so as to constitute commercial presence of MAF in India or otherwise defeats the various regulatory objectives of the profession.	The Council, in principle, accepted to encourage networking of Indian CA firms with MAF provided that such networking does not result into an affiliation in a manner so as to constitute commercial presence of MAF in India or otherwise defeats the various regulatory of the profession. The Council remitted the matter to its Executive Committee for recommending the necessary modalities.
C.4	Networking of the Indian CA firms, as registered with the ICAI, should be appropriately regulated so as to ensure that the same is not misused to defeat in letter or spirit various regulations or statutory requirements.	The Council has, by and large, accepted the restrictions/regulations suggested by the Study Group to appropriately regulate the networking.
C.5	The Indian CAs are required to establish professional entities outside India, which may require getting into partnerships or similar arrangements with locally qualified professionals, who may not be members of the Institute. In certain cases, this requirement may be limited only to sponsorship by a local resident to become part and parcel of the local accounting entity to be created in the host country.	The Council accepted the recommendation of the Study Group regarding permitting partnership or similar other arrangements with locally qualified professionals outside India subject to recommending the modalities by its Executive Committee on a holistic approach.
C.6	The Council has already recommended to the Government for creation of a separate multi-disciplinary firm between CAs and other professionals as may be approved by the Council from time to time. It has to be achieved at the earliest and all necessary steps are to be taken.	The Council accepted the recommendation for creation of separate Multi-Disciplinary firm between CAs and other professionals and remitted the matter to its Executive Committee for recommending the modalities.

3.7	Merger/De-merger/reconstitution of partnership firms.	The Council accepted the recommendation of the Study Group regarding merger, demerger, re-organisation of the Indian CA firms.
D.	**INTERNAL AUDIT BY NON-CAs** A number of instances have been observed where internal audit of companies is carried out by non-CAs either in corporate or other form. The auditors of the companies also rely on the internal audit and specifically report on its efficacy. The corporate governance mechanism including Audit Committees and investors' interests are directly connected with efficacy and reliability of internal audit function. In case the internal audits are carried out by corporate entities or non-CA, there is no regulatory mechanism and technical framework to ensure a minimum desired standard of professional performance, thereby creating a serious threat to the interest of investors, lenders and public at large.	The Council accepted the recommendation of the Study Group that internal audit should be an exclusive area of practice of CAs. The Council decided to refer the matter to Auditing & Assurance Standards Board (AASB) to issue maximum technical literature on internal audit. The Council further decided to make a request to DCA and other regulators including SEBI, RBI & IRDA that in case internal audit function is outsourced by any entity under their supervision and control, the same can be undertaken by CAs/firms of CAs.
E.	**CHARGING FEE ON PERCENTAGE BASIS:** In the area of MCS, despite various relaxations that have been granted by the Council, there remains a difficulty in members quoting fees contingent upon the findings/results of the professional work or in certain cases on a percentage basis.	The Council decided to request DCA to expedite passing of the amendment in the Chartered Accountants Act, 1949 already proposed by the Institute.
F.	**PRACTICE BY INDIAN CAs IN CORPORATE FORM :** Issue of permitting Indian CAs to practise as corporate entity : • For Management Consultancy • For traditional practice also.	The Council decided that corporate form practice in the field of MCS to be freely allowed. CAs may promote and incorporate entities for this. The Council also, in principle, decided to permit the traditional practice in corporate form subject to necessary amendments in the Chartered Accountants Act, 1949. The Council further decided to request the Government to expedite the enactment of Limited Liability Partnership Act.
G.	**ISSUE RELATING TO JOINT AUDIT :** Ensuring independence and quality audit, as also joint audit system may be considered wherein a big CA firm along with a small/medium CA firms to carry out joint audit beyond a particular size.	The Council, while appreciating the recommendation, was of the view that the feasibility to be explored taking into consideration the other relevant issues such as rotation of auditors, etc.

Impc-857

ANNEXURE – 'B'

Contents:

1. Some of the instances of transgressing the permission granted to the MAFs under CPC 865 brought to the notice of the Study Group constituted by the Council.

(i) List of offices of M/s PricewaterhouseCoopers Ltd. and their surrogate firms at Bangalore, Chennai & Hyderabad. This shows that M/s PricewaterhouseCoopers, which cannot provide services other than Management Consultancy Services, provides services through its surrogate firms. (Pages 6 – 8)

(ii) M/s Ernst & Young is announcing that "The audit which are statutorily required are conducted by a member firm for which information will be furnished on request in accordance with Indian regulatory requirements." Service also includes "Other assurance and accounting services" (Page 9)

(iii) KPMG India is announcing that "The firm operates from its offices in Mumbai, Delhi, Chennai, Bangalore, Hyderabad and Kolkata, and offers its clients a full range of services including assurance, tax and regulatory, consulting and financial advisory services." (Pages 10 – 11)

2. (i) In the website page of KPMG 'India Office Locations' includes the Mumbai office location of KPMG in India as

"KPMG
KPMG house
Kamala Mills Compound
448, Senapati Bapat Marg
Lower Parel
Mumbai – 400 013" (Pages 12 – 14)

It may be mentioned that the address of an Indian firm 'M/s Bharat S. Raut & Co.' as registered with the ICAI is the same as of M/s KPMG.

(ii) In the website page, M/s Ernst & Young is announcing that their services includes inter alia:

- Assurance
- Tax (Page 15)

(iii) In the Website page, Deloitte is announcing in its Country contact information that the Indian firm is:

"Deloitte Haskins & Sells
6th Floor
Mafatlal House
Backbay Reclamation
Mumbai – 400 020

It may be mentioned that the aforesaid firm 'Deloitte Haskin & Sells' is an Indian firm through which Deloitte is providing services in India. (Pages 16-20)

Deloitte is also announcing that "The Member firms offer clients a broad range of audit, tax, consulting and financial advisory services." (Page 21)

HDC-859
Annexure B

Annexure 1

PricewaterhouseCoopers

6

Below is a list of offices for [illegible] of M/s PricewaterhouseCoopers Ltd

Offices are listed alphabetically by city.

A| |D|E|F|G| |I|J| |L| | |O|P|Q|R|S|T|U|V|W|X|Y|Z|

Bangalore
PricewaterhouseCoopers Ltd
Mittal Tower, 10th Floor, C Wing
47/6 MG Road
Bangalore 560 001

Telephone: [91] (80) 559 1941, 559 3429, 558 7559, 558 7239, 559 5335/6, 559 7504/5/6
Telecopier: [91] (80) 559 3792, 558 8751

Bangalore
Lovelock & Lewes; Price Waterhouse
Mittal Tower, 14th Floor, B Wing
47/6 MG Road
Bangalore 560 001

Telephone: [91] (80) 558 6362, 558 6365, 532 5265, 555 0399
Telecopier: [91] (80) 558 6354

Chennai (Madras)
PricewaterhouseCoopers Ltd
610 Anna Salai
Chennai 600 006

Mail Address

100

HPL-860

7

PO Box 743
Chennai 600 006
India

Telephone: [91] (44) 829 1597, 829 2046, 829 5986
Telecopier: [91] (44) 829 5787

Chennai (Madras)
Lovelock & Lewes; Price Waterhouse
610 Anna Salai
Chennai 600 006

Mail Address
PO Box 743
Chennai 600 006
India

Telephone: [91] (44) 829 1597, 829 2046, 829 5986
Telecopier: [91] (44) 829 5787

Chennai (Madras)
PricewaterhouseCoopers Ltd
Auras Corporate Centre, 8th Floor
98-A, Dr Radhakrishnan Salai
Mylapore
Chennai 600 004

Telephone: [91] (44) 859 1858/9, 859 1253
Telecopier: [91] (44) 859 1254

Chennai (Madras)
Lovelock & Lewes; Price Waterhouse
Auras Corporate Centre, 8th Floor
98-A, Dr Radhakrishnan Salai

HPC-861

8

Mylapore
Chennai 600 004

Telephone: [91] (44) 859 1858/9, 859 1253
Telecopier: [91] (44) 859 1254

Hyderabad
PricewaterhouseCoopers Ltd
6-3-550, II Floor
LB Bhavan, Somajiguda
Hyderabad 500 087

Telephone: [91] (40) 330 1364/5, 651 1011/2/3
Telecopier: [91] (40) 332 6117

Hyderabad
Lovelock & Lewes; Price Waterhouse
6-3-550, II Floor
I.B Bhavan, Somajiguda
Hyderabad 500 087

Telephone: [91]
Telecopier: [91]

The audits which are statutorily required are conducted by a member firm for which information will be furnished on request in accordance with Indian regulatory requirements.

Other assurance and accounting services are directed towards supporting stakeholders such as lenders and investors. In addition, these services assist management looking at global financial markets, including overseas listings.

Our services include:

Limited Scope Reviews
Concurrent audit
Conversion of financial statements for international reporting in compliance with US GAAP/UK GAAP/INTERNATIONAL GAAP
Forensic audit

Visit our International Site for an overview of Ernst & Young Assurance Advisory Business Services.

Please Contact us for more details.

Copyright © 2001 Ernst & Young. All rights reserved.
This information is not intended for use without professional advice. See our Liability disclaimer. Ernst & Young India is a member of Ernst & Young International.

HPC-863

10

Annexure 3

KPMG

KPMG is a global network of professional advisory firms, whose aim is to turn knowledge into value for the benefit of our clients, our people and our communities.

KPMG India was established in September 1993, and has rapidly built a significant competitive presence in the country. The firm operates from its offices in Mumbai, Delhi, Chennai, Bangalore, Hyderabad and Kolkata, and offers its clients a full range of services, including assurance, tax & regulatory, consulting, and financial advisory services. The firm is focused on gaining differentiation by providing industry-tailored and technology-enabled services to its clients specifically in the financial, pharmaceuticals, infrastructure, insurance and telecom sectors.

In India, KPMG has a client base of over 2000 companies, whose ambition, inherent quality and business potential position them to become world-class players. The firm's global approach to service delivery and world-class skills help provide value-added services to clients.

The firm serves leading information technology companies and has a dominant position in the growing market for US listings by Indian corporates. KPMG has a strong presence in the financial services sector in India while serving a number of market leaders in other industry segments.

Our differentiation is derived from rapid performance-based, industry-tailored and technology-enabled business advisory solutions delivered by some of the most talented professionals in the country. KPMG professionals are grouped by industry focus and our clients are able to deal with industry professionals who speak their language. Our internal information technology and knowledge management systems support the application of the firm's total body of knowledge towards business solutions.

With over 100,000 people collaborating worldwide from 750 offices in 152 countries, KPMG is committed to delivering quality services to its clients all over the world.

IDPC-864

11

Bearing Point, Inc., formerly KPMG Consulting, Inc., is an independent consulting firm and is not affiliated with KPMG International or any KPMG member firm.

© 2002 KPMG, the Indian member firm of KPMG International, a Swiss non-operating association. All rights reserved.

KPMG Online Privacy Statement and Disclaimer

KPMG International Site



About KPMG in India

KPMG is the global network of professional services firms whose aim is to turn understanding of information, industries, and business trends into value.

KPMG India was established in September 1993, and has rapidly built a significant competitive presence in the country. The firm operates from its offices in Mumbai, Delhi, Chennai, Bangalore, Hyderabad and Kolkata, and offers its clients a full range of services, including financial and business advisory, tax and regulatory, and assurance based advisory services.

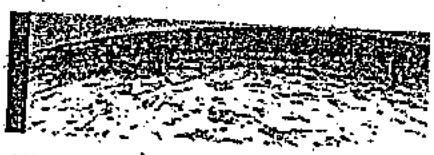
In India, KPMG has a client base of over 2000 companies. The firm's global approach to service delivery help provide value-added services to clients. The firm serves leading information technology companies and has a strong presence in the financial services sector in India while serving a number of market leaders in other industry segments.

Our differentiation is derived from rapid performance-based, industry-tailored and technology-enabled business advisory services delivered by some of the most talented professionals in the country. KPMG professionals are grouped by industry focus and our clients are able to deal with industry professionals who speak their language. Our internal information technology and knowledge management systems enable the delivery of informed and timely business advice to clients.

© 2004 KPMG, the Indian member firm of KPMG International, a Swiss cooperative. All rights reserved

Online Privacy Statement and Disclaimer

INDIA



KPMG

[illegible] PARTNERS [illegible] ABOUT KPMG IN INDIA [illegible]

[illegible] FORUM [illegible] LOCATIONS

ABOUT KPMG IN INDIA

OVERVIEW
LEADERSHIP TEAM
HISTORY
CLIENT CARE
IN THE COMMUNITY
PRESS RELEASES
OFFICE LOCATIONS

India Office Locations

Bangalore (GMT + 5 1/2)
KPMG
KPMG House
20/2 Vittal Mallya Road
Bangalore - 560 001

Phone: +91(80) 227 6000 / 227 6000
Fax: +91 (80) 227 3000

Chennai (GMT + 5 1/2)
KPMG
Wescare Towers, 1st Floor
16, Cenotaph Road, Teynampet
Chennai - 600 018

Phone: +91 (44) 2433 2533 / 3962 / 3916
Fax: +91 (44) 2434 8856

Hyderabad (GMT + 5 1/2)
KPMG
Merchant Towers, 2nd Floor
Road No 4, Banjara Hills
Opp. Syndicate Bank
Hyderabad - 500 034

Phone: +91 (40) 2651 1370 / 2335 0060
Fax: +91 (40) 2335 0070

Kolkata (GMT + 5 1/2)
KPMG
Park Plaza, Block -F, 6th Floor
71, Park Street
Kolkata - 700 016

Phone: +91 (33) 2217 2858 / 2862
Fax: +91 (33) 2217 2868

Mumbai (GMT + 5 1/2)
KPMG
KPMG House
Kamala Mills Compound
448, Senapati Bapat Marg
Lower Parel
Mumbai - 400 013

Phone: +91 (22) 2491 3030 / 2491 3131
Fax: +91 (22) 2491 3132

Delhi (GMT + 5 1/2)
KPMG
Block no 4B

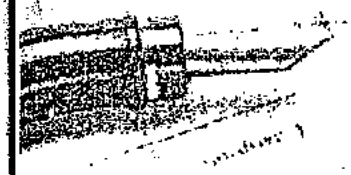
DLF Corporate Park, DLF City
Phase III
Gurgaon
Haryana 122002

Phone: +91 (124) 2549191/9192
Fax: +91 (124) 2549101

14

© 2004 KPMG, the Indian member firm of KPMG International, a Swiss cooperative. All rights reserved.

