General Circular No. 10/2011

No. 17/71/2011-CL V

Government of India

Ministry of Corporate Affairs

5th Floor, A Wing, Shastri Bhavan,

Dr. R.P. Marg, New Delhi-110001

Dated : 04.04.2011

C I R C U L A R

Subject :- Interpretation of the word "Partnership" for the purpose of Chartered Accountants Act, 1949, Cost and Works Accountants Act, 1959 and Company Secretaries Act, 1980.

The Acts governing the three professional Institutes define in Section 2 members who are deemed to be in practice. In all the three Acts, there is a provision for a member to be in practice when he is in partnership with certain others. In the case of Chartered Accountants and Cost & Works Accountants, such persons must be member of the same Institute, while in the case of Company Secretaries, it is provided that the partnership could also be with members of such other recognised professions as may be prescribed.

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2 At the time of enactment of the three Acts governing the professional Institutes, only one form of partnership existed in India, namely Partnerships under Indian Partnership Act, 1932. Subsequently, Parliament has enacted the Limited Liability Partnerships Act, 2008. Though Limited Liability Partnerships are bodies corporate under Section 3(i) of the LLP Act, the fact that LLPs are basically partnerships may be seen from the definition in Section 2(i) (n) :-

" Limited Liability Partnerships means a partnership formed and registered under this Act.

Section 2(i)(q) defines a partner as "any person who becomes a partner in the limited liability partnership in accordance with the Limited Liability Partnership Agreement"

It is thus clear that a Limited Liability Partnership is also a partnership and its members are also partners.

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3. The matter of permitting member of ICAI, ICWAI and I ICSI was been examined in this Ministry. Acts governing these professionals were passed at a time when limited liability partnership did not exist. It is also clear from the definitions in the Limited Liability Partnership Act that such entities are also partnerships and their members are also partners. In the context of Section 2 of the Acts governing the professional Institutes, this interpretation is also not repugnant to the context. Accordingly, it is clarified that the words "partnership" wherever occurring in the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980 shall mutatis mutandis be construed as including those Limited Liability Partnerships where all the other partners are natural persons(individuals). The word "partner" shall also be construed accordingly. This clarification shall apply only to these three Acts and not to any other enactment where the word "partnership' occurs.

4. This issues with the approval of Competent Authority.

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Yours faithfully,

(Seema Rath)
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To
All Regional Directors
All Registrar of Companies
All Official Liquidators