

DRAFT GUIDELINES FOR THE FORMATION OF MULTI-DISCIPLINARY PARTNERSHIP (MDP) FIRMS BY THE MEMBERS OF THE INSTITUTE OF COST ACCOUNTANTS OF INDIA AS PER PROVISIONS OF THE COST AND WORKS ACCOUNTANTS ACT AND REGULATIONS

INTRODUCTION

These Guidelines are being issued by the Council of the Institute to enable the members of the Institute to form Multi-disciplinary Partnership (MDP) firms as prescribed in Section 2(2) & Part I, Clause (4) of First Schedule to the Cost and Works Accountants Act, 1959 read with Regulation 111C of the Cost and Works Accountants Regulations, 1959. [*relevant provisions are reproduced below*]

For the purpose of these Guidelines,

- "Act" means The Cost and Works Accountants Act, 1959;
- "Regulations" means The Cost and Works Accountants Regulations 1959
- "Institute" means The Institute of Cost Accountants of India
- "Member" means Member of The Institute of Cost Accountants of India
- "CMA" means a Cost Accountant registered with the Institute as its Associate or Fellow Member and holds valid full-time Certificate of Practice.
- "Majority" means majority by number and also by profit share in the MDP firm

Section 2(2) of the Cost and Works Accountants Act, 1959 –

"A member of the Institute shall be deemed "to be in practice" when, individually or in partnership with one or more members of the Institute in practice or in partnership with members of such other recognised professions as may be prescribed"

Part I of First Schedule to the Cost and Works Accountants Act, 1959 – Professional misconduct in relation to Cost Accountants in Practice

A Cost Accountant in Practice shall be deemed to be guilty of professional misconduct, if he–

(4) enters into partnership, in or outside India, with any person other than a cost accountant in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (iv) of sub-section (1) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships;

Regulation 111C of the Cost and Works Accountants Regulations, 1959 – Membership of professional bodies for partnership—

For the purposes of entering into partnership under clauses (4) and (5) of Part 1 of the First Schedule to the Act, a person shall be a member of any of the following professional bodies namely:—

- (i) Chartered Accountant, member of the Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949 (XXXVIII of 1949);*
- (ii) Company Secretary, member of the Institute of Company Secretaries of India, established under the Company Secretaries Act, 1980 (No. 56 of 1980);*

- (iii) *Advocate, member of the Bar Council of India established under the Advocates Act, 1961 (No. 25 of 1961);*
- (iv) *Engineer, member of the Institution of Engineers, or Engineering from a University established by law or an institution recognized by law;*
- (v) *Architect, member of the Indian Institute of Architects established under the Architects Act, 1972 (No. 20 of 1972);*
- (vi) *Actuary, member of the Institute of Actuaries of India, established under the Actuaries Act, 2006 (No. 35 of 2006);*
- (vii) *Any other professional body or institution outside India whose qualifications relating to cost accountancy are recognized by the Council under sub-section (2) of Section 38 of the Act.*

Notes:

- Relevant Extracts from the Cost and Works Accountants Act, 1959 & the Cost and Works Accountants Regulations, 1959 are given in Appendix-I.
- Similarly, relevant extracts from the Acts/Regulations governing the Chartered Accountants, Company Secretaries, Advocates, Engineers, Architects and Actuaries are given in Appendix-II.

THE APPLICABLE PRINCIPLES TO THE MULTI-DISCIPLINARY PARTNERSHIP (MDP) FIRMS SHALL BE AS UNDER:

- a) As per provisions contained in the applicable Statutes as given in Appendix-II, CMAs can form MDPs only with Chartered Accountants, Company Secretaries, Engineers, Architects and Actuaries. Until the Bar Council of India Rules, 1975 are amended, an Advocate cannot enter into partnership with any other professional i.e. an Advocate cannot become a partner in the MDP. Further, no other professional can become a partner in the proposed MDPs.
- b) Every Cost Accountant desirous of (i) forming an MDP; or (ii) becoming Partner in any other MDP should be (a) Registered Associate or Fellow Member of the Institute; and (b) Hold valid full-time Certificate of Practice.
- c) Except in case of Actuaries, no other professional holding Part-time Certificate of Practice from its prescribed professional body shall be admitted as a partner of the MDP.
- d) MDP can be constituted either as a partnership firm as per the Indian Partnership Act, 1932 or as a limited liability partnership firm as per the Limited Liability Partnership Act, 2008. It cannot be formed as a company, society or trust.
- e) Subject to limitations by any law in force, MDP shall decide the share of profits, functions, powers, authorities, duties, rights, responsibilities and liabilities of each

partner among themselves and resolution of any disputes among the partners on mutually agreed terms as per the partnership deed.

- f) All MDPs wherein CMA partners are in majority, by number and also by profit share, would be registered with the Institute. All other MDPs wherein CMA partners are not in majority may also be registered with the Institute. However, there would be no need for multiple registration of an MDP with all such professional Institutions whose members are joining the said MDP as its partners.
- g) Any member of the Institute desirous of joining any such MDP that is registered with any other Institute and wherein CMA partners are in minority would pre-inform & take consent of the Institute. Similarly, Chartered Accountants (CAs), Company Secretaries (CSs), etc. should also take consent of their respective Institutes before joining any MDP as its minority partner(s). The details of such partnerships shall also be disclosed by member while renewing his membership/COP annually.
- h) Every MDP shall be given a new Registration Number. It will have distinct name [trade name or firm name] which shall be approved by the Institute in accordance with Regulation 108 of the Regulations.
- i) Experience of an MDP firm shall be counted from the date of constitution of the firm. However, in case of conversion of an existing firm to MDP, the experience of the MDP shall be counted from the date of registration of the existing firm.
- j) All MDPs wherein CMAs are partners, whether in majority or not, shall use the suffix "MDP of Professionals in Practice" after its name.
- k) Application for registration of a new firm as MDP shall be made in Form MDP-I; application for conversion of an existing firm to MDP shall be made in Form MDP-II; and application for obtaining the Institute's consent to join an MDP registered with any other professional Institute shall be made in Form MDP-III.
- l) Approval for any change in the MDP's partners by way of admission, retirement, or death or in the details of its partners or in particulars/constitution of an MDP Firm Registered with the Institute shall be sought in Form MDP-IV. Any change in particulars/constitution of an MDP Firm not Registered with the Institute shall be informed to the Institute in Form MDP-V within 30 days of such change.
- m) It would be the sole responsibility of the continuing partners to satisfy the conditions as prescribed under Regulation 108 of the Regulations.
- n) All documents submitted alongwith the application forms shall be self-attested by the respective professional. It shall be the duty & responsibility of each partner to certify the truth and validity of (a) his degree(s) obtained from the recognized Institute/University; and (b) his certificate of membership as well as certificate of practice obtained from its prescribed professional body. He shall be solely & personally liable for any false declaration in this regard.

- o) Only those MDPs registered with Institute of Cost Accountants of India having CMA partners in majority, by number and also by profit share, shall be allowed to be appointed as cost auditor under section 148 of the Companies Act 2013 and the Rules made thereunder. Such firms shall not be eligible to be appointed as statutory (financial) auditor u/s 139 or as secretarial auditor u/s 204 of the Companies Act, 2013.
- p) An MDP wherein majority of its partners are non-CMAs shall not be eligible for appointment as cost auditor under section 148 of the Companies Act, 2013 and the Rules made thereunder.
- q) In case an MDP is appointed as cost auditor to conduct audit of cost records under section 148 of the Companies Act 2013 and the Rules made thereunder, it shall be the responsibility of MDP and all its partners to ensure that majority of its partners are CMAs, by number as well as by profit share. In case of any failure to comply with this condition, necessary disciplinary action as per the Act and Regulations shall be taken on all the partners who are CMAs.
- r) "Majority criteria" for computing eligibility of MDP for the purpose of appointment as cost auditor under section 148 of the Companies Act 2013 and the Rules made thereunder shall be calculated on the basis of number of partners and also by profit share, on the date of appointment and the MDP shall maintain such majority throughout the period till its appointment remains in-force.
- s) Besides compliance with the abovementioned majority requirements for appointment as auditors under sections 139, 148 or 204 of the Companies Act, 2013, MDP can render all such other services that its partners are allowed to perform.
- t) Presently, a CMA or CA holding Certificate of Practice, is allowed to become partner in more than one professional firm of CMAs, or CAs respectively. On the same lines, they would be allowed to become partner in more than one MDP and also in other non-MDP firms.
- u) While rendering professional services, MDP and all its partners shall ensure strict compliance with the provisions of section 144 of the Companies Act.
- v) In exercise of the powers vested with the Council of the Institute under section 37(1) of the Act and subject to any amendment in Regulation 106(2) of the Regulations, any partner [not an employee] of MDP would be permitted to be in-charge of the branch offices of MDP. Therefore, MDP would itself decide the branch in-charges and take approval of the professional body with which it is registered. All other professional bodies whose members are partners of the said MDP shall be kept informed.
- w) For CMA partners of MDP, provisions contained in Regulations 111 & 111A of the Regulations shall apply for them being engaged in any other business or occupation or relating to their other functions. Similarly, no partner shall be permitted to engage in any other business, occupation or profession other than that permitted as per the Rules/Regulations of respective professional body of which they are members, subject

to a limitation that such partner must hold full-time [not part-time] certificate of practice.

- x) An MDP by its trade name or firm name shall not be allowed to become partner in another Firm, LLP, or MDP; and nor will it be allowed to become shareholder in any company.
- y) As regards applicability of the provisions of Insolvency & Bankruptcy Code, 2016 on the MDP firm and its partners, the existing legal position would continue i.e. any of its partner can practice as Insolvency Professional, if qualified, but the MDP or all other partners shall not be liable for his actions under the IBC.
- z) Similarly, the existing legal position with respect to applicability of provisions of The Companies (Registered Valuers and Valuation) Rules, 2017 on the MDP firm and its partners would continue i.e. any of its partner can practice as Registered Valuer, if qualified, but the MDP or all other partners shall not be liable for his actions under the said Rules.
- aa) In case of any violation of the provisions of law or any misconduct of a partner, disciplinary proceedings shall be taken on that partner as per provisions contained in the Act/Regulations of the respective professional body of whom he is the registered member. However, where there is no professional body to deal with misconduct of a partner, general law of the land will prevail. Further, MDP or other partners of MDP would not be responsible for misconduct of a partner.
- bb) Any action of default initiated against the MDP firm shall be dealt with by the Institute with which the said MDP is registered.

EXTRACTS FROM THE COST AND WORKS ACCOUNTANTS ACT, 1959

Section 2 (1) (b) “cost accountant” means a person who is a member of the Institute;

Section 2 (1) (ea) “firm” shall here the meaning assigned to it in section 4 of the Indian Partnership Act, 1932, and includes—

- (i) the limited liability partnership as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008; or
- (ii) the sole proprietorship, registered with the Institute;

Section 2 (1) (fc) “partnership” means—

(A) a partnership as defined in section 4 of the Indian Partnership Act, 1932; or

(B) a limited liability partnership which has no company as its Partner;

Section 2 (2) Save as otherwise provided in this Act, a member of the Institute shall be deemed “to be in practice” when, individually or in partnership with one or more members of the Institute in practice or in partnership with members of such other recognised professions as may be prescribed he, in consideration of remuneration received or to be received,—

- (i) engages himself in the practice of cost accountancy; or
- (ii) offers to perform or performs services involving the costing or pricing of goods or services or the preparation, verification or certification or auditing of cost accounting and related statements or holds himself out to the public as a cost accountant in practice; or
- (iii) renders professional services or assistance in or about matters of principle or detail relating to cost accounting procedure or the recording, presentation or certification of costing facts or data; or
- (iv) renders such other services as, in the opinion of the Council, are or may be rendered by a cost accountant in practice, and the words “to be in practice”, with their grammatical variations and cognate expressions, shall be construed accordingly.

Explanation: A member of the Institute who is a whole-time salaried employee of any person shall not be deemed to be in practice within the meaning of this sub-section.

6. Certificate of Practice

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

(2) Every such member shall make an application in such form, and pay such annual fee, for his certificate as may be determined, by notification, by the Council, which shall not exceed rupees three thousand and such fee shall be payable on or before the 1st day of April in each year:

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

Provided further that if a member of the Institute, who was in practice immediately before the commencement of this Act, has made within one month of such commencement an application for the grant of certificate of practice, he shall not be deemed to have contravened the provisions of sub-section (1) by reason of his having practised during the period between such commencement and the disposal of the application.

(3) The certificate of practice obtained under sub-section (1) may be cancelled by the Council under such circumstances as may be prescribed.

7. Members to be known as cost accountants

Every member of the Institute in practice shall, and any other member may, use the designation of a cost accountant and no member using such designation shall use any other description, whether in addition thereto or in substitution therefor:

Provided that nothing in this section shall be deemed to prohibit any such member from adding any other description or letters to his name, if entitled thereto, to indicate membership of such other Institute of accountancy, whether in India or elsewhere, as may be recognised in this behalf by the Council, or any other qualification that he may possess, or to prohibit a firm, all the partners of which are members of the Institute and in practice, from being known by its firm name as cost accountants.