Online Privacy Statement and Disclaimer



Let us help You Achieve Your Goals

Our professional teams join forces with clients to provide creative and innovative solutions for the present and enhance client's ability to manage future change and growth.

Our Service offering includes the following (please click on one of the areas to find out more):

- Assurance
- Corporate Finance
- Risk & Business Solutions
- Tax

- Overview
- Assurance
- Corporate Finance
- Risk & Business S
- Tax

India

Search all ey.com

HPL-869

16

Global Site Selector: Select a Country

Search:

Deloitte in Asia Pacific

Country contact information

To learn more about our service offerings and industry experience in Asia Pacific, or to submit a Request for Proposal (RFP), please use the contact information listed for each country below:



Australia
India
Japan
Korea
Indonesia
Japan
Korea
Malaysia
New Zealand
Pakistan
Philippines
Singapore
Taiwan
Thailand
Vietnam

If you are unable to locate the information you require you can submit a request for information via the Global site form.

AUSTRALIA

Legal Name:	Deloitte Touche Tohmatsu
Office Address:	P.O.Box N250 Grosvenor Place 225 George Street New South Wales 1217
City:	Sydney
Phone Number:	+ 61 2 9322 7000
Fax Number:	+ 61 2 9322 7001
Contact Us:	http://www.deloitte.com/au/contactus
Site Address:	http://www.deloitte.com/australia
Careers:	http://www.deloitte.com/au/careers

[top]

CHINA

Legal Name:	Deloitte Touche Tohmatsu
Office Address:	26/F Wing On Centre 111 Connaught Road Central
City:	Hong Kong
Phone Number:	+ 852 2852 1600
Fax Number:	+ 852 2541 1911
Contact Us:	http://www.deloitte.com/dtt/en/contactus - English http://www.deloitte.com/cn/contactus - Chinese (中文)
Site Address:	http://www.deloitte.com/china/en - English

17

Careers:	http://www.deloitte.com/cn/cn - Chinese (中国) http://www.deloitte.com/cn/en/careers - English http://www.deloitte.com/cn/careers - Chinese (中国)

[top]

GUAM

Legal Name:	Deloitte & Touche LLP
Office Address:	361 South Marine Drive Tamuning Guam 96913
City:	Tamuning
Phone Number:	+ 1 671 646 3884
Fax Number:	+ 1 671 649 4265 or + 1 671 649 4932
Contact Us:	guaminfo@deloitte.com
Site Address:	http://www.dttguam.com
Careers:	http://careers.deloitte.com

[top]

INDIA

Legal Name:	Deloitte Haskins & Sells
Office Address:	6th Floor Mafatlal house Backbay Reclamation Mumbai 400 020
City:	Mumbai
Phone Number:	+ 91 22 2285 43 30 or + 91 22 2283 70 06
Fax Number:	+ 91 22 2202 43 37/44 99
Contact Us:	indiainfo@deloitte.com
Careers:	http://careers.deloitte.com

[top]

INDONESIA

Legal Name:	Hans Tuanakotta Mustofa & Halim
Office Address:	12th Floor Wisma Antara Building Jalan Medan Merdeka Selatan No. 17 Jakarta 10110 Indonesia
City:	Jakarta
Phone Number:	+ 62 21 231 2879 or + 62 21 231-2955
Fax Number:	+ 62 21 231-3325 or 62 21 384-0387
Contact Us:	indttt@deloitte.com
Careers:	http://careers.deloitte.com

[top]

JAPAN

Legal Name:	Tohmatsu & Co
Office Address:	MS Shibaura Building 13-23 Shibuara 4-Chome, Monato-Ku Tokyo 1088530
City:	Tokyo
Phone Number:	+ 81 3 3457 7321
Fax Number:	+81 3 3457 1694
Contact Us:	pre@tohmatsu.co.jp

18

Site Address:	http://www.deloitte.co.jp

[top]

KOREA

Legal Name:	Deloitte & Touche LLC.
Office Address:	17, 21, 22 Floors Korea First Bank Bldg. 100 Gongpyeong-dong Jongro-gu Seoul 110-702 Korea
City:	Seoul
Phone Number:	+ 82 2 721 7100
Fax Number:	+ 82 2 721 7200
Contact Us:	http://www.deloittekorea.co.kr/dtt/contactus/contactus_emailus.asp - Korean (한국어)
Site Address:	http://www.deloittekorea.co.kr
Careers:	http://careers.deloitte.com

[top]

MALAYSIA

Legal Name:	Deloitte KassimChan
Office Address:	Level 19, Uptown 1 1 Jalan SS 21/58 Damansara Uptown 47400 Petaling Jaya Selangor Malaysia
City:	Selangor
Phone Number:	+ 60 3 7723 6500
Fax Number:	+ 60 3 7726 3986 or + 60 3 7724 9445
Contact Us:	http://www.deloitte.com.my/Contact/OfficeLocations.asp#Kuala%20Lumpur
Careers:	http://careers.deloitte.com

[top]

NEW ZEALAND

Legal Name:	Deloitte Touche Tohmatsu
Office Address:	Deloitte House 8 Nelson Street, Auckland City PO Box 33 New Zealand
City:	Auckland
Phone Number:	+ 64 9 309 4944
Fax Number:	+ 64 9 309 4947
Contact Us:	http://www.deloitte.com/nz/contactus
Site Address:	http://www.deloitte.com/newzealand
Careers:	http://www.deloitte.com/nz/careers

[top]

PAKISTAN

Legal Name:	M. Yousuf Adil Saleem & Co.
Office Address:	Cavish Court, A-35 Block 7 & 8 KCHSU Sharea Faisal

IDC-872

19

Karachi-75350
Pakistan

City: Karachi
Phone Number: + 92 21 111 55 2626
Fax Number: + 92 21 454 1314
Contact Us: pakistaninfo@deloitte.com
Careers: http://careers.deloitte.com

[top]

PHILIPPINES

Legal Name: C.L. Manabat & Co.
Office Address: 5th Floor, Salamin Building
197 Salcedo Street, Legaspi Village
1229 Makati City
Philippines
City: Makati City
Phone Number: + 63 2 812 0535 or + 63 2 818 1826
Fax Number: + 63 2 810 5737 or + 63 2 810 5047
Contact Us: info@deloitte.com.ph
Site Address: http://www.deloitte.com.ph
Careers: http://careers.deloitte.com

[top]

SINGAPORE

Legal Name: Deloitte & Touche Singapore
Office Address: 6 Shenton Way
#32-00 DBS Building Tower Two
Singapore 068809
Mailing address: Robinson Road
P.O. Box 2110
Singapore 904110
City: Singapore
Phone Number: + 65 6224 8288
Fax Number: + 65 6538 6166
Contact Us: enquiries@deloitte.com
Careers: http://careers.deloitte.com

[top]

TAIWAN

Legal Name: Deloitte & Touche
Office Address: 12th Floor
156 Min Sheng East Road, Sec. 3
Taipei 105
Taiwan
City: Taipei
Phone Number: + 886 2 2545 9988
Fax Number: + 886 2 2545 9966
Contact Us: http://www.deloitte.com.tw/english/contact.asp - English
http://www.deloitte.com.tw/contact_us.asp - Chinese ( )
Site Address: http://www.deloitte.com.tw - Chinese (繁)
Careers: http://www.deloitte.com.tw/recruit/recruit.asp - Chinese ( )

[top]

113

HPC-873

20

THAILAND

Legal Name:	Deloitte Touche Tohmatsu Jaiyos
Office Address:	Rajanakarn Building 25, 26 & 28 Floor 183 South Sathorn Road Yannawa Bangkok 10120, Thailand
City:	Bangkok
Phone Number:	+ 66 2 676 5700
Fax Number:	+ 66 2 676 5757
Contact Us:	th_info@deloitte.com
Careers:	http://careers.deloitte.com

[top]

VIETNAM

Legal Name:	Vietnam Auditing Company Ltd International Services Division
Office Address:	8 Pham Ngoc Thach Street Hanoi Vietnam
City:	Hanoi
Phone Number:	+ 84 4 852 4123
Fax Number:	+ 84 4 852 4143
Contact Us:	vaco_hn@vacodd't.com
Careers:	http://careers.deloitte.com

[top]

ontact us for more information about this topic.

Login Register

ecurity | Legal | Privacy

Copyright ©2004 by Deloitte Touche Tohmatsu. All rights reserved. Deloitte Touche Tohmatsu is a Swiss Verein (association), and, as such, neither Deloitte Touche Tohmatsu nor any of its member firms has any liability for each other's acts or omissions. Each of the member firms is a separate and independent legal entity operating under the names "Deloitte," "Deloitte & Touche," "Deloitte Touche Tohmatsu," or other related names. The services described herein are provided by the member firms and not by the Deloitte Touche Tohmatsu Verein. Not all services are provided by all member firms.

HKC-874

21

Global Site Selector: Select a Country

Search:

rvices

mber firms of Deloitte offer clients a broad range of audit, tax, ting and financial advisory services. Our client service teams, under the rship of a Lead Client Service Partner, help create powerful business ions for organizations operating anywhere in the world. This integrated ach combines insight and innovation from multiple disciplines with ss knowledge and industry expertise to help our clients exceed their tations.



her your company is just starting up or is on the verge of becoming a powerhouse, our growth services can help you manage and sustain your any's growth.

dition, Deloitte's member firms offer services distinct to their practice. For information about these services, use the Global Site Selector.

...
...gnment & Sustainability, Global ...g Services, International ...cial Reporting Conversion ...ices, Qualified Intermediaries

...ancial Advisory
...porate Finance, Forensic Services, ...ganization Services, Transaction ...ices

...x
...preciation Tax Solutions, ...porate Tax, European Union, Global ...siness Guides, Indirect Tax, ...ternational Assignment Services, ...ternational Tax, Mergers & ...quisitions , Tax Technology ...utions, Transfer Pricing

Consulting
Enterprise Applications, Human Capital, Outsourcing, Strategy & Operations, Technology Integration

Legal
Banking and Finance, Commercial, Corporate and M&A, Employment Law, EU & Competition Law, Intellectual Property, Public Law, Reorganization Services

Emerging Markets
Agribusiness and Trade Develop... Financial Sector Services, Hea... Services, Private Sector Develop... Utilities and Infrastructure

Risk Consulting
Capital Markets, Centre Assess... Internal Audit, Regulatory Com... Security Services

...tact us for more information about this topic.

Login Register

Related Links
Global e-Library

Focus On ...
Network Economy
Growth Services

...urity | Legal | Privacy

...right ©2004 by Deloitte Touche Tohmatsu. All rights reserved. Deloitte Touche Tohmatsu is a Swiss Verein (association), and, as such, neither ...loitte Touche Tohmatsu nor any of its member firms has any liability for each other's acts or omissions. Each of the member firms is a separate

ANNEXURE – 'C'

MPC-825

Contents:

The Institute has from time to time brought to the notice of the RBI the instances of violating the terms & conditions of the permission by the MAFs.

1. Letter No. 29-CA/Law/NDM-127 dated 18th October, 2000. (Pages 22 – 23)

2. Letter No. DBS.ARF No. 368/08.91.008/2002.2003 dt. 29th November, 2002. (Pages 24 – 25)

3. Letter No. 26-CA(Misc) 203 dated 7th March, 2003. (Pages 26 – 27)

4. Letter No. DBS.ARS.No.744/08.91.008/(ICAI)/2003-04 dt. 23.3.2004. (Pages 28 – 34)

5. Letter No. 26-CA/(Misc.)/2003 dated 4th February, 2004. (Pages 35 – 37)

WPC-876
Annexure-C 22

PRESIDENT

THE INSTITUTE OF CHA
ACCOUNTANTS OF
P.B. NO. 7100, Indraprastha
New Delhi -11

29-CA/Law/NDM-127

COURIER

18th October, 2000

Dr. Bimal Jalan
Governor
Reserve Bank of India
Central Office
New RBI Building
Shaheed Bhagat Singh Road
Mumbai – 400 001.

Dear Sir

Sub: (1) Checking proliferation of Foreign Accountancy Firms under Government of India/RBI approval and functioning thereof.

(2) Misnomer-audit reports being given in the name of "Independent Auditors Report", "International Accountants Report" etc. by such firms

As you are aware, the Institute of Chartered Accountants of India (hereinafter referred to as the "Institute") was set up by an Act of Parliament i.e. The Chartered Accountants Act, 1949 (No.38 of 1949 and hereinafter called as "the Act"). It is a body corporate and it has members who are known as Chartered Accountants. The purpose, for which the Institute was constituted, was to regulate the profession of Chartered Accountants. There is a Council of the Institute, which is empowered by the Act, for the management of the affairs of the Institute and for discharging the functions assigned to it under the Act. The Council is composed of 30 members, out of which 24 are elected by the members of the Institute and 6 persons are nominated by the Central Government. The Government nominees include Dy. Comptroller and Auditor General of India and Sr. officers of Department of Company Affairs. For a long time, the Dy. Governor of Reserve Bank of India had also been on the Council of the Institute.

