

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

(Under the provisions of Section 37(2) of the Competition Act, 2010)

**IN THE MATTER OF DECEPTIVE MARKETING PRACTICES BY M/S
INSTITUTE OF COST AND MANAGEMENT ACCOUNTANTS OF
PAKISTAN**

BY

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FAIZ-UR-REHMAN & UROOJ AZEEM AWAN

DATED: May 23, 2023

1. BACKGROUND:

- 1.1 The Competition Commission of Pakistan (the '**Commission**') took notice of the marketing practices of the Institute of Cost and Management Accountants of Pakistan (the '**Respondent**'), which was created through the Cost and Management Accountants Act, 1966 (hereon the '**ICMA Act**'). The ICMA Act reads in particular:
- i. Section 1(2); it extends to whole of Pakistan
 - ii. Section 7; that the members of the institute be known as Cost and Management Accountants
- 1.2 Based on a concern raised against the Respondent, it was observed that the relevant excerpts of the ICMA Act cited above, limit the jurisdiction of ICMA within the boundaries of Pakistan. Moreover, as per the ICMA Act, the members are to be known as "*Cost and Management Accountants*".
- 1.3 It was further observed that notwithstanding the specific provisions contained in the ICMA Act, the current President of the National Council of the Respondent, along with the office bearers and Executive Director have indulged themselves in possible deceptive marketing practices by calling the institute ICMA-International, without any amendment to the ICMA Act. The 'ICMA-International' is also being regularly used on stationery/advertisement, webpages, social media and emails of the Respondent. (Evidence attached as 'Annex-A' for reference).
- 1.4 Furthermore, it was observed that the Respondent, in order to attract students, also declared that the qualified members are to be known as 'Chartered Management Accountants' and are in a profession of 'Chartered Management Accountancy', without adhering to the provisions of Section 7 of the ICMA Act.
- 1.5 Such conduct of the Respondent appeared to have the tendency to harm business interest of other undertakings, amounting to a, *prima facie*, violation of Section 10 (2) (a) of the Act. Moreover, the conduct of the Respondent also appeared to distribute false or misleading information to consumers lacking reasonable basis related to place of production, properties, suitability for use and quality of goods (services), *prima facie*, a violation of Section 10 (2) (b) of the Act.
- 1.6 In light of the aforementioned observations, a preliminary probe was conducted wherein the Respondent was called upon to substantiate the justification of its marketing campaigns with respect to the observations made. However, the facts collected thus did not substantiate the marketing practices of the Respondent.

1.7 Based on the preliminary probe, the Competent Authority decided to initiate an enquiry in accordance with the provisions of Section 37(1) of the Act by appointing Mr. Faiz-ur-Rehman, Joint Director (OFT) and Ms. Urooj Azeem Awan, Deputy Director (OFT) as Enquiry Committee to conclude the enquiry. The Enquiry Committee was directed to conduct an enquiry and to submit its findings and recommendations, *inter alia*, on the following;

- i. *Whether the conduct of the Respondent is capable of harming the business interest of other undertakings, prima facie, in violation of Section 10 (2) (a) of the Act?*
- ii. *Whether the Respondent is disseminating false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the place of production, properties, suitability for use, and quality of goods, prima facie, in violation of Section 10 (2) (b) of the Act?*
- iii. *Whether the conduct of the Respondent is in violation of Section 10 (1) of the Act in general;*
- iv. *Whether there is a spillover effect of the conduct of the Respondent?*