26. Companies not to engage in cost accountancy.

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

(2) Any contravention of the provisions of sub-section (1) shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction to five thousand rupees.

Explanation: For the removal of doubts, it is hereby declared that the “company” shall include any limited liability partnership which has company as its partner for the purposes of this section.

37. Maintenance of Branch Offices.

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

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

Part I of First Schedule to the Cost and Works Accountants Act, 1959 – Professional misconduct in relation to Cost Accountants in Practice

A Cost Accountant in Practice shall be deemed to be guilty of professional misconduct, if he–

- (1) allows any person to practice in his name as a cost accountant unless such person is also a cost accountant in practice and is in partnership with or employed by him;
- (2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

Explanation.-In this item, “partner” includes a person residing outside India with whom a cost accountant in practice has entered into partnership which is not in contravention of item (4) of this Part;

- (3) accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute:

Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share, commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this Part;

- (4) enters into partnership, in or outside India, with any person other than a cost accountant in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (iv) of sub-section (1) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships;
- (5) secures, either through the services of a person who is not an employee of such cost accountant or who is not his partner or by means which are not open to a cost accountant, any professional business:

Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this Part;

EXTRACTS FROM THE COST AND WORKS ACCOUNTANTS REGULATIONS, 1959

106 (1). Branch Office.—Every cost Accountant in practice or a firm of such Cost Accountants maintaining more than one office at the commencement of the Act shall send within three months thereafter to the Council a list of offices and the persons in charge thereof. Any change in regard to any branch office or offices shall also be intimated to the Council forthwith.

(2) The person in-charge of any office or branch office of a Cost Accountant in practice or a Firm of Cost Accountants must either be a partner of the Firm or an Employee of the Firm who is a Cost Accountant in Practice as the case may be.

111. Cost Accountants in practice not to engage in any other business or occupation.—A Cost Accountant in practice shall not engage in any business or occupation other than the profession of accountancy unless it is permitted by a general or specific resolution of the Council:

Provided that a Cost Accountant in practice who at the commencement of the Act was engaged in any business or occupation other than the profession of accountancy may continue to engage himself in such business or occupation up to the 30th June 1964.

111A. Other functions of a Cost Accountant in practice.— Without prejudice to the discretion vested in the Council in this behalf a Cost Accountant in practice may act as a Trustee, Executor, Administrator, Arbitrator, Receiver, Appraiser, Valuer Adviser. Secretary or as a secretarial Consultant, or as a representative for financial matters including taxation and may take up an appointment that may be made by the Central or State Governments. Courts of Law, Labour Tribunals or any other legal authority.

111B. Other professional bodies—(1) For the purposes of clauses (2), (3) and (5) of Part I of the First Schedule to the Act, a person has to be member of any of the following namely:

- (a) the Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949 (XXXVIII of 1949);

- (b) the Institute of Company Secretaries of India established under the Company Secretaries Act, 1980 (No. 56 of 1980);
- (c) the Bar Council of India established under the Advocates Act, 1961 (No. 25 of 1961)
- (d) the Indian Institute of Architects established under the Architects Act, 1972 (No. 20 of 1972)
- (e) the Institute of Actuaries of India established under the Actuaries Act, 2006 (No. 35 of 2006)
- (f) any other professional body or institution whose qualifications relating to cost accountancy are recognized by the Council.

(2) For the purposes of Clauses (2), (3) and (5) of Part 1 of the First Schedule to the Act, the following shall be the persons qualified in India, namely:

- (a) Chartered Accountants within the meaning of the Chartered Accountants Act, 1949 (XXXVIII of 1949);
- (b) Company Secretary within the meaning of the Company Secretaries Act, 1980 (No. 56 of 1980);
- (c) Actuary within the meaning of the Actuaries Act, 2006 (No. 35 of 2006);
- (d) Bachelor in Engineering from a University established by law or an Institution recognized by law;
- (e) Bachelor in Technology from a University established by law or an institution recognized by law;
- (f) Bachelor in Architecture from a University established by law or an institution recognized by law;
- (g) Bachelor in Law from a University established by law or an institution recognized by law;
- (h) Master in Business Administration from Universities established by law or technical institutions recognized by All India Council for Technical Education.

111C. Membership of professional bodies for partnership—

- (1) For the purposes of entering into partnership under clauses (4) and (5) of Part 1 of the First Schedule to the Act, a person shall be a member of any of the following professional bodies namely :—
 - (a) Chartered Accountant, member of the Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949 (XXXVIII of 1949);
 - (b) Company Secretary, member of the Institute of Company Secretaries of India, established under the Company Secretaries Act, 1980 (No. 56 of 1980);

- (c) Advocate, member of the Bar Council of India established under the Advocates Act, 1961 (No. 25 of 1961);
- (d) Engineer, member of the Institution of Engineers, or Engineering from a University established by law or an institution recognized by law;
- (e) Architect, member of the Indian Institute of Architects established under the Architects Act, 1972 (No. 20 of 1972);
- (f) Actuary, member of the Institute of Actuaries of India, established under the Actuaries Act, 2006 (No. 35 of 2006);
- (g) Any other professional body or institution outside India whose qualifications relating to cost accountancy are recognized by the Council under sub-section (2) of Section 38 of the Act.

113. Constitution or reconstitution of firms to require approval.—(1) A partnership firm of Cost Accountants may be constituted or reconstituted by members holding valid certificate of practice and having obtained approval from the Council for use of a trade name or firm name in accordance with the provisions of Regulation 108:

Provided that such constitution or reconstitution shall not be valid unless intimated to the Council within ninety days along with a certified copy of partnership deed.

(2) If at any time the Council finds that terms and conditions of the Partnership Deed are or the firm is acting in a manner detrimental to the interest of the Institute, the Council shall initiate disciplinary proceedings.

RELEVANT PROVISIONS IN THE STATUTES RELATING TO CHARTERED ACCOUNTANTS, COMPANY SECRETARIES, ADVOCATES, ARCHITECTS, ACTUARIES AND ENGINEERS

CHARTERED ACCOUNTANTS

The Chartered Accountants Regulations, 1988

Regulation 53A -Other professional bodies

- (1) For the purposes of Items (2), (3) and (5) of Part I of the First Schedule to the Act, a person has to be a member of any of the following professional bodies, namely:-
- (a) The Institute of Company Secretaries of India established under the *Companies Act, 1980 (No.56 of 1980);
 - (b) The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959 (No.23 of 1959);
 - (c) Bar Council of India established under the Advocates Act, 1961 (No.25 of 1961);
 - (d) The Indian Institute of Architects established under the Architects Act, 1972 (No.20 of 1972);
 - (e) The Institute of Actuaries of India established under the Actuaries Act, 2006 (No.35 of 2006).
- (2) The membership of the professional bodies or institutions outside India whose qualifications relating to accountancy are recognised by the Council under sub-section (2) of section 29 shall also be taken into consideration for the purposes of Items (2), (3) and (5) of the Part I of the First Schedule to the Act.
- (3) For the purposes of Items (2), (3), (4) and (5) of Part I of the First Schedule to the Act, the following shall be the persons qualified in India, namely:-
- (a) Company Secretary within the meaning of the Company Secretaries Act, 1980;
 - (b) Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959;
 - (c) Actuary within the meaning of the Actuaries Act, 2006;
 - (d) Bachelor in Engineering from a University established by law or an Institution recognised by law;
 - (e) Bachelor in Technology from a University established by law or an institution recognised by law;
 - (f) Bachelor in Architecture from a University established by law or an institution recognised by law;

- (g) Bachelor in Law from a University established by law or an institution recognised by law;
- (h) Master in Business Administration from Universities established by law or technical institutions recognised by All India Council for Technical Education.

Regulation 53B - Membership of professional bodies for partnership

- (1) For the purposes of entering into partnership under Item (4) of Part I of the First Schedule to the Act, a person shall be a member of any of the following professional bodies, namely:-
- (a) Company Secretary, member, The Institute of Company Secretaries of India, established under the Company Secretaries Act, 1980;
 - (b) Cost Accountant, member, The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959;
 - (c) Advocate, member, Bar Council of India established under the Advocates Act, 1961;
 - (d) Engineer, member, The Institution of Engineers, or Engineering from a University established by law or an institution recognized by law.
 - (e) Architect, member, The Indian Institute of Architects established under the Architects Act, 1972;
 - (f) Actuary, member, The Institute of Actuaries of India, established under the Actuaries Act, 2006.
- (2) Professional bodies or institutions outside India whose qualifications relating to accountancy are recognised by the Council under sub-section (2) of section 29 of the Act.