The Institute was established as yet another arm of the Government as well as economic society to overses that the conduct of business has been carried out with transparency, accountability, financial discipline and in accordance with the enactments made by the Parliament and the translation of business in financial terms has been properly done and reported. The members of our august Institute are performing this function of audit to the best of their capabilities and have always acted as a conscience keeper of the society.

Our members are governed by a strict Code of Conduct and Professional Ethics. The Institute has always ensured that while on the one hand, there is no compromise on the quality of audit by setting appropriate professional standards, on the other hand, the independence of the auditor is also maintained. In case any member is found to be not observing the rules of professional ethics, he is exposed to disciplinary jurisdiction of the Institute. For such purposes, the Council of the Institute has constituted a Disciplinary Committee, which is composed of President, Vice-President, two elected members and a Government nominee from the Department of Company Affairs.

A Chartered Accountant can practise either in his individual name or as a firm of Chartered Accountants duly registered with the Institute. A company cannot function as Chartered Accountants under Section 25 of the Chartered Accountants Act, 1949. If any person not being a member of the Institute represents as a Chartered Accountant or uses the designation of Chartered Accountant is punishable with fine or imprisonment. Any reference to a Chartered Accountant or to a certified or qualified auditor in any other law or in any document whatsoever is considered as a reference to a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949.

117 ...p/2

Tel : 3355317, 3310195, 3311731, 3725166 ❑ E-mail : president@icai.org ❑ Fax : 011-3721334

HPL-877 23

SIDENT

THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA
P.B. No. 7100, Indraprastha Marg,
New Delhi -110 002

We have come across certain foreign companies, like KPMG, Price Waterhouse Coopers, etc. which have entered India presumably after obtaining permission from Government of India/RBI. These companies are rendering not only the management consultancy services but also audit related services either in their own name or in the name of their surrogate/associate Indian firms. This is in violation of the provisions of Chartered Accountants Act, 1949 and other legislations like Companies Act which prohibit them to undertake such activities. The personnel of these foreign firms and their surrogate Indian firms function interchangeably depending upon their convenience.

Recently, the Institute has come across various annual reports of companies like Reliance Industries Ltd., Infosys Technologies, HCL Technologies Ltd., ICICI Bank. In these annual reports, the companies are publishing not only statutory audit reports issued by the firms of Indian Chartered Accountants duly registered with the Institute in accordance with the provisions of the Companies Act, but they are also including therein certificates/reports in the name of either Independent auditors or international accountants given by such foreign firms in their firm name or by their Indian associates with whom they cannot otherwise share the arrangements on professional and ethical grounds. In a common parlance, leaving aside the legality of the matter, it is generally understood that an audit report is given by a Chartered Accountant or a firm of Chartered Accountants registered with the Institute of Chartered Accountants of India. Furnishing audit reports by anyone else under a different title such as those mentioned above, would misguide and deceive the readers. At times the contents of these reports are in the format identical/similar to those given by the statutory auditor as per the provisions of the Companies Act.

As mentioned above, no company in India or elsewhere can practice as Chartered Accountants. The arrangements between such foreign firms and an Indian associate are, as we understand, under hidden agreements under which major portion of the fees received is passed on to foreign firms in one or other manner. In many cases, while the work is done by the Indian Chartered Accountants employed by them, the fees charged are in dollar terms. The foreign firms remain outside the jurisdiction of the Chartered Accountants Act, 1949 governing their professional and ethical conduct.

The WTO addressed to the issue of trade in services. The stand taken by the Institute of Chartered Accountants of India is that entry of foreign firms may be permitted, only if our members are also permitted to practise abroad so that they can have level playing field with foreign firms.

Considering the above, we would request you to reconsider the Government of India's policy for the entry of foreign Chartered Accountants in India in such a way so that the Indian professionals are permitted to render similar professional services abroad, without any barriers.

Thanking you,

Yours faithfully

G. CITHARANJAN

118

Tel. : 3355317, 3310195, 3311731, 3725166 E-mail : president@icai.org Fax : [illegible]

HPC-878

24

भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA

बैंकिंग पर्यवेक्षण विभाग
केन्द्रीय कार्यालय, सेन्टर 1, कफ़ परेड, कोलाबा, मुंबई 400005
Department of Banking Supervision,
Central Office, Centre 1, Cuffe Parade,
Colaba, Mumbai, 400005

फैक्स Fax : 022 2180157, 2160932
टेलिफ़ोन /Telephone 2189131 to 2189139
E Mail : camcdbsco@rbi.org.in
टेलेक्स /Telex 011 86135 RBI IN
तार/Telegram : पर्यवेक्षण
PARYAVEKSHAN

हिन्दी आसान है, इसका प्रयोग बढ़ाइये।

सन्दर्भ पर्य सं. /Ref.DBS.ARS.No. 368 /08.91.008/2002-2003

November 29, 2002

SECRET

The President,
The Institute of Chartered Accountants of India,
Post Box No.7100, Indraprastha Marg,
New Delhi-110 002

Dear Sir,

Rotation of auditors of Private Sector/Foreign Banks

We have received a complaint from one of your members alleging that certain Indian audit firms affiliated to large international audit firms are rotating the audit of private/foreign banks among themselves (members of the same group). It is further alleged that such firms share the same office premises as well as resources of the organisation in the country and the assistants who are actually conducting the audit are inter-changeably used within the member firms, thereby defeating the very purpose of independence of audit. The complainant has given names of certain Indian audit firms affiliated to international firms as examples, the details of which are given in the Annexure.

2. You are requested to forward to us the full details of all such Indian Audit firms who enjoy affiliations with international audit firms together with your comments on the above allegations made by the complainant.

3. This may please be treated as most urgent.

Yours faithfully,

(R.M. Thakkar)
General Manager
Enc: As above

119

Annexure

WPC-879

25

Particulars of Indian Audit firms along with their affiliations to the International firms

Sr	Name of the Indian Audit firm	Affiliation to International Audit Firm
1.	M/s S.R. Batliboi & Co.	M/s Ernst & Young
2	M/s S.R.Batliloi & Associates	M/s Ernst & Young
3	M/s Arthur Anderson (after the recent merger)	M/s Ernst & Young
4	M/s Rajesh Rajeev & Associates	M/s KPMG
5	M/s Bharat S Raut & Co	M/s KPMG
6	M/s C.C.Choksi & Co	M/s Deloitte Touche Tohmatsu
7.	M/s S.B.Billimoria & Co	M/s Deloitte Touche Tohmatsu
8	M/s P.C.Hansotia & Co	M/s Deloitte Touche Tohmatsu
9	M/s Fraser & Ross	M/s Deloitte Touche Tohmatsu
10.	M/s Price Waterhouse & Co	M/s Price Waterhouse Coopers
11.	M/s Lovelock & Lewes	M/s Price Waterhouse Coopers
12	M/s Choksey Bhargava & Associates	M/s Price Waterhouse Coopers

120

HPC-880 26

The Institute of Chartered Accountants of India

P. B. No. 7100, Indraprastha Marg, New Delhi – 110 002.
Phone: 23370055, 23378406, Telefax: 011-23378402
Email: icaidel@del2.vsnl.net.in

CONFIDENTIAL
SPEED POST A.D.

– 7 MAR 2003

No.26-CA(Misc.)/2003

Shri R.M.Thakkar
General Manager
Reserve Bank of India
(Department of Banking Supervision)
Central Office, Centre 1
World Trade Centre, Cuffe Parade, Colaba
MUMBAI – 400 005.

Dear Sir,

Sub: Rotation of auditors of Private Sector/Foreign Banks

This has reference to your Secret letter Ref.DBS.ARS.No.368/08.91.008/2002-2003 dated 29th November, 2002 and the subsequent communication dated 3rd December, 2002 of the President of the Institute at the relevant time, on the above subject.

As you know, the matter referred to by you requires not only an in-depth examination of various issues involved (including the provisions of the Chartered Accountants Act, 1949 and other statutes of the land) but also the sincere and effective co-operation of various authorities like the Reserve Bank of India, Ministry of Finance and possibly the Ministry of External Affairs. With a view to consider the matter in its right perspective and also for effective delivery of justice we, in the first instance, seek your kind indulgence and on that premise, I would request you to kindly make available the following details/documents, if they are in possession and/or in the knowledge of the RBI:-

1. Whether the initial entry of the foreign firms into the country was through the permission granted by the Reserve Bank of India and if so, the terms and conditions under which they were permitted including the purpose for which the permission was granted.

2. Whether there are any other regulatory and other Govt. Authorities whose permissions are necessary, besides the Reserve Bank of India for the purpose of setting up of office in India by any International or Foreign Audit Firms.

5

12

HPC-881

3. Relevant rule/requirement for periodical reporting of such firms to RBI and/ or to any other Govt. agency regarding their compliance with objective clause.

4. Whether any material evidence(s) has/have been cited by the member of the Institute, who has brought this matter to your knowledge and/or those in your knowledge/possession which were made available by any other member of the Institute or anybody else in the past.

Although we are, from our side, making appropriate steps to elicit the above; however, we considered it appropriate to seek your help in the matter, purely for the purpose of expediting action at our end.

Yours faithfully,

(T. KARTHIKEYAN)
ADDL. DIRECTOR

122

HPC-882

28

भारतीय रिज़र्व बैंक

RESERVE BANK OF INDIA

www.rbi.org.in

बैं प वि सं. /Ref DBS. ARS. No. 744/08:91:008(ICAI)/2003-04

March 23, 2004

Shri T. Karthikeyan
Director
The Institute of Chartered
Accountants of India
P.B. No. 7100, Indraprastha Marg
New Delhi - 110 002

Dear Sir,

Rotation of Auditors of private sector/foreign banks

Please refer to the correspondence resting with your letter 26-CA(Misc.)/2003 dated February 4, 2004 on the captioned subject. In this connection, we advise as under:-

(i) As regards item (i), (ii) and (iii) of your letter dated 7th March 2003, our Foreign Exchange Department has informed that RBI has not permitted any foreign audit firm to set up office or to carry out any activity in India under the current exchange control regulations. Further, M/s KPMG and M/s Price Waterhouse & Coopers are basically Indian partnership firms. The former had obtained permission from the Secretariate for Industrial Assistance, Ministry of Finance, Government of India to undertake taxation, audit related services, etc.

बैंकिंग पर्यवेक्षण विभाग,केन्द्रीय कार्यालय, वर्ल्ड ट्रेड सेन्टर, सेन्टर 1, कफ परेड, कोलाबा, मुंबई - 400005.
टेलिफोन : (9122) 22182528 फैक्स : 022 22180157 e-mail- cgmicdbscof@rbi.org.in
Department of Banking Supervision, Central Office, World Trade Centre 1,Cuffe Parade, Colaba, Mumbai - 400 005, INDIA.
Tele: (9122) 22182528 Fax: 022 22180157 e-mail- cgmicdbscof@rbi.org.in

123

HPC-883

(ii) As regards item (iv) of the your letter under reference, we enclose a copy of letter dated August 9, 2002 received from Shri H.Joshi, Chartered Accountant, Mumbai, the contents of which are self-explanatory. 29

2. We shall be glad if you will please offer your comments on the allegations contained in the above complaint at an early date.

3. Please acknowledge receipt.

Yours faithfully,

(P.K. Janardanan)
Deputy General Manager

Encls: As above

बैंकिंग पर्यवेक्षण विभाग,केन्द्रीय कार्यालय, वर्ल्ड ट्रेड सेन्टर, सेन्टर I, कफ परेड, कोलाबा, मुंबई - 400005.
टेलिफोन : (9122) 22182528 फैक्स : 022 22180157 e-mail- cgmicdbsco@rbi.org.in

Department of Banking Supervision, Central Office, World Trade Centre I,Cuffe Parade, Colaba, Mumbai - 400 005, INDIA
Tele: (9122) 22182528 Fax: 022 22180157 e-mail: cgmicdbsco@rbi.org.in

124

...oshi
...om., F.C.A.

भा. रि. बैं/DOS
रि. स. वि. कार्या./ARS
एस एस्पेक्ट
LETTER'S NO 298
दिनांक
DATE 12/9/2002

C/54, Saubhagya,
Jeevan Vikas Kendra Marg,
Andheri (East),
Mumbai - 400 069.

HPC-884

30

August 9, 2002

CONFIDENTIAL

The Governor,
Reserve Bank of India
Mumbai.

Sir,

Re. : Are we waiting for Enron, Worldcom, Xerox etc., to happen in India ?

Sub : Whether the 'intra-organisation' rotation of auditors of Private Sector/Foreign Banks is justified or needs to be checked before a debacle takes place.

As you may be well aware, with the spate of accounting scandals unearthed in the West, the entire profession of accounting has come under a cloud and lot of doubts have been raised about the independence of the Auditors. When the Enron Issue was made Public, the professionals in India were surprised to learn that the same firm, i.e. Arthur Anderson, were the Statutory as well as Internal Auditors of the Company, which, under the American laws, is permissible. However, we have seen what the results have been. Although, in India, there is a bar under the Companies Act, for the same firm to act as Statutory as well as Internal Auditors, in spirit, this is not being done by many large firms. The Reserve Bank of India has always been very proactive and a front runner in introducing necessary safeguards by way of putting various checks and balances in regulating the appointment of auditors and in introducing the Audit exercises in Banks.

However, certain unhealthy policies are being followed by multinational audit firms which seems to have escaped the attention of RBI.

I. Rotation of Audits within the same 'organisation' :

You will kindly observe that there are rampant malpractices prevailing in the Audits of Banks in India, especially in the Audits of Private Sector Banks and Foreign Banks. Currently, a firm can be appointed as a Statutory Auditor of a Private Sector/Foreign Bank for a maximum period of four years, after which, they have to compulsorily retire and make way for another firm. The procedure followed is that the appointing bank normally gives three names to RBI for obtaining its approval and consent and, if nothing is noticed to the contrary by RBI, then one of the three firms is appointed as Auditors.

125

malpractice which is now being noticed in this field is that the firms which are a part of the same international organisation, are rotating the Audits among themselves, which defeats the very purpose of maintaining independence which is the back-bone of maintaining the credibility of the Auditing profession. To illustrate my view point, I would like to state that, currently, the big four firms viz. 31

1) Price Waterhouse Coopers;
2) Ernst & Young;
3) Deloitte Touche Tohmatsu; and
4) KPMG,

which are having their presence in India, indirectly through the cluster of Indian member firms, are trying to ensure that the Audit of Private Sector/Foreign Banks remain within their organisation itself. For example, Price Waterhouse Coopers has the following Indian firms which are Members of their international organisation:

1) Price Waterhouse;
2) Lovelock & Lewes; and
3) Choksey Bhargava & Associates,

- when one of the firms within the same organisation retires as an Auditor of a Bank, then the name of the other Member firm in the same organisation is 'recommended' to the appointing bank for being forwarded to RBI for appointing as Statutory Auditors. The RBI merely looks into the fact that there are no common Partners between the retiring and incoming Auditors (apart from the other safeguards like no disciplinary proceedings pending etc.) before conveying its 'No Objection' to the name recommended by the Bank.

It is, therefore, pertinent to note here that, after M/s. Price Waterhouse retires as an Auditor of a Bank, it, through its relationship developed over the years, 'persuades' the appointing bank to recommend the name of M/s. Lovelock & Lewes as the incoming Auditors. In a situation like this, the entire issue of independence becomes a mockery. This is because, both the firms share the same office premises, report jointly to the international body of which they are Members, share all the resources of the organisation in the country and the Assistants who are actually conducting the Audits and who are interchangeably used within the Member firms, in fact, remain the same and no new persons are actually coming to do the Audits. Therefore, in substance, only the name of the firm and the signing Partner change, whereas everything else remains the same from one sister concern to another sister concern.

126

HPC-886

The above was just an illustration, but it applies to all the big four firms operating in India with the following Member organisations, as per the information available with me :

32

1) Deloitte Touche Tohmatsu :

   a) C.C. Choksi & Co.;
   b) S.B. Billimoria & Co.;
   c) P.C. Hansotia & Co.; and
   d) Fraser & Ross.

2) Ernst & Young :

   a) S.R. Batliboi & Co.;
   b) S.R. Batliboi & Associates; and
   c) Arthur Andersen (after the recent merger)

3) KPMG :

   a) Bharat S. Raut & Co.; and
   b) Rajesh Rajeev & Co. (???)

4) Price Waterhouse Coopers :

   a) Price Waterhouse;
   b) Lovelock & Lewes; and
   c) Choksey Bhargava & Associates.

Therefore, it is submitted that before the lapses on the part of these audit firms get exploded the RBI should lay down that, apart from the fact that the retiring and incoming Auditors should not have common Partners or should not have relationship with sister concerns, it should be ensured that :-

1) they are not Members of the same international organisation,
2) they do not share common resources of whatsoever nature,
3) they do not have the same reporting requirements to any international body they belong to and
4) they should not be related to each other, either directly or indirectly.

Such type of safeguards would really ensure in spirit the complete independence between the retiring and incoming Auditors. A number of examples can be quoted to show that the retiring and incoming Auditors are virtually and for all practical purposes the same although different in names, like HDFC Bank wherein P.C. Hansotia & Co. were appointed in place of S.B. Billimoria & Co.

Needless to mention, the above example and the relationships stated above are only those which I am prima-facie aware of. There would obviously be many more such cases which I fervently hope you will identify and look into it.

127

(APL-887

Unfair Discrimination in allotment of audits between Public Sector & Private/Foreign Banks :

33

a) I would also take this opportunity to bring to your kind notice the very clear anomaly in the matter of allotment of Audits to Private Sector/Foreign Banks. Currently, the RBI allows only one Statutory Audit per firm as far as Public Sector Banks are concerned, whereas, for Private Sector/Foreign Banks, the limit is four.

//

With most of the foreign banks, being virtually as large as many Public Sector banks and with the private banks also becoming very large with the help of mergers, this limit of four should be immediately scaled down to one for being in line with the Public sector banks.

b) Further, the Auditors whose names appeared in the JPC/Janakiram Reports in connection with the 1992 Scam, had been blacklisted thereby debarring them from being appointed as Auditors of Public Sector Banks.

However, this blacklisting and debarrment is not made applicable when it comes to Private Sector/Foreign Banks. This gives an impression that the RBI is trying to protect the interests of larger firms, especially those who are the Members of the 'Big Four' (or should I say 'Remaining Four') accounting firms. Why should there be a discrimination between Public Sector Banks and Private Sector/Foreign Banks? It is submitted that a uniform policy should be followed in respect of appointment of auditors.

Compliance of Procedure not being strictly adhered to by Private / Foreign Banks :

Another issue which merits attention is that the Private Sector/Foreign banks are not very strict in ensuring that the Statutory Auditors which they are appointing do not have any disciplinary proceedings pending against them (apart from the issue of the Bank scam cases mentioned above). In many cases, it has been noticed that, even though the incoming Auditors are having disciplinary proceedings pending against them and which fact is confirmed by the Institute of Chartered Accountants of India directly to the appointing Bank, no congnisance is taken of the same at the time of appointment. You may be aware that the C&AG does not empanel any firm which has disciplinary proceedings pending against it. Therefore, this condition, which applies to the Auditors of Public Sector Banks, should also be made applicable to Private Sector/Foreign Banks.

128

I hope, you will kindly consider our above views in all the seriousness they deserve, so that the credibility of the accounting profession, which is, currently at its lowest ebb, is not only resurrected but full confidence in the minds of the users of financial statements, is also restored. RBI is well known for upholding the highest values and ethics, particularly in the accounting field, and I have no doubt that, based on the merit of my observations and views, given above, the RBI will take the corrective steps.

Thanking you,

Yours faithfully,

M. JOSHI
(Chartered Accountant)

CC : President, ICAI – New Delhi.

129

HPC-889

The Institute of Chartered Accountants of India

(Set up under an Act of Parliament)
P. B. No. 7100, Indraprastha Marg, New Delhi – 110 002.
Phones: 011-23370055/ 2337402. GRAM: CICA New Delhi
Telefax: 011-23378402;
Email: icaidelhi@del2.vsnl.net.in/karthik@icai.org/disc.@icai.org

35

CONFIDENTIAL
SPEED POST A.D.

No. 26-CA(Misc.)/2003 FEBRUARY 04, 2004

Shri R.M.Thakkar,
General Manager,
Reserve Bank of India,
(Department of Banking Supervision),
Central Office, Centre-1,
World Trade Centre,
Cuffe Parade, Colaba,
MUMBAI – 400 005

Sir,

Sub:- Rotation of auditors of Private Sector/Foreign Banks

This has reference to our last letter of even no. dated 7th March, 2003 (copy enclosed) in response to your Secret letter Ref. No. DBS.ARS No.368/08.91.008/2002-2003 dated 29th November, 2002 on the aforementioned subject.

Through the said letter, you were requested to send certain details/documents which were listed in our aforementioned letter. However, no such details/documents have so far been received at our end. You are, therefore, requested to expedite sending of the relevant documents at our end.

Yours faithfully,

(T.KARTHIKEYAN)
DIRECTOR

Encl: As above

D:\Munjal\26-CA\RM Thakkar.doc

130

HPC-890

The Institute of Chartered Accountants of India
P.B. No.7100, Indraprastha Marg, New Delhi – 110 002.
Phone: 23370055, 23378406, Telefax: 011-23378402
Email: icaidel@del2.vsnl.net.in

CONFIDENTIAL
SPEED POST A.D.

- 7 MAR 2003

No.26-CA(Misc.)/2003

Shri R.M.Thakkar
General Manager
Reserve Bank of India
(Department of Banking Supervision)
Central Office, Centre 1
World Trade Centre, Cuffe Parade, Colaba
MUMBAI – 400 005.

Dear Sir,

Sub: Rotation of auditors of Private Sector/Foreign Banks

This has reference to your Secret letter Ref.DBS.ARS.No.368/08.91.008/2002-2003 dated 29th November, 2002 and the subsequent communication dated 3rd December, 2002 of the President of the Institute at the relevant time, on the above subject.

As you know, the matter referred to by you requires not only an in-depth examination of various issues involved (including the provisions of the Chartered Accountants Act, 1949 and other statutes of the land) but also the sincere and effective co-operation of various authorities like the Reserve Bank of India, Ministry of Finance and possibly the Ministry of External Affairs. With a view to consider the matter in its right perspective and also for effective delivery of justice we, in the first instance, seek your kind indulgence and on that premise, I would request you to kindly make available the following details/documents, if they are in possession and/or in the knowledge of the RBI:-

1. Whether the initial entry of the foreign firms into the country was through the permission granted by the Reserve Bank of India and if so, the terms and conditions under which they were permitted including the purpose for which the permission was granted.

2. Whether there are any other regulatory and other Govt. Authorities whose permissions are necessary, besides the Reserve Bank of India for the purpose of setting up of office in India by any International or Foreign Audit Firms.

131

HPC-891

Relevant rule/requirement for periodical reporting of such firms to RBI and/ or to any other Govt. agency regarding their compliance with objective clause.

37

Whether any material evidence(s) has/have been cited by the member of the Institute, who has brought this matter to your knowledge and/or those in your knowledge/possession which were made available by any other member of the Institute or anybody else in the past.

Although we are, from our side, making appropriate steps to elicit the ..., however, we considered it appropriate to seek your help in the matter, ... for the purpose of expediting action at our end

Yours faithfully,

(T. KARTHIKEYAN)
ADDL. DIRECTOR

132

ANNEXURE – 'D'

Itpc-892

Contents:

The Institute brought to the notice of the financial institutions such as ICICI, IDBI, UTI & HDFC regarding unreasonable conditionalities detrimental to the interest of the Indian accounting firms as well as independence and quality of audit assignments.

1. Letters of No. 29-CA/ESC-129/2002 dated 12th December, 2002 addressed to: -
   (i) Shri P. P. Vora, Chairman & Managing Director, Industrial Development of India (IDBI) (Pages 38 – 39)
   (ii) Shri V.P. Singh, Chairman & Managing Director, Industrial Finance Corporation of India (IFCI) (Pages 40 – 41)
   (iii) Shri K.V. Kamath, Managing Director & Chief Executive Office, ICICI Bank Ltd. (Pages 42 – 43)
   (iv) Shri M. Damodaran, Chairman, United Trust of India (UTI) (Pages 44 – 45)

2. Letter No. LD. No.2309 dated 15th January, 2003 of IDBI (Pages 46 – 47)

3. Letter No. IFCI/SEC//2003-29178 dated 27th January, 2003 of IFCI (Pages 48 – 50)

Annexure - D

IADC-893

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up under an Act of Parliament)
P. B. No. 7100, Indraprastha Marg,
New Delhi – 110 002.
Phone: 011-3370055/3370295, Telefax: 3370295;
E-mail : icaidel@del2.vsnl.net.in or legal@icai.org

38

Confidential
By Courier/~~Registered Post with A.D.~~

29-CA/ESC-129/2002

December 12, 2002

Shri P.P. Vora,
Chairman & Managing Director,
Industrial Development Bank of India (IDBI),
IDBI Tower,
Cuffee Parade, Colaba,
MUMBAI-400 005.

Dear Sirs,

Sub: Appointment of Auditing firms for projects financed by Financial Institutions.

Our attention has been drawn to the fact that the financial institutions like ICICI, IFCI, IDBI, UTI etc. which are providing finance for setting up projects have started pressurizing the management of the borrowing company to appoint certain big firms as auditors of the company. We are surprised to note the terms and conditions of such an agreement between one financial institution and the borrowing company. We may quote the relevant clauses of such an agreement defining the term 'Auditor' and prescribing such undue compulsion to appoint specified firms.

> "Auditor(s) shall mean such firm of chartered accountants or recognised international standing acceptable to the Facility Agent, as the Borrower may, with the consent of the Facility Agent, from time to time appoint as auditors of the Borrower."
>
> x x x x
>
> "Clause (18): - agree to appoint reputed firm of Chartered Accountants like Price Waterhouse, S.R. Batliboi and Company, A.F. Fergusson etc., as concurrent auditors with direct reporting system during the period of the loan;"

A copy of the said agreement is enclosed herewith for your ready reference.

Needless to mention that such compulsion is prejudicial to the auditing practice and will affect the right of the borrowing company to exercise its discretion bona fide while appointing his auditor. You may appreciate that since the borrowing companies, i.e. your clients, are in dire need of funds to execute the project, they are left with no other alternative but to agree to these prejudicial terms and conditions, reluctantly, if not under coercion.

In this regard, it is relevant to emphasize the imperative need of the profession to ensure the independence of auditors. The relevant guidelines/directions as appearing in the Code of Ethics, 2001 edition at pages 150-151 are as follows: -

> "Public conscience is expected to be ahead of the law. Members, therefore, are expected to interpret the requirement as regards independence much

134

more strictly than what the law requires and should not place themselves in positions which would either compromise or jeopardise their independence.

Members must take care to see that they do not land themselves in situations where there could be conflict of interest and duty."

We may also draw your attention to Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 which prohibits, inter alia, indirect solicitation of cleitns or professional works by any means.

