

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.**

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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;

(ii)

- 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 resolutions 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 Niranjana 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.

(iii)

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 June, 2003 to September, 2003 addressed the issues arising from this Background/Perspectives and has accordingly framed its recommendations.

(iv)

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 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 been 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 proprietary 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 losing 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 garb of a fully Indian owned IFIA which does not have power to determine its policies and practices. The Institute may prescribe a standard format for a joint declaration by the IFIA and its foreign affiliates.

2.1.14 Upon such declaration being filed in the manner prescribed;

- (a) The work of one networking firm can be done by the other network firm with the clients permission for such arrangements. So far as the criteria to fixing the responsibility of associate firms is concerned, the responsibility in this regard is already clearly identified in terms of AAS and the procedure prescribed by the Council in the past.
- (b) The Study Group felt that the imperative need of the hour is to ensure the independence of the auditors. For the purpose of determining issues of Independence all entities within the network shall be considered together. Accordingly,
 - (i) If one firm is the statutory auditor of an entity then the associate of the said firm directly/indirectly should not accept the internal audit of that entity or any accountancy service for that entity.
 - (ii) Institute has issued a notification no.1-CA(7)/60/2002 dated 8th March, 2002 regarding ceiling on fees in respect of Management Consultancy Services in case of certain entities and this ceiling on the fees will also be applicable to all the networked firms.
 - (iii) In a similar way where in certain Companies/Government/Banks and PSU appointments, if and when permitted, rotation of firms is called for, then firms within the group for the purpose of such rotation will not be considered. Accordingly, after retirement of Networking firm as statutory auditor of a PSU, it shall not be permissible to accept the said audit by any other networking firm in the cooling period.
 - (iv) If the Council prescribes any restrictions for the statutory auditor or to one of the network firms, then the same will automatically apply appropriately to the other network firms.

2.1.15 There was further discussion in the Group regarding a declaration to be obtained in regard to two further matters. However, in light of the fact that the Group could not reach consensus on these matters, no recommendation in this regard has been made by the Study Group. The issues so discussed were (i) declaration in regard to the protection of right of the Indian partners to retain rights in/over firm name in which Indian firm is registered with the ICAI; (ii) declaration to be obtained confirming that if the Multinational Accounting Firm (MAF) is desirous of entering into a network arrangement with an Indian firm during the subsistence of such arrangement with another Indian firm then such second arrangement shall not be entered into without obtaining the prior written consent of the existing networked Indian firm.

2.1.16 The MAF having affiliation in different countries may mention in their Website the names of Indian firm(s) provided such MAF had no commercial presence in India. Such permission could also be given to Indian firms.

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 its 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 framework 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.

- 6.7.3. 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 activity, 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 misled 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 than 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 select few 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.

New Delhi
Date: 16.9.2003

(Sd/-)
Shri Jayant P. Gokhale
Convenor

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	<p>The Committee on Ethical Standards & Unjustified Removal of Auditors</p> <p>- 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.</p>
MCS	<p>Management Consultancy Services.</p> <p>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:</p> <p>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:</p> <ul style="list-style-type: none">*(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 arrangement, 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 223 rd 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 169 th 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	<p>“Juridical person of another Member” means a juridical person which is either :</p> <p>(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</p> <p>(ii) in the case of the supply of a service through commercial presence, owned or controlled by:</p> <ol style="list-style-type: none"> 1. natural persons of that Member; or 2. juridical persons of that other Member identified under subparagraph (i).
A juridical person	<p>A juridical person is :</p> <p>(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;</p> <p>(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.</p> <p>(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;</p>
Natural Person of another Member	<p>“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;</p> <p>(i) is a national of that other Member; or</p> <p>(ii) has the right of permanent residence in that other Member, in the case of a Member which:</p> <p>(a) does not have nationals; or</p> <p>(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.</p>
Supply of a Service	<p>Supply of a Service includes the production, distribution, marketing, sale and delivery of a service.</p>
Financial Auditing Services	<p>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</p>

Accounting Review Services	<p>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.</p> <p>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.</p>
Compilation of Financial Statement Services	<p>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.</p>
Other Accounting Services	<p>Other Accounting Services such as attestations, valuations, preparation services of pro forma, statements, etc.</p>
Book Keeping Services	<p>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.</p>