The Chartered Accountants Act, 1949

Section 2(2) of the Act prescribes that a member of the Institute shall be deemed —to be in practice, when individually or in partnership with chartered accountants in practice, or in partnership with members of such other recognised professions as may be prescribed...||

Hence, a Chartered Accountant is permitted to become partner in an MDP of Professionals in Practice that is registered with the Institute of Cost Accountants of India.

COMPANY SECRETARIES

As per Section 2(1)(c) of the Company Secretaries Act, 1980, —Company Secretary means a person who is a member of the Institute;

As per Section 2(2) of the Company Secretaries Act, 1980, Save as otherwise provided in this Act, a member of the Institute shall be deemed "to be in practice" when, individually or in partnership with one or more members of the Institute in practice or in partnership with

members of such other recognised professions as may be prescribed, he, in consideration of remuneration received or to be received,—

- (a) engages himself in the practice of the profession of Company Secretaries to, or in relation to, any company; or
- (b) offers to perform or performs services in relation to the promotion, forming, incorporation, amalgamation, reconstruction, reorganization or winding up of companies; or
- (c) offers to perform or performs such services as may be performed by—
 - (i) an authorised representative of a company with respect to filing, registering, presenting, attesting or verifying any documents (including forms, applications and returns) by or on behalf of the company,
 - (ii) a share transfer agent,
 - (iii) an issue house,
 - (iv) a share and stock broker,
 - (v) a secretarial auditor or consultant,
 - (vi) an adviser to a company on management, including any legal or procedural matter falling under the Capital Issues (Control) Act, 1947 (29 of 1947), the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Companies Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956), any of the rules or bye-laws made by a recognised stock exchange, the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), the Foreign Exchange Regulation Act, 1973, (46 of 1973), or under any other law for the time being in force.
 - (vii) issuing certificates on behalf of, or for the purposes of, a company; or
- (d) holds himself out to the public as a Company Secretary in practice; or
- (e) renders professional services or assistance with respect to matters of principle or detail relating to the practice of the profession of Company Secretaries; or
- (f) renders such other services as, in the opinion of the Council, are or may be rendered by a Company Secretary in practice;

and the words "to be in practice" with their grammatical variations and cognate expressions, shall be construed accordingly.

Clause 4 of Part I of First Schedule to the Company Secretaries Act, 1980 – Professional misconduct in relation to Company Secretaries in Practice

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

(4) enters into partnership, in or outside India, with any person other than a Company Secretary in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (e) of sub-section (1) of section 4 or whose qualifications are recognized by the Central Government or the Council for the purpose of permitting such partnerships;

Regulation 168B of the Companies Secretaries Regulations, 1982- Membership of Professional body for Partnership

(1) For the purposes of entering into partnership under clauses (4) and (5) of Part I of the First Schedule to the Act, a person shall be a member of any of the following professional bodies, namely:-

- (i) The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949 (No. 38 of 1949);
- (ii) The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959 (No.23 of 1959);
- (iii) Bar Council of India established under the Advocates Act, 1961 (No. 25 of 1961);
- (iv) The Institute of Engineers or Engineering from a University established by law or an institution recognized by law;
- (v) The Indian Institute of Architects established under the Architects Act, 1972 (No. 20 of 1972);
- (vi) The Institute of Actuaries of India established, under the Actuaries Act, 2006 (No. 35 of 2006);
- (vii) Professional bodies or institutions outside India whose qualifications relating to Company Secretary recognized by the Council under Sub-section (2) of Section 38 of the Act.]

Hence, a Company Secretary is permitted to become partner in an MDP of Professionals in Practice that is registered with the Institute of Cost Accountants of India.

However, the Institute of Company Secretaries is yet to issue the related guidelines and regulations enabling its members to form or join as partner in an MDP firm.

ADVOCATES

As per Section 2(1)(a) of the Advocates Act, 1961, —Advocate means an advocate entered in any roll under the provisions of this Act.

As per Clause (c) of Regulation 53B of the Regulations, Advocate, Member of the Bar Council of India established under the Advocates Act, 1961 are permitted to enter into a partnership.

However, as per Rule 2 of Chapter III of Part VI- "Conditions for Right to Practice" of the Bar Council of India Rules, 1975,

An Advocate shall not enter into a partnership of any other arrangement for sharing remuneration with any person or legal Practitioner who is not an Advocate.

Hence, unless the Bar Council of India Rules, 1975 are amended, an Advocate cannot enter into partnership with any other professional i.e. an Advocate cannot become a partner in the MDP.

ENGINEERS

Bye Laws of the Indian Institute of Engineers

Membership

Clause 44 - Corporate Members shall comprise of Fellows, Members, and Associate Members. These are elected and approved under clause 47, 48, & 49 respectively.

Clause 67 (a) - Every Fellow, Member and Associate Member is, and is entitled to describe himself as a Chartered Engineer, and in using that description after his name as C.Eng.(I) shall place it after that designation of the class in the Institution to which he belongs, stated in accordance with the following abbreviated forms, namely, F.I.E., M.I.E., A.M.I.E.

Clause 67 (b) - A Fellow or Member or Associate Member practising in partnership with any person who is not a Fellow or Member or Associate Member under the title of a firm shall not use or permit to be used after the title of such firm the designation Chartered Engineer or Chartered Engineers, or described or permit the description of such firm in any way as Chartered Engineers.

Clause 67 (e) - Every member entitled to describe himself as a Professional Engineer can use that description after his name as P.Eng.

Professional Engineers

Clause 75 - In the light of the authority vested by the Royal Charter for certifying the competency of engineers, the Council of The Institution of Engineers (India) may at its discretion, approve that a person fulfilling the educational, technical and other experience criteria as prescribed by it, shall be entitled to describe himself as a 'Professional Engineer'. The procedure and methodology of certification of competency of such a Professional Engineer shall be as formulated and approved by the Council from time to time.

All India Council for Technical Education Act, 1987

Section 2(g) - "technical education" means programmes of education, research and training in engineering technology, architecture, town planning, management, pharmacy and applied arts and crafts and such other programme or areas as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare.

Section 2(h) - "technical institution" means an institution, not being a University which offers courses or programme of technical education, and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions.

Section 2(i) - "University" means a University defined under clause (f) of section 2 of the University Grants Commission Act, 1956 and includes an institution deemed to be a University under section 3 of that Act.

University Grants Commission Act, 1956

Section 2(f) – "University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such institution as may, in consultation with the University concerned, be recognised by the Commission in accordance with the regulations made in this behalf under this Act.

Section 3 – The Central Government may, on the advice of the Commission, declare by notification in the Official Gazette, that any institution for higher education, other than a University, shall be deemed to be a University for the purposes of this Act, and on such a declaration being made, all the provisions of this Act shall apply to such institutions as if it were a University within the meaning on clause (f) of section 2.

Hence, an Engineer, who is a member of the Institution of Engineers, or qualified from a University established by law or an institution recognized by law can become partner of the MDP.

ARCHITECTS

The Architects Act, 1972

Section 2(a)– "architect" means a person whose name is for time being entered in the register.

Section 2(c)– "Indian Institute of Architects" means the Indian Institute of Architects registered under the Societies Registration Act, 1860 (21 of 1860).

Section 2(b)– "Council" means the Council of Architecture constituted under section 3.

Section 2(e)– "register" means the register of architects maintained under section 23.

As per Clause 4 of the Constitution and Bye Laws of the Indian Institute of Architects,

Constitution of the Indian Institute of Architects

Clause 4 (a)- CATEGORY OF MEMBERS: Unless and until the Bye-Laws otherwise provide there shall be seven category of Members of the Institute termed respectively Honorary Fellow, Fellow, Associate, Licentiate, Retired Fellow, Retired Associate and Retired Licentiate. These expressions shall respectively bear the meanings attached thereto by the Bye-laws.

Bye Laws of the Indian Institute of Architects

Bye Laws 1 - Interpretation: "MEMBERS OF THE INSTITUTE" means any person who has been admitted to the Membership of the Institute, whether a Fellow, Associate, Licentiate or Hon. Member, all of whom may hereafter be referred to as Members.

Council of Architecture (COA)

The Council of Architecture (COA) has been constituted by the Government of India under the provisions of the Architects Act, 1972. The Act provides for registration of Architects, standards of education, recognized qualifications and standards of practice to be complied

with by the practicing architects. The Council of Architecture is charged with the responsibility to regulate the education and practice of profession throughout India besides maintaining the register of architects. For this purpose, the Government of India notified the following Rules/Regulations:

- Council of Architecture Rules, 1973
- Council of Architecture Regulations, 1982
- Council of Architecture (Minimum Standards of Architectural Education) Regulations, 2020
- Architects (Professional Conduct) Regulations, 1989

Regulation 2 of the Architects (Professional Conduct) Regulations, 1989

(1) Every architect, either in practice or employment, subject to the provisions of the Central Civil Services (Conduct) Rules, 1964 or any other similar rules applicable to an Architect, he shall [follow the professional code of conduct & services]

(2) In a partnership firm of architects, every partner shall ensure that such partnership firm complies with the provisions of the sub-regulation (1).

Subject to compliance with the abovementioned Rules & Regulations, a member of the Indian Institute of Architects and having his name entered in the Register maintained by the Council of Architecture can become a partner in the MDP.

ACTUARIES

The Actuaries Act, 2006

Section 2(1)(a) - "Actuary" means a person skilled in determining the present effects of future contingent events or in finance modelling and risk analysis in different areas of insurance, or calculating the value of life interests and insurance risks, or designing and pricing of policies, working out the benefits, recommending rates relating to insurance business, annuities, insurance and pension rates on the basis of empirically based tables and includes a statistician engaged in such technology, taxation, employees' benefits and such other risk management and investments and who is a fellow member of the Institute; and the expression "actuarial science" shall be construed accordingly.

Section 2(1)(h) – "Institute" means the Institute of Actuaries of India constituted under Section 3.

Section 2(1)(i) – "Member" means an individual whose name appears in the register of members maintained by the Institute.

Section 2(2) - Save as otherwise provided in this Act, a member of the Institute shall be deemed "to be in practice" when individually or in partnership with Actuaries in practice as a member or an employee of a company, he, whether or not in consideration of remuneration received or to be received,—

- (i) engages himself in actuarial profession; or
- (ii) offers to perform or performs services involving the application of actuarial techniques in the fields of insurance, pension, investment, finance and management; or

- (iii) renders such other services as, in the opinion of the Council, are or may be rendered by an actuary in practice; or
- (iv) is in employment of a person engaged in one or more of the activities mentioned in clauses (i), (ii) and (iii) above,

and the words "to be in practice" with their grammatical variations and cognate expressions shall be construed accordingly.

Explanation.—For the purposes of this sub-section, the expression "company" includes a public financial institution as defined in section 4A of the Companies Act, 1956 (1 of 1956).

Section 9 - Certificate of practice -

- (1) No member of the Institute shall be entitled to practice unless he fulfils the qualifications as may be specified and obtains from the Council a certificate of practice.
- (2) A member who desires to be entitled to practice shall make an application in such form and pay such annual fee for certificate of practice as may be specified and such fee shall be payable on or before the first day of April in each year.
- (3) The certificate of practice obtained under sub-section (1) may be cancelled by the Council under such circumstances as may be specified.

Section 10 - Members to be known as Actuaries -

Every member of the Institute in practice shall, and any other member may, use the designation of an Actuary and no member using such designation shall use any other description whether in addition thereto or in substitution therefor:

Provided that nothing contained in this section shall be deemed to prohibit any such member from adding any other description or letters to his name, if entitled thereto, to indicate membership of such other Institute, whether in India or elsewhere, as may be recognized in this behalf by the Council, or any other qualification that he may possess, or to prohibit a firm, all the partners of which are members of the Institute and in practice, from being known by its firm name as Actuaries.

Section 50 - Maintenance of more than one offices by Actuary -

- (1) Where an Actuary in practice or a firm of such Actuaries has more than one offices within or outside India, each one of such offices shall be in the separate charge of a fellow member of the Institute:

Provided that the Council may in suitable cases exempt any Actuary in practice or firm of such Actuaries from the operation of this sub-section.

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

Part I of the Schedule to the Actuaries Act, 2006 - Professional misconduct in relation to members of the Institute in practice

An Actuary in practice shall be deemed to be guilty of professional misconduct, if he—

- (1) allows any person to practice in his name as an actuary unless such person is also an actuary in practice and is in partnership with or employed by himself; or
- (2) pays by way of remuneration to an employee, pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner; or
- (3) enters into partnership with any person other than an Actuary in practice or a person resident outside India who but for his residence abroad would be entitled to be admitted as

a member under clause (c) of sub-section (1) of section 6 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnership, provided the Actuary shares in the fees or profits of the business of the partnership both within and outside of India.

Hence, an Actuary who does not hold certificate of practice may be permitted by the Central Government or the Council to become a partner in an MDP of Professionals in Practice.