Further, you are aware that Public Sectors and the Nationalised Banks consider all Indian auditing firms competent to do their auditing jobs. The Institute, a statutory body established under an Act of Parliament to regulate the profession, has spared no efforts to ensure quality audits in the country by its members. In case, the Indian Financial Institutions, are suffering from such inhibitions of appointing only such specified firms, then we are afraid that such practice will impair the public interest. You will appreciate our concern in respect of these provisions, which are discriminatory in nature and clearly amount to unreasonable restraint besides being against the spirit of quality audit as well as fair competition. In fact such provisions shut out the door for all others except these firms and will promote and provide undue advantage to such firms referred in the agreement.

In view of the above, we would request you to omit such discriminatory provisions immediately so that all the Auditing firms can avail the opportunity to participate in the nation building process.

We solicit your earliest response.

Thanking you,

Yours faithfully,

(DR. ALOK RAY)
SECRETARY,
Committee on Ethical Standards &
Unjustified Removal of Auditors

C.C. to:

- Shri Jaswant Singh,
  Hon'ble Minister of Finance & Company Affairs,
  Department of Company Affairs,
  Ministry of Finance & Company Affairs,
  5th Floor, Shastri Bhawan, **NEW DELHI-110 001**

- The Hon'ble Comptroller & Auditor General of India,
  10, Bahadur Shah Zafar Marg,
  NEW DELHI-110 002.

- President, ICAI
- Secretary, ICAI
- Shri Sunil Goyal, FCA, Chairman, CEDURA, Jaipur
- Dr. B. Chakraborty, Director CPE/Secretary, PDC.

HPC-895

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up under an Act of Parliament)
P. B. No. 7100, Indraprastha Marg,
New Delhi – 110 002.
Phone: 011-3370055/3370295, Telefax: 3370295;
E-mail : icaidel@del2.vsnl.net.in or legal@icai.org

40

Confidential

By Courier/Registered Post with A.D.

29-CA/ESC-129/2002

December 12, 2002

Shri V.P. Singh,
Chiarman & Managing Director,
Industrial Finance Corporation of India,
IFCI Tower,
61, Nehru Place,
NEW DELHI-110 119.

Dear Sir,

Sub: Appointment of Auditing firms for projects financed by Financial Institutions.

Our attention has been drawn to the fact that the financial institutions like ICICI, IFCI, IDBI, UTI etc. which are providing finance for setting up projects have started pressurising the management of the borrowing company to appoint certain big firms as auditors of the company. We are surprised to note the terms and conditions of such an agreement between one financial institution and the borrowing company. We may quote the relevant clauses of such an agreement defining the term 'Auditor' and prescribing such undue compulsion to appoint specified firms.

> "Auditor(s) shall mean such firm of chartered accountants of recognised international standing acceptable to the Facility Agent, as the Borrower may, with the consent of the Facility Agent, from time to time appoint as auditors of the Borrower."
>
> x x x x
>
> "Clause (18): - agree to appoint reputed firm of Chartered Accountants like Price Waterhouse, S.R. Batliboi and Company, A.F. Fergusson etc., as concurrent auditors with direct reporting system during the period of the loan;"

A copy of the said agreement is enclosed herewith for your ready reference.

Needless to mention that such compulsion is prejudicial to the auditing practice and will affect the right of the borrowing company to exercise its discretion bona fide while appointing his auditor. You may appreciate that since the borrowing companies, i.e. your clients, are in dire need of funds to execute the project, they are left with no other alternative but to agree to these prejudicial terms and conditions, reluctantly, if not under coercion.

In this regard, it is relevant to emphasize the imperative need of the profession to ensure the independence of auditors. The relevant guidelines/directions as appearing in the Code of Ethics, 2001 edition at pages 150-151 are as follows: -

> "Public conscience is expected to be ahead of the law. Members, therefore, are expected to interpret the requirement as regards independence much

HPC-896

41.

more strictly than what the law requires and should not place themselves in positions which would either compromise or jeopardise their independence.

Members must take care to see that they do not land themselves in situations where there could be conflict of interest and duty."

We may also draw your attention to Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 which prohibits, inter alia, indirect solicitation of cleitns or professional works by any means.

Further, you are aware that Public Sectors and the Nationalised Banks consider all Indian auditing firms competent to do their auditing jobs. The Institute, a statutory body established under an Act of Parliament to regulate the profession, has spared no efforts to ensure quality audits in the country by its members. In case, the Indian Financial Institutions, are suffering from such inhibitions of appointing only such specified firms, then we are afraid that such practice will impair the public interest. You will appreciate our concern in respect of these provisions, which are discriminatory in nature and clearly amount to unreasonable restraint besides being against the spirit of quality audit as well as fair competition. In fact such provisions shut out the door for all others except these firms and will promote and provide undue advantage to such firms referred in the agreement.

In view of the above, we would request you to omit such discriminatory provisions immediately so that all the Auditing firms can avail the opportunity to participate in the nation building process.

We solicit your earliest response.

Thanking you,

Yours faithfully,

(DR. ALOK RAY)
SECRETARY,
Committee on Ethical Standards &
Unjustified Removal of Auditors

C.C. to:

- Shri Jaswant Singh,
  Hon'ble Minister of Finance & Company Affairs,
  Department of Company Affairs,
  Ministry of Finance & Company Affairs,
  5th Floor, Shastri Bhawan, **NEW DELHI-110 001**
- The Hon'ble Comptroller & Auditor General of India,
  10, Bahadur Shah Zafar Marg,
  NEW DELHI-110 002.
- President, ICAI
- Secretary, ICAI
- Shri Sunil Goyal, FCA, Chairman, CESURA, Jaipur
- Dr. B. Chakraborty, Director CPE/Secretary, PDC.

137

HPL-897

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up under an Act of Parliament)
P. B. No. 7100, Indraprastha Marg,
New Delhi – 110 002.
Phone: 011-3370055/3370295, Telefax: 3370295;
E-mail : icaidel@del2.vsnl.net.in or legal@icai.org

42

Confidential

By Courier/Registered Post with A.D.

29-CA/ESC-129/2002

December 12, 2002

Shri K.V. Kamath,
Managing Director & Chief Executive Officer,
ICICI Bank Ltd.,
Corporate Office,
ICICI Towers,
4th Floor, South Tower,
Bandra - Kurla Complex,
Bandra (East),
MUMBAI-400 051.

Dear Sir,

Sub: Appointment of Auditing firms for projects financed by Financial Institutions.

Our attention has been drawn to the fact that the financial institutions like ICICI, IFCI, IDBI, UTI etc. which are providing finance for setting up projects have started pressurising the management of the borrowing company to appoint certain big firms as auditors of the company. We are surprised to note the terms and conditions of such an agreement between one financial institution and the borrowing company. We may quote the relevant clauses of such an agreement defining the term 'Auditor' and prescribing such undue compulsion to appoint specified firms.

> "Auditor(s) shall mean such firm of chartered accountants of recognised international standing acceptable to the Facility Agent, as the Borrower may, with the consent of the Facility Agent, from time to time appoint as auditors of the Borrower."

x x x x x x

> "Clause (18): - agree to appoint reputed firm of Chartered Accountants like Price Waterhouse, S.R. Batliboi and Company, A.F. Fergusson etc., as concurrent auditors with direct reporting system during the period of the loan;"

A copy of the said agreement is enclosed herewith for your ready reference.

Needless to mention that such compulsion is prejudicial to the auditing practice and will affect the right of the borrowing company to exercise its discretion bona fide while appointing his auditor. You may appreciate that since the borrowing companies, i.e. your clients, are in dire need of funds to execute the project, they are left with no other alternative but to agree to these prejudicial terms and conditions, reluctantly, if not under coercion.

In this regard, it is relevant to emphasize the imperative need of the profession to ensure the independence of auditors. The relevant guidelines/directions as appearing in the Code of Ethics, 2001 edition at pages 150-151 are as follows: -

> "Public conscience is expected to be ahead of the law. Members, therefore, are expected to interpret the requirement as regards independence much

-ITPC-898

43

more strictly than what the law requires and should not place themselves in positions which would either compromise or jeopardise their independence.

Members must take care to see that they do not land themselves in situations where there could be conflict of interest and duty."

We may also draw your attention to Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 which prohibits, inter alia, indirect solicitation of cleitns or professional works by any means.

Further, you are aware that Public Sectors and the Nationalised Banks consider all Indian auditing firms competent to do their auditing jobs. The Institute, a statutory body established under an Act of Parliament to regulate the profession, has spared no efforts to ensure quality audits in the country by its members. In case, the Indian Financial Institutions, are suffering from such inhibitions of appointing only such specified firms, then we are afraid that such practice will impair the public interest. You will appreciate our concern in respect of these provisions, which are discriminatory in nature and clearly amount to unreasonable restraint besides being against the spirit of quality audit as well as fair competition. In fact such provisions shut out the door for all others except these firms and will promote and provide undue advantage to such firms referred in the agreement.

In view of the above, we would request you to omit such discriminatory provisions immediately so that all the Auditing firms can avail the opportunity to participate in the nation building process.

We solicit your earliest response.

Thanking you,

Yours faithfully,

(DR. ALOK RAY)
SECRETARY,
Committee on Ethical Standards &
Unjustified Removal of Auditors

C.C. to:

- Shri Jaswant Singh,
  Hon'ble Minister of Finance & Company Affairs,
  Department of Company Affairs,
  Ministry of Finance & Company Affairs,
  5th Floor, Shastri Bhawan, NEW DELHI-110 001

- The Hon'ble Comptroller & Auditor General of India,
  10, Bahadur Shah Zafar Marg,
  NEW DELHI-110 002.

- President, ICAI
- Secretary, ICAI
- Shri Sunil Goyal, FCA, Chairman, CESURA, Jaipur
- Dr. B. Chakraborty, Director CPE/Secretary, PDC.

IAPC-899

44

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up under an Act of Parliament)
P. B. No. 7100, Indraprastha Marg,
New Delhi – 110 002.
Phone: 011-3370055/3370295, Telefax: 3370295;
E-mail : icaidel@del2.vsnl.net.in or legal@icai.org

Confidential

By Courier/Registered Post with A.D.

29-CA/ESC-129/2002

December 12, 2002

Shri M. Damodaran,
Chairman,
Unit Trust of India (UTI),
13, Sir Vithaladas,
Thackersay Marg,
MUMBAI-400 020.

Dear Sir,

Sub: Appointment of Auditing firms for projects financed by Financial Institutions.

Our attention has been drawn to the fact that the financial institutions like ICICI, IFCI, IDBI, UTI etc. which are providing finance for setting up projects have started pressurising the management of the borrowing company to appoint certain big firms as auditors of the company. We are surprised to note the terms and conditions of such an agreement between one financial institution and the borrowing company. We may quote the relevant clauses of such an agreement defining the term 'Auditor' and prescribing such undue compulsion to appoint specified firms.

"Auditor(s) shall mean such firm of chartered accountants of recognised international standing acceptable to the Facility Agent, as the Borrower may, with the consent of the Facility Agent, from time to time appoint as auditors of the Borrower."

x x x x

"Clause (18): - agree to appoint reputed firm of Chartered Accountants like Price Waterhouse, S.R. Batliboi and Company, A.F. Fergusson etc., as concurrent auditors with direct reporting system during the period of the loan;"

A copy of the said agreement is enclosed herewith for your ready reference.

Needless to mention that such compulsion is prejudicial to the auditing practice and will affect the right of the borrowing company to exercise its discretion bona fide while appointing his auditor. You may appreciate that since the borrowing companies, i.e. your clients, are in dire need of funds to execute the project, they are left with no other alternative but to agree to these prejudicial terms and conditions, reluctantly, if not under coercion.

In this regard, it is relevant to emphasize the imperative need of the profession to ensure the independence of auditors. The relevant guidelines/directions as appearing in the Code of Ethics, 2001 edition at pages 150-151 are as follows: -

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

140

IPC-900

Members must take care to see that they do not land themselves in situations where there could be conflict of interest and duty." 45

We may also draw your attention to Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949 which prohibits, inter alia, indirect solicitation of cleitns or professional works by any means.

Further, you are aware that Public Sectors and the Nationalised Banks consider all Indian auditing firms competent to do their auditing jobs. The Institute, a statutory body established under an Act of Parliament to regulate the profession, has spared no efforts to ensure quality audits in the country by its members. In case, the Indian Financial Institutions, are suffering from such inhibitions of appointing only such specified firms, then we are afraid that such practice will impair the public interest. You will appreciate our concern in respect of these provisions, which are discriminatory in nature and clearly amount to unreasonable restraint besides being against the spirit of quality audit as well as fair competition. In fact such provisions shut out the door for all others except these firms and will promote and provide undue advantage to such firms referred in the agreement.

In view of the above, we would request you to omit such discriminatory provisions immediately so that all the Auditing firms can avail the opportunity to participate in the nation building process.

We solicit your earliest response.

Thanking you,

Yours faithfully,

(DR. ALOK RAY)
SECRETARY,
Committee on Ethical Standards &
Unjustified Removal of Auditors

C.C. to:

- Shri Jaswant Singh,
  Hon'ble Minister of Finance & Company Affairs,
  Department of Company Affairs,
  Ministry of Finance & Company Affairs,
  5th Floor, Shastri Bhawan, **NEW DELHI-110 001**
- The Hon'ble Comptroller & Auditor General of India,
  10, Bahadur Shah Zafar Marg,
  NEW DELHI-110 002.
- President, ICAI
- Secretary, ICAI
- Shri Sunil Goyal, FCA, Chairman, CESURA, Jaipur
- Dr. B. Chakraborty, Director CPE/Secretary, PDC.

141

रामामूर्ति
सलाहकार
RAMAMURTHY
L ADVISER

भारतीय औद्योगिक विकास बैंक
आई डी बी आई टॉवर, डब्ल्यू टी सी कॉम्प्लेक्स, कफ परेड, मुंबई - 400 005.
INDUSTRIAL DEVELOPMENT BANK OF INDIA
IDBI TOWER, WTC COMPLEX, CUFFE PARADE, MUMBAI - 400 005.

UP C-901

46

15th January, 2003

The Institute of Chartered Accountants of India
RECEIVED
16 JAN 2003
LEGAL SECTION

Dr. Alok Ray,
Secretary,
Committee on Ethical Standards &
Unjustified Removal of Auditors,
The Institute of Chartered Accountants of India,
P.B.No.7100, Indraprastha Marg,
New Delhi – 110 002.

Dear Sir,

Appointment of Auditing Firms for projects financed by Financial Institutions

Please refer to your letter No. 29-CA/ESC-129/2002 dated December 12, 2002. It is true that the members of the Institute are competent to do their auditing job and that the Institute is making its best endeavour to ensure quality audit by its members.

In the particular case, which had been cited, the financial assistance was sanctioned for setting up a 400 mw hydro power project, a large sized infrastructure project. The project cost at the time of appraisal was estimated at Rs. 1800 crore with about Rs. 1250 crore debt component, including guarantee assistance. This was the first infrastructure project in hydro power sector assisted by financial institutions after it was thrown open for private participation. The stipulation related to the appointment of concurrent auditor by the financial institutions and not the statutory auditor by the company. The role of concurrent auditor, in our opinion, required high level of skill as well as industry specific knowledge derived through sustained training, exposure and understanding of business. It was, therefore, felt that a reputed firm of Chartered Accountants acting as concurrent auditors would be able to oversee the proper implementation of the project and provide feed back to the financial institutions about the end use of funds. It is in this context certain names of Chartered Accountant firms were mentioned by way of illustration only. The condition as worded did not prohibit any other

142

टेलिफोन : 2218 2089 • फैक्स : 022-2215 2627/2218 3941 • पोस्ट बैग नं. : 6060
Tel : 2218 2089 • FAX : 022-2215 2627/2218 3941 • Post Bag No. 6060

firm other than those named in the letter of intent from being appointed as concurrent auditors.

There was a delay in the implementation of the project and the loan sanctioned earlier lapsed. IDBI ceased to be the lead institution. Subsequently a fresh letter of intent was issued and the loan agreement did not mention the name of the auditing firm to be qualified for appointment as concurrent auditors. The requirement that the firm of Chartered Accountants should be a firm of recognised international standing is only to guide and assist the institutions in effective monitoring of the implementation of the project and maintenance of utmost financial discipline. The condition is in no way intended to cause any doubt on the competency of the Chartered Accountants who are the members of the institute. The stipulation was inserted only to high light the relevant experience or capability to handle the concurrent audit assignment. We have no doubt and you will also concur that all auditing firms do not possess the capability or requisite experience and ability to accept this type of assignment.

In deference to the concerns expressed in your letter, we shall, in future, take care not to mention specific names of auditing firms to be appointed either as statutory auditors or concurrent auditors in our letters of intent.

We hope that our position has been adequately clarified.

Yours faithfully,

(G.M.Ramamurthy)

ITPC-903

48

IFCI LIMITED
आई एफ सी आई लिमिटेड

No.IFCI/SEC//2003- 29178

January 27, 2003

RECD
31 JAN 2003
LEGAL SECTION

The Secretary,
Committee on Ethical Standards &
Unjustified Removal of Auditors,
The Institute of Chartered Accountants of India,
P.B. No.7100, Indraprastha Marg,
New Delhi - 110 002.

Dear Sir,

Re: Appointment of Auditing firms for projects financed by Financial Institutions.

Please refer to your letter No.299-CA/ESC-1299/2002 dated December 12, 2002 on the above subject.

2. We would like to clarify that the instances of agreements with borrowers indicating acceptability of auditors of recognised international standing or specifying certain Audit Firms, as mentioned in your letter, do not pertain to IFCI. Further, we may add that although we do not undermine the quality and the competence of auditing jobs undertaken by our Indian firms, we have to specify certain criteria to safeguard our interests. Factors normally considered are listed below :-

i) To ensure the independence of the Auditing firm;

ii) The strength of the firm and its previous experience, and area of specialisation;

iii) The performance of the Auditing firm in respect of any previous assignment executed on behalf of Banks/Institutions; and

iv) Acceptability of the auditors to the foreign lender/stakeholders in case of consortium financing.

3. We do not solicit business for any particular Auditing firm and the borrowers are free to appoint auditors, subject to our satisfaction with regard to competence and experience of the Auditing firm.

4. We hope the above will clarify the position and assure you that IFCI will continue to promote and provide the opportunity to our Auditing firms as we have done in the past.

Thanking you,

Yours faithfully,

(R.K. Chavali)
General Manager

पत्र कार्यालय : आई.एफ.सी.आई. टावर/IFCI Tower, 61, नेहरू प्लेस/Nehru Place, पो. बा. संख्या/P.B. No. 4499, नई दिल्ली/New Delhi-110 019
Regd. Office :
दूरभाष/Phone : 648 7444, 648 7622 वॉईस मेल/Voice Mail : 648 6301-06
फैक्स/Fax : 011-623 0201, 648 8471 टेलेक्स/Telex : 31-71352
E-mail : helpdesk@ifcimail.com Website : www.ifciltd.com

144

Parties after the date first above written.

Annual Budget shall have the meaning specified in Section 7.15.1(i).

Annual Operating Plan shall have the meaning specified in Section 7.15.2(iii).

Applicable Exchange Rate shall mean the reference rate quoted by Reserve Bank of India on the "RBIB" page of Reuters for that date.

Applicable Law shall mean any statute, law, regulation, ordinance, rule, judgement, rule of law, order, decree, clearance, approval, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision, or determination by, or any interpretation or administration of any of the foregoing by, any statutory or regulatory authority whether in effect as of the date of any Facility Agreement or thereafter and in each case as amended.

Auditor(s) shall mean such firm of chartered accountants of recognised international standing acceptable to the Facility Agent, as the Borrower may, with the consent of the Facility Agent, from time to time appoint as auditors of the Borrower.

Authorised Officer shall mean with respect to any Person, any officer of such Person that is authorised to sign on behalf of such Person and at the time being listed as such by the company secretary of such Person in the most recent certificate of such company secretary delivered to the Facility Agent.

Availability Period shall mean with respect to each Facility, the period from Initial Drawdown Date until the earliest of (i) the date that each of the Commitments under such Facility shall have been terminated or reduced to zero pursuant to the terms of this Agreement and such Facility Agreement, (ii) Final Completion, or (iii) the date falling sixty six (66) months from the Initial Drawdown Date. Availability Period for the Guarantee Assistance shall have the meaning set out in the Guarantee Assistance Agreement.

Banking Base Case shall mean the projection of revenues and expenses and cash flows with respect to the Project, mutually agreed to by the Borrower and the Senior Lenders, over a period not shorter than the period ending on the Final Maturity Date, together with the supporting assumptions and explanations thereto and shall be in substance satisfactory to the Independent Engineer and the Facility Agent.

Balance Due Amounts, in respect of a Loan, shall mean the balance amount of the Loan which has not fallen due on an Interest Payment Date (as defined in the relevant Facility Agreement) and interest thereon discounted by such Senior Lenders' bid curve for the approved maturity, then prevailing.

Base Exchange Rate shall mean the Applicable Exchange Rate for the conversion of Dollars to Rupees on the date of this Agreement.

Base Equity shall mean the issued and subscribed equity share capital of the Borrower pursuant to the provisions of the Share Retention and Financial Support Agreement.

Board shall mean the board of directors of the Borrower appointed pursuant to the Companies Act, 1956.

[illegible] the operations heads of the Escrow Account from time to time

quarterly basis and the cost thereof shall be borne by the company. The lenders engineer shall also review the bid evaluation carried out by the company and the independent consultants, various contracts, the design parameters, water flow analysis, capacity of the plant, choice of equipment, the costs, payment terms etc. before financial closure. The lenders engineer shall inter-alia review the cost elements and shall also monitor the payments made by to The first review shall be carried out before financial closure. The company shall comply with the recommendations of the Lenders' engineers before financial closure;

50

appoint an independent agency for carrying out a detailed economic and social impact assessment of the project;

appoint an insurance consultant of international repute and finalise the insurance arrangements to the satisfaction of IDBI and agree to take a comprehensive insurance package including loss of profit policies in respect of the power plant after getting the insurance package examined by the independent insurance advisor;

agree to appoint reputed firm of Chartered Accountants like Price Waterhouse, S.R.Batliboi and Company, A.F.Ferguson etc., as concurrent auditors with direct reporting system during the period of the loan;

appoint an independent consultant for geological review of the project, the review shall, inter-alia cover the seismological aspects of the site and the precautions/preventive measures to be taken;

appoint an independent counsel to act on behalf of IDBI, including overseas lenders, to assist in the review of various project documents and security documentation required for the project;

enter into an agreement with IDEA for carrying out basic and detailed engineering for the electro-mechanical equipment;

agree to abide by IDBI's decision on the cost of the project and means of financing after studying various reviews carried out by lenders engineers and their recommendations. The company shall also agree to amend the contracts if required by IDBI on the basis of recommendations of lenders' engineers;

finalise the equipment supply contract for supply/erection/commissioning of the electro-mechanical equipments; the terms of the contract to be finalised in consultation with and to the satisfaction of IDBI;

finalise the operational details of the Escrow Account /other arrangements for

146

ANNEXURE – 'E'

HPL-906

Contents:

1. Advertisement of Government of Maharashtra, Sales Tax Department, for appointment of Consultants for implementation of VAT. Conditions prescribed therein include, inter alia: -

"4) The Tenderer must have atleast 20 (twenty) full-time professionals in its current employment for providing services in the areas of work related to VAT. The Tenderer should have qualified and competent staff in the field of Economic, Law, VAT Business Practice, Auditing, Computerisation and Human Resource Development."

5) The annual turnover of the Tenderer on account of consultancy work (including VAT) shall not be less than Rs. 100 million on average in the preceding two financial years." (Page 51)

147

(HPC-907

Annexure-E

GOVERNMENT OF MAHARASHTRA
SALES TAX DEPARTMENT

Invitation for Expression of Interest for appointment of consultants for Implementation of VAT in Maharashtra

51

s Tax Department, Government of Maharashtra intends to invite proposals for appointment nsultants for Implementation of Value Added Tax in Maharashtra. The Bidding will be open Tenderers who fully meet the following qualifying criteria:

The Tenderer must be a reputed consultancy firm/ company engaged in providing sultancy and Services to Taxation matters, especially in areas of work relating to Value d Tax for at least last five years.

The Tenderer must have successfully executed in the last three financial years, or be in process of execution of, at least one VAT consultancy project related to VAT legislation, omic analysis of VAT system, Information Technology requirements of VAT, Organisational Administrative issued related to VAT in India or abroad.

The Tenderer must have proven track record for the Completion of Consultancy Projects ed with VAT to the Department's satisfaction and should be supported by a complete set of mentation, including Certificates from clients and manpower profile.

The Tenderer must have atleast 20 (twenty) full-time professionals in its current loyment for providing services in the areas of work related to VAT. The Tenderer should have lfied and competent staff in the field of Economics, Law, VAT Business Practice, Auditing, nputerisation and Human Resources Development.

The annual turnover of the Tenderer on account of consultancy work (including VAT) shall be less than Rs.100 million on average in the preceding two financial years.

The tenderer should have in depth knowledge, experience and practice in the Sales Tax tem being followed anywhere in India for the preceding three years, to be supported by umentary evidence.

scope of the consultancy will cover complete design and implementation of VAT in arashtra from 1st April, 2003.

Department reserves the right to reject any or all of the applications and the Department's sion in this regard shall be final. The Request For Proposals will be issued only to those sultants who are short listed for the assignment. Interested firms may submit their ression of interest along with documents on any working day to the Dy. Commissioner of s Tax(C), Enforcement, Room No.105, 1st Floor, Vikrikar Bhavan, Mazgaon, Mumbai-10. last date for submission of Expression of interest is 5. p.m. on 18th July 2002.

(S.S. KSHATRIAYA)
Commissioner of Sales Tax,
Maharashtra State, Mumbai

148

DGIPR/2002-2003/742

ANNEXURE – 'F'

HPC-908

Contents:

1. Advertisement of Government of NCT of Delhi, Sales Tax Department, inviting for Expression of Interest for appointment of Consultants for implementation of VAT. Conditions prescribed include, inter alia:

"iv) The Tenderer must have atleast 20 (twenty) full-time professionals in its current employment for providing services in the areas of work related to VAT. The Tenderer should have qualified and competent staff in the field of Economic, Law, VAT Business Practice, Auditing, Computerisation and Human Resource Development.'

v) The annual turnover of the Tenderer on account of consultancy work (including VAT) shall not be less than Rs. 100 million on average in the preceding two financial years." (Page 52)

Intc-909

Invitation for Expression of Interest for appointment of consultants for implementation of VAT in Delhi

Sales Tax Department, Government of Delhi intends to invite proposals for appointment of consultants for implementation of Value Added Tax in Delhi. The Bidding will be open to all Tenderers who fully meet the following qualifying criteria :

i) The tenderer must be a reputed consultancy firm/company engaged in providing Consultancy and Services in Taxation matters, especially in areas of work relating to Value Added Tax for at least last five years.

ii) The tenderer must have successfully executed in the last three financial years, or be in the process of execution of, at least one VAT consultancy project related to VAT legislation, economic analysis of VAT system, Information Technology requirements of VAT, Organisational and Administrative issues related to VAT in India or abroad.

iii) The tenderer must have proven track-record for the completion of consultancy projects related with VAT to the Department's satisfaction and should be supported by a complete set of documentation, including certificates from clients and manpower profile.

iv) The tenderer must have at least 20 (twenty) full-time professionals in its current employment for providing services in the areas of work related to VAT. The tenderer should have qualified and competent staff in the field of Economics, Law, VAT Business Practice, Auditing, Computerisation and Human Resources Development.

v) The annual turnover of the tenderer on account of consultancy work (including VAT) shall not be less than Rs. 100 million on average in the preceding two financial years.

vi) The tenderer should have in depth knowledge, experience and practice in the Sales Tax System being followed anywhere in India for the preceding three years, to be supported by documentary evidence.