2. SUBMISSIONS OF THE RESPONDENT:

- 2.1 The relevant portions of the concern received against the Respondent and the observations of the Commission in the matter were first forwarded to the Respondent for comments on 18th of March, 2022. However, M/s Ali & Associates, on behalf of the Respondent, requested for an extension vide letter dated 5th of April, 2022, which was granted through a letter dated 8th of April, 2022. The Respondent submitted its comments through its legal counsel vide letter dated 20th of April, 2022, the contents of which are reproduced below.
- 2.2 It was submitted that the Respondent was established in the year 1951 with the objective to regulate and promote the profession of Management Accounting in Pakistan and has been entrusted with the responsibility to provide education, examine competencies and confer internationally recognized post-graduate professional certification. It was further submitted that the Respondent is chartered under the Cost and Management Accountants Act No. XIV of 1966 of the Parliament of Pakistan and its activities are governed under the Cost and Management Regulations 1990, as revised from time to time.
- 2.3 It was submitted that the Respondent currently has over 15,000 students, more than 200 faculty members, over 260 employees, 07 regional and 06 overseas Branch Councils, 11 education campuses and 20 examination centres.

- 2.4 It was submitted that as a chartered body, it is not motivated by a desire for profits but does believe that it has a duty to modernize and bring forth changes that will add value to its members and students.
- 2.5 Pertaining to the merits of the matter, the Respondent submitted that the ICMA-Pakistan has changed its nomenclature to ICMA- International, which appears on two of its websites; www.icmap.com.pk and www.icmainternational.com, all the promotional material as well as on the brochures of various courses offered.
- 2.6 The step was taken by the Respondent as a necessary modernizing tool in order for the professional management of accounting in Pakistan to come at par with the international standards and alleviate any difficulty faced by Pakistani professionals in being recognized in local and global markets. As such, this step was an important branding exercise to assist Pakistani expertise in domestic as well as international markets as previous nomenclature was hindering the progress of students and members of the Respondent, restricting its image to Pakistan only.
- 2.7 In reply to the concerns shared, it is submitted that it has been inferred in the concerns that professional qualifications and qualifying bodies are bound by territorial jurisdiction, and that perhaps was true in the past but is no longer the case. The global profession of accountancy/ management accountancy has been going through significant changes, and qualifying organizations are no longer confined to their countries but are actively conducting international outreach and offering global qualifications.
- 2.8 An example of the above is the alliance between the Association of International Certified Professional Accountants (AICPA), USA, and Chartered Institute of Management Accountants (CIMA), UK, who formed a joint venture in 2011 and created a new global designation, Chartered Global Management Accountant (CGMA). This was followed in 2016 by the two bodies coming together to form the Association of International Certified Professional Accountant® which as per their statement *"represents 696,000 members, students and engaged professionals in public and management accounting and advocates for the public interest and business sustainability on current and emerging issues. With broad reach, rigor and resources, the Association advances the reputation, employability and quality of CPAs, CGMA designation holders and accounting and finance professionals globally."*
- 2.9 It was submitted that such international organizations, alongwith universities such as the University of London, are actively operating in Pakistan, offering services to Pakistani residents.

- 2.10 The Respondent has actively sought to broaden its outlook in the interest of its members and students. Pivotal to this has been international affiliations with numerous international boards and programs, including but not limited to; International Federation of Accountants (IFAC), International Accounting Standards Board (IASB), the International Integrated Reporting Council (IIRC), International Corporate Governance Network (ICGN), Confederation of Asian and Pacific Accountants (CAPA) and South Asian Federation of Accountants (SAFA).
- 2.11 It was also submitted that the Respondent's qualifications are aligned with its parent body IFAC, on whom the Respondent has based its curriculum and pedagogy; as a result of which it enjoys the highest rating of IFAC Statements of Membership Obligations (SMO's) i.e., 7 out of 7 at sustain level. Moreover, all the International Financial Reporting Standards (IFRS) at International Auditing Standards (IASs) are also being taught to the students.
- 2.12 In addition to this, the Respondent is engaging with international bodies and organizations so as to ensure that its members and students are able to practice outside of Pakistan. This has been further established with the Respondent's modus operandi wherein it provides its students with distance learning programs globally to the extent that its examinations are even conducted vide remote proctoring worldwide.
- 2.13 It was reiterated that the Respondent is providing its members who even reside abroad with CPD activities, and currently it has approximately 1500 members serving in over 40 countries across the world.
- 2.14 Moreover