

Clarification on Section 39 of Actuaries Act 2006

The Council of the Institute of Actuaries of India pursuant to its power vested under sections 19(1), 19(2), 19(2)(i) and 19(2)(r) of the Actuaries Act 2006 issues the following clarification after having detailed deliberations taking into account views expressed by some members of the Institute and opinions obtained from legal experts.

Section 2(2) of the Act allows an actuary to practice as an employee of a Company. It is important to note that the expression "Save as otherwise provided in this Act" means 'except to the extent specific provision is made'. In other words, Section 2(2) will come into play only in cases which are not governed by any other specific provision of the Act.

Section 39 of the act specifically prohibits companies from engaging in actuarial practice. So, the Section 2(2) allowing an employee to engage in practice should not be construed as allowing the employer of the actuary to engage in actuarial practice.

Therefore, a Company cannot engage in actuarial practice. However, an actuary can engage in actuarial practice in his/her individual professional capacity whether or not he is an employee of a Company.

A company will be deemed to be engage in actuarial practice if

- a) Its Memorandum of Association or Articles of Association provides for actuarial services/practice as one of the objects of the company, or
- b) It offers to perform actuarial services as evidenced by marketing literature or by contracts with the client, or
- c) It performs actuarial services as evidenced by issuance of work products to the client, or
- d) It pays service tax for performing actuarial services, or
- e) any other activities that lead to the company being perceived as a provider of actuarial services by the recipient (client) of the service

Section 39 specifically prohibits companies from engaging in actuarial practice. **Therefore, companies cannot engage in actuarial practice.**

Section 40 provides that no person other than a fellow member of the Institute shall sign any document on behalf of an Actuary in practice or a firm of such Actuaries in his or its professional capacity. **This means an actuary can practice individually either as a 'sole practitioner' or 'sole proprietor' in his professional capacity or a (partnership) firm of actuaries can practice in its professional capacity.**

Section 2(2) states "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.....". **This means an actuary can practice individually in his professional capacity or a (partnership) firm of actuaries can practice in its professional capacity.**

Section 41 of the Act provides for punishment for violation of the Actuaries Act and, for the purpose of this section, company was broadly defined to include any other association of individuals. **This prohibits companies and all other types of associations between individuals (other than partnership between actuaries) from engaging in actuarial practice.**

The Act, however, does not distinguish between limited liability partnerships and partnerships. **Hence, limited liability partnerships will be permissible as long as all the partners are actuaries in practice.**

For any further clarifications, members are advised to write to the president@actuariesindia.org