The scope of the consultancy will cover complete design and implementation of VAT in Delhi from 1st April, 2002.

The Department reserves the right to reject any or all of the applications and the Department's decision in this regard shall be final. The Request For Proposals will be issued only to those consultants who are short listed for the assignment. Interested firms may submit their Expression of Interest along with documents on any working day to the Assistant Commissioner, Zone VII, Sales Tax Department, Room 701, Bikrikar Bhawan, IP Estate, New Delhi. The last date for submission of Expression of Interest is 5 p.m. on 24/08/2001.

COMMISSIONER, SALES TAX

SALES TAX DEPARTMENT
GOVT. OF NCT OF DELHI
BIKRIKAR BHAWAN, I.P. ESTATE, NEW DELHI

Pay your tax and relax

Now we are on internet at:
www.delhisalestax.com

150

ANNEXURE – 'G'

HPL-910

Contents:

1. Advertisement of Certain domestic non-life Insurance Companies for appointment of Consultants for Management Audit. Conditions prescribed therein include, inter alia: -

"To have minimum staff of around 200 on the rolls of the consultant/management auditor.

The annual turnover of the management consultancy division should be atleast Rs. 10 crores average for the previous two years." (Page 53)

MPL-911

53

APPOINTMENT OF CONSULTANT FIRM FOR MANAGEMENT AUDIT

Certain domestic non-life Insurance Companies with national presence desire to shortlist Management Consultancy firms/Companies with adequate exposure and expertise at the national and international level for conducting management audit of the Organisations.

The Consultant firm is expected to cover the following areas in the scope of management audit:

1. To evaluate the underwriting and claim processing practices with regard to the adequacy of internal controls in place and their responsiveness to customer requirements *including study on effectiveness and conduct of surveyors and advocates.*
2. To study the current investment practices and to examine whether proper checks and balances are in place and whether adequate prudential norms are laid down and *to recommend overall improvement in yield without sacrificing the quality of assets/investments.*
3. To examine the adequacy and the effectiveness of corporate governance practices.
4. To examine the efficiency of the existing distribution channels and the effectiveness of current marketing strategies *to increase the reach. To examine the cost-effectiveness of the same, in the context of changes in marketing practices. Also, to formulate an effective strategy for publicity and advertising.*
5. To identify potential areas of stress and vulnerability and suggest necessary remedial measures.
6. To examine the organisational structure and manpower requirements of the company in the context of change in marketing practices (emergence of brokers, corporate agencies and other intermediaries) and improvement in technology in the insurance sector *with particular emphasis on information technology.*
7. To examine and evaluate financial control systems including system of cost-cutting measures, scope for improvement in the internal audit system and review of the system of delegation of Financial Authority.
8. Study of all aspects of Reinsurance system in place.
9. To advise on a system for motivating employees.
10. The consultant should in addition, give advice regarding the futuristic strategy the Company should follow with respect to point 1-9 above

Management audit should be completed within three months from the date of award.

Minimum criteria required for prequalification for shortlisting are:

1. To have local experience in conducting management audit of Banks/other Financial Institutions.
2. International & local experience in the non life insurance sector would be desirable.
3. To have expertise in handling multi location audits
4. To have undertaken similar projects of this nature where billing fee is around Rs. 25 lakhs per project.
5. To have minimum staff of around 200 on the rolls of the consultant/management auditor.
6. The annual turnover of the management consultancy division should be atleast Rs. 10 crores average for the previous two years.
7. The firm should have multiple offices atleast covering metro centres.

Interested applicants are required to furnish the above details in respect of their organisation and also the details of the following:

a) Company profile with details of senior management, addresses of offices, etc.
b) Annual IT Returns for the past two years showing their overall turnover as also the turnover of the Management Consultancy Division.
c) Documentary proof of earlier assignments and billings thereof.

Shortlisted applicants would have to make a detailed presentation, including submission of further details/data as may be prescribed. Based on the presentation, the final terms of reference will be suitably issued. Thereafter, the financial bid for appointment of Management Auditor will be invited along with the financial bid. Final selection would depend on the technical and financial bids submitted. The Company reserves the right of selection and rejection and the Company's decision would be final. Correspondence from the applicants who are not shortlisted will not be entertained.

Interested applicants may write to :
Post Box No. 670,
Royapettah, Chennai 600 014.

Last date for receipt of applications is 07.03.2003.

152

ANNEXURE – 'H'

Vtpc-912

Contents:

1. Advertisement of National Highways Authority of India (Ministry of Road Transport & Highways) inviting for Expression of Interest for appointment of Consultants for implementation of VAT. Conditions prescribed therein are as follows: -

   (i) 15 years of experience either as Statutory Auditors and/or Internal Auditors;
   (ii) 15 full time partners;
   (iii) 50 Qualified Chartered Accountants in full time employment;
   (iv) Offices in New Delhi, Kolkata or Bhubaneswar, Hyderabad or Chennai or Bangalore; Mumbai or Pune or Ahmedabad; and
   (v) Average annual turnover of Rs. 10 crores during the last three years NEED ONLY APPLY. With a view to facilitate evaluation, the above information called for may be submitted in a tabular form also. Firms fulfilling ALL the above criteria shall only be considered for further evaluation. (Page 54)

HPC-913

Annexure H

154

National Highways Authority of India
(Ministry of Road Transport & Highways)

INVITATION FOR EXPRESSIONS OF INTEREST (EOI) FROM THE FIRMS OF CHARTERED ACCOUNTANTS FOR APPOINTMENT AS INTERNAL AUDITORS

The National Highways Authority of India (NHAI), Ministry of Road Transport & Highways, Government of India is implementing the National Highways Development Project (NHDP) and other projects comprising the Golden Quadrilateral connecting the four metros cities Delhi-Mumbai-Chennai-Kolkata, and the North-South & East-West Corridors connecting Kashmir to Kanyakumari and Silchar to Saurashtra.

NHAI intends to appoint a firm of Chartered Accountants as its Internal Auditors for the financial years 2004-05, 2005-06 and 2006-07. Accordingly, NHAI invites Expressions of Interest (EOI) from the eligible firms of Chartered Accountants to enable NHAI to prepare a short list for consideration for appointment as Internal Auditors. Interested firms are requested to STRICTLY provide ONLY the following information :-

1. Constitution of firm issued by the Institute of Chartered Accountants of India as on 1.4.2003, with year of establishment of the firm.
2. Number of partners and their CV.
3. Details of the offices/branches.
4. Details of assignments handled.
5. Number of qualified Chartered Accountants working with the firm.
6. Turnover in the last three years (2000-01, 2001-02, 2002-03), and
7. Audited Accounts for last 3 years.

Firms having AT LEAST (i) 15 years of experience, either as Statutory Auditors and/or Internal Auditors; (ii) 15 full time partners (iii) 50 Qualified Chartered Accountants in full time employment (iv) Offices in New Delhi, Kolkata or Bhubaneswar, Hyderabad or Chennai or Bangalore, Mumbai or Pune or Ahmedabad, and (v) Average annual turnover of Rs. 10 crores during the last three years NEED ONLY APPLY. With a view to facilitate evaluation, the above information called for may be submitted in a tabular form also. Firms fulfilling ALL the above criteria shall only be considered for further evaluation.

Interested firms are requested to submit their EOI (ONLY) in BOUND form and in SEALED ENVELOPES clearly mentioning "EOI FOR INTERNAL AUDITORS" latest by 1500 hours on 5th January, 2004 at the address given below. This notice is also available at the Website http://www.nhai.org

Address for Communication:
General Manager (Finance)
National Highways Authority of India
Plot No. G-5&6, Sector-10, Dwarka, New Delhi-110 075
Phone : 91-11-25074100/25074200 Extn.: 2539
Fax : 91-11-25074100/25074200 Extn.: 2539
E-mail : ppathak@nhai.org

IT-DIVISION, NHAI

154

ANNEXURE – 'I'

Contents:

HPC-914

1. Letter No. Sectt./DCA/03 dated 21st October, 2003 bringing to the notice of DCA the instances where a Multinational Company through its Articles of Association stipulated for appointment of auditors from a set of accounting firms which were either the MAF or their Indian surrogate alongwith its enclosure i.e., copy of news item published in 1.10.2003, Kolkata Business Standards. (Pages 55 – 56)

155

HDC-915
Annexure-V
(4)

PRESIDENT

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
[Set up under an Act of Parliament]
P.B. NO. 7100, Indraprastha Marg
New Delhi -110 002 INDIA

No.Sectt./DCA/03

October 21, 2003

55

Dear Mr. Sardana

Sub.: Appointment of auditor through Articles of Association – Certain wrongful practices being followed

Section 224 of the Companies Act, 1956 provides that every company shall at each Annual General Meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting to the conclusion of the next Annual General Meeting.

A recent newspaper report (copy enclosed) suggests that some of the companies through amendment in the Articles of Association are naming select few firms to carry out audit function, some of them are not even eligible for being appointed as auditor. The Articles of Association further provides that of any internationally recognised firm of auditors approved by the prime shareholders shall be eligible for appointment as auditor.

You would kindly appreciate that the stipulation in the Articles to the above effect is not only in violation to the provisions of Companies Act but also seriously jeopardize the independence of the auditor. I would, therefore, request you to kindly have the matter examined so that the companies are not allowed to violate the provisions of the Companies Act on the one hand and action is taken against the erring companies on the other.

With kind regards

Yours sincerely

R BUPATHY

Encl.: As above.

Mr. M.M.K. Sardana, IAS
Secretary to the Government of India
Ministry of Finance and Company Affairs
Department of Company Affairs
Shastri Bhawan
NEW DELHI – 110 001.

156

23370317 23370305 23370333 23370366 E-mail : president@icai.org Fax : 91-11-23370365

HPC-916

Polaris 'has violated Companies Act, Contract Act' says CAAC's S Gurumurthy

CAs' panel points finger at surrogate auditing

S KALYANA RAMANATHAN
Chennai, 30 September

The CAAC (Chartered Accountants Action Committee) has fired its first salvo against corporates in India using surrogate entities of multinational accounting firms to audit its book of accounts.

S Gurumurthy, convener, CAAC has written to the secretary, Department of Company Affairs, pointing out that the Chennai-based Polaris Software Labs has violated the Companies Act and the Contract Act by naming some Big Four consulting firms as approved auditors in its Articles of Association.

Gurumurthy's letter to the DCA, a copy of which is available with Business Standard, points out that, Polaris has amended its Articles of Association regarding appointment of Statutory Auditors under Section 224 of the Companies Act, 1956; by naming select firms to carry out audit functions. The letter said that the amendment was in violation of the provisions of section 224 of the Companies Act, 1956 and also infringed upon the right of the shareholders in appointing statutory auditors of the company. Polaris has in its Articles of Association, defined the term approved auditors as KPMG, Pricewaterhouse Coopers, Ernst & Young and Deloitte Touche & Tomahatsu.

The company in its Articles of Association, has also included a residuary clause which includes any internationally recognised firm of auditors approved by the prime shareholders from time to time.

Polaris in its articles of association, while defining the term approved auditors has included the phrase, where appropriate, their associate firms in India. Polaris's books are at present audited by Bharat S. Raut & Co, an associate of KPMG.

The amendments put through by the company are clearly void under section 23 of the Contract Act as being against public policy and also as being unlawful as KPMG and Ernst and Young are not audit firms within the meaning of the ICAI regulations and therefore, not entitled to be appointed as auditors of the company. Gurumurthy has said in his letter.

While clarifying the term any internationally recognised firm and need for restricting the list of auditors to the Big Four, a Polaris spokesperson said, "Just as we have benchmarking standards for many of our other operational areas, we have set benchmarks and standards for selecting auditors. It is a standard practice among large organisations around the world, including India, to retain one of the Big Four international audit firms (or their associates, where applicable) to examine and certify their book of accounts."

The Polaris spokesperson further said, It is not really an issue of listing multinational versus Indian firms in the Articles. We have simply listed firms that we believe will meet the high audit standards expected of them in examining and certifying our book of accounts.

But according to P H Arvindh Pandian, a leading attorney specialising in Company Law said, restricting the number of firms being mentioned in the Articles of Association takes away these powers vested in the shareholders, which is not in their interest.

157

HPC-838

Certain Initiatives taken by the Institute against clandestine activities/functioning of Multinational Accounting Firms in contravention of the provisions of the CA Act, 1949 and the Regulations framed thereunder.

The Institute has been pursuing the matter since early nineties and had appointed a Study Group in relation to Section 25 of the Chartered Accountants Act, 1949 and related issues involved to consider all the aspects and perspectives involved.

On 26th June, 2003, the representatives of the ICAI lead by the then President had a meeting with Shri Vinod Dhall, then Secretary, DCA, to discuss services being rendered by foreign firms in India in the accountancy sector. After considering the intricacies of various issues involved, the following decisions were taken:

(i) The ICAI may identify the problem areas and suggest solutions to the problems identified. ICAI may submit the proposal in a tabular form indicating therein the problems and the suggested solutions. If any legislation in the matter is required, the draft legislation may also be submitted. For this, if required, ICAI may expedite the report of the sub-group and examine the whole issue in the next Council meeting scheduled in July.

(ii) The ICAI will obtain the details of the relationship, the `surrogate' firms have with foreign firms.

(iii) The ICAI will contact the RBI/FIPB to obtain details of the conditions under which the foreign forms are permitted to operate in India. Assistance, if and when required, will also be provided by the Department in this exercise.

(iv) ICAI may examine the CPC 865 and see as to whether foreign firms are transgressing upon the items contained in CPC 862.

(v) After the proposals are received from ICAI the matter may be discussed in a meeting in the Department wherein the other stakeholders like Industry Association and the representatives of RBI and FIPB may also be invited

The Council of the Institute, at its meeting held in October, 2003 considered the report of the Study Group constituted by the Council. The summary of the issues concerning MAFs and the decisions of the Council on the Report of the Study Group

were communicated to the Ministry of Corporate Affairs vide letter dated 29th November, 2003.

To pursue the course of action, the Ministry of Corporate Affairs , vide letter dated 19th October, was requested by the Institute, to take necessary action including reference to RBI and Ministry of External Affairs (i) for reviewing the existing situation for ensuring reciprocal advantage in favour of the Indian accounting profession; (ii) to take appropriate action against MAFs including cancellation/revoking/withdrawal of the permission already granted to such foreign entities; (iii) to prohibit the MAFs/consultancy firms which have set up commercial presence either as a corporate entity or otherwise defied the restrictions in terms of the Government policy both in letter and spirit; (iv) to ensure that the names of the companies which are same or similar to the names of MAFs should not be allowed to continue to operate in India; and (v) to ensure that the non-compliance of the terms & conditions of the permission granted to such MAFs is dealt with effectively.

Further, in this letter, while examining the scope of CPC 865, the manner in which certain MAFs were transgressing upon the items contained in CPC 862, CPC 863 and CPC 861 were also brought to the notice of the Ministry by the Institute.

The Institute took up the matter with the Reserve Bank of India also. In a letter dated 18th October, 2000 addressed to Dr. Bimal Jalan, the then Governor, Reserve Bank of India, Institute took up the issue of functioning of such certain foreign companies like KPMG, Price Waterhouse Coopers etc. in India who have been rendering not only the management consultancy services but also audit related services either in their names or in the name of their surrogate/associate Indian firms, thereby violating the provisions of Chartered Accountants Act, 1949. Dr Jalan was also requested to reconsider the Government of India's policy for the entry of foreign Chartered Accountants in India in such a way so that the Indian Professionals are permitted to render similar professional services abroad without any barriers.

In another letter dated 7th March, 2003, Shri Thakkar, the then General Manager, RBI was requested to make certain details/documents available in respect of alleged clandestine activities of large international firms, if those were in possession and/or in the knowledge of the RBI, including inter alia, the terms and conditions of

permissions granted to foreign firms, purpose of permission granted, names of bodies granting permissions/ approvals etc.

In response, a letter no. Ref.DBS.ARS.No.744/08:91/008(ICAI)/2003-2004 dated 23rd March, 2004 was received from Shri P.K. Janardanan, Deputy General Manager, Reserve Bank of India wherein it was, inter alia, mentioned that "RBI has not permitted any foreign audit firm to set up office or to carry out any activity in India under the current exchange control regulations. Further, M/s. KPMG & M/s. Price Waterhouse & Coopers are basically Indian partnership firms. The former had obtained permission from the Secretariate for Industrial Assistance, Ministry of Finance, Government of India to undertake taxation, audit related services etc."

While mentioning this development vide letters dated 19th October, 2004 and 15th September, 2006, the Institute had requested the Ministry of Corporate Affairs to take up the matter with the Ministry of External Affairs and RBI, for appropriate action.

ANNEXURE - II

Summary of the issues concerning Multinational Accounting Firms and the decisions of the Council on the Report of the study group

S.No.	Issues/Problems	Decisions of the Council
1.	Certain corporates, firms and other juridical persons have been given permission by RBI under FIPB Route for doing consulting business (as per CPC 865) in corporate form. While granting permission, no reciprocal undertaking has been taken. This has resulted in lowering the negotiating capacity under WTO/GATS negotiations. Further, there are visa, residence and other unwarranted restrictions in foreign countries on entry of Indian CAs.	The Council decided to request DCA to approach RBI/MEA for review of the situation for obtaining reciprocal permission, and to take appropriate action including cancelling/ revoking/ withdrawing the permission granted.
2.	Certain corporates, firms and other juridical persons which entered into FIPB route for rendering Management Consultancy Services (MCS), as defined in CPC 865 have transgressed the permission and are rendering Taxation services (CPC 863), Accounting, Auditing & Book Keeping Services (CPC 862) and Legal Services (CPC 861). These are exclusive domain of Chartered Accountants and/or advocates.	The Council decided to request DCA to approach RBI/MEA for review of the situation for obtaining reciprocal permission, and to take appropriate action including cancelling/ revoking/ withdrawing the permission granted.
3.	ICAI and Government of India have taken a stand that in the field of accounting, auditing and book keeping (CPC 862), taxation services (CPC 863) and legal services (CPC 861), foreign direct investment is not permitted. The commercial presence of foreign accounting firms (Mode 3) is not to be permitted as of now. The movement of natural persons (Mode 4) is also to be permitted subject to reciprocity and removal of certain restrictions by other country placed on Indian CAs.	The Council observed that providing services through service providers in Indian also amounts to commercial presence. The Council decided to take up with DCA, RBI & other relevant Government Department to ensure that non-compliance is dealt with effectively.
4.	MAFs already operating in India either through commercial presence (Mode 3) or through movement of natural persons (Mode 4) need to be prohibited to operate in India in defiance of the present policy of the Government.	The Council decided to suggest to the concerned Department of the Government including DCA to see that consulting firms/ MAFs which have set up commercial presence either as

		a corporate entity or otherwise, are prohibited to defy the restrictions in terms of the Government policy, both in letter and spirit.
5.	In a number of instances, financial statements have been attested by persons or bodies who are not CA firms registered with the ICAI. These financial statements are not only circulated, but are also used for several purposes in India. A large number of investors, analysts and media also rely on such attested financial statements.	The Council observed that the public interest may severely get affected if unqualified persons (non-CAs) or bodies, which are not registered with the ICAI, are permitted to attest financial statements. The Council has decided to issue a notification that all such attestation of financial statements are not permitted in India and only CAs registered with the ICAI, are authorised to attest financial statements which are used for any purposes in India. The Council also decided to issue necessary clarification through various regulators including DCA, RBI, SEBI, IRDA and others to avoid any misgivings in this regard.
6.	The Council has already recommended to the Government for creation of a separate multi-disciplinary firm between CAs and other professionals as may be approved by the Council from time to time. It has to be achieved at the earliest and all necessary steps are to be taken.	The Council accepted the recommendation for creation of separate multi-disciplinary firm between CAs and other professionals and remitted the matter to its Executive Committee for recommending the modalities.

ANNEXURE - III

Instances brought to the notice of the Study Team constituted by the Council in April, 1995 and the Study Group constituted by the Council in February, 2002 and communicated to the Ministry of Corporate Affairs

- The MAFs, which are operating as partnership firms or as companies in India give a misleading impression to the public that they provide services which are provided by Chartered Accountants, exclusively and otherwise.

- The firm or company set up by or through these MAFs have a name which is either identical with or substantially similar to the name that the foreign accounting firm is using elsewhere in the world. This is resulting into co-branding of the accounting firm and erroneous perception of identity.

- Such firms or body corporates extensively advertise for recruitment, the contents of which at times impliedly brings home to the readers the size of operations or the nature and extent of services offered. Besides, these firms or body corporates also sponsor major national/international events to impliedly advertise and spread their brand name.

- Such firms or body corporates make attempts through extensive advertising or personal meetings or even written communications to seek professional work for themselves and also for their local affiliate CA firms, which mode otherwise is not available to members of the Institute in practice.

- The said entities with international brand name operate in the same premises occupied by CA firms, thus giving an impression that they are one and the same.

- The officials/partners and staff of these entities and that of CA firms carry visiting cards of both the non-CA entities and the CA firm and use them interchangeably suiting to their requirement. They use similar looking business cards and professional stationery, which again misleads the public.

- Financial institutions/Government agencies are prescribing unreasonable conditionalities to appoint select firms/entities for professional work, which eliminates competition from middle level and small size firms, thus providing better chance for certain type of firms.

- Internal audit of companies are sometimes carried out by non-CAs in corporate or other forms.

- There have been instances where financial audit of an entity has been performed by an audit firm, whereas management consultancy services for the same entity has been provided by its international affiliate.

- The MAF and the body corporate display the names and contact details of their affiliate Indian CA firms in their websites.

ANNEXURE - IV

ENTITY A

Services

We bring a unique combination of business, functional and technical expertise that allow our clients to better align their business objectives and strategies with the need of today's competitive market. We serve Indian business houses, multinational corporations and the public sector and provide assistance to global clients seeking to develop local businesses and expand into emerging markets such as India. Our edge lies in our ability to draw upon a well equipped global network and teaming this with customised services of a local office. Our integrated approach combines insight and innovation from multiple disciplines with business and industry knowledge to help our clients excel anywhere irrespective of geographical boundaries.

We offer a broad range of fully integrated services in the following areas:

Audit and Enterprise risk services: *Our Audit and Enterprise Risk Service professionals provide a range of audit and advisory services to assist clients in achieving their business objectives, managing their risk and improving their business performance.*

Consulting: *Our consulting group works closely with you to deliver measurable/ quantifiable improvement in business performance; drive shareholder value and create sustainable competitive advantage.*

Financial advisory: *Our FA practice takes on an industry vertical approach. It draws upon its pool of experts both in India and abroad specialising in various industries.*

Tax: *Our tax professionals will keep you aware of developments that may affect your business, and also help you interpret their significance and integrate a plan into your business strategy.*

ENTITY B

Our services, our strength

We provide global services in four main areas: Assurance, Tax, Transactions and Advisory. Through these services, we can help you retain the confidence of investors, manage your risk, strengthen your controls and achieve your potential.

We are 144,000 talented people with a shared way of working and commitment to quality. This allows us to put together a team that can give you the seamless service you need, wherever you are in the world.

Assurance: *Around the world, the journey to success is governed by increasingly complex and broadening regulatory requirements and stakeholder demands. Strong independent assurance provides critical information for investors and other stakeholders, a robust and clear perspective to audit committees and timely and constructive input to management.*

Tax: *A successful tax function delivers a strong reporting foundation and sustainable planning to help the business achieve its growth potential. You need tax strategies aligned with your business drivers, built on effective compliance and open, transparent reporting. So we create highly networked teams who can advise on planning, compliance and reporting and maintaining good relationships with the tax authorities.*

Transactions: *The right transaction can help your business grow, prosper or reinvent itself. We offer integrated, objective advisory services that are designed to help you evaluate opportunities, execute your transactions more efficiently and achieve your strategic goals.*

Advisory: *Today's achievement is tomorrow's expectation. But as targets increase, so do risks. We help your business to make and sustain improvements, while responding more quickly to change.*

ENTITY C

India - Who We Are

Entity C is a global network of professional firms providing Audit, Tax and Advisory services. We operate in 144 countries and have 137,000 people working in member firms around the world. The independent member firms of the Entity C network are affiliated with Entity C International Cooperative ("Entity C International"), a Swiss entity. Each Entity C firm is a legally distinct and separate entity and describes itself as such.

Entity C in India is one of the leading providers of risk, financial and business advisory, internal audit, corporate governance, and tax and regulatory services. With a global approach to service delivery, Entity C responds to clients' complex business challenges with a broad range of services across industry sectors and national boundaries.

About Entity C in India

Entity C was established in India in September 1993, and has rapidly built a significant competitive presence in the country. The firm operates from its offices in Mumbai, Pune, Delhi, Kolkata, Chennai, Bangalore, Hyderabad and Kochi, and offers its clients a full range of services, including financial and business advisory, tax and regulatory.

Executive Team

_____ is the Chief Executive Officer for Entity C's operations in India and a member of the International Council of Entity C.

ENTITY D

Entity D : SERVICES:

Internal Audit Services ▪ *Internal Audit Sourcing Services* ▪ *Sarbanes-Oxley and Clause 49 Related Services* ▪ *Internal Audit Advisory Services* *Transaction* ▪ *GCMG* ▪ *Corporate Finance & Investment Banking* ▪ *Transaction Services* ▪ *Financial Due Diligence* ▪ *Structuring Services* ▪ *Post Deal Services* ▪ *Commercial & Market Due Diligence* ▪ *Bid Support & Defence Service* ▪ *Valuation and Strategy Services (V&S)* ▪ *Business & Asset Valuations* ▪ *Corporate Advisory Services & Strategic Solutions* ▪ *Project Finance* ▪ *Carbon Finance* *Crisis Management* ▪ *Corporate Advisory & Restructuring*	*Performance Improvement* ▪ *Risk Regulation* ▪ *IT Effectiveness* ▪ *Finance Function Effectiveness* ▪ *Strategy & Operations* ▪ *People & Change* ▪ *Outsourcing Advisory Services* ▪ *eGovernance* ▪ *Enterprise Architecture & Implementation* ▪ *Enterprise Application* ▪ *Business Intelligence* ▪ *ITeS/KPO* ▪ *Forensic Technology Services* *Government Reforms and Institutional Development* ▪ *Utilities* ▪ *Social Sector Development* *Tax and Regulatory Services* ▪ *Direct Tax* ▪ *Indirect Tax* ▪ *Transfer Pricing* ▪ *Corporate tax* ▪ *Regulatory* ▪ *International Assignment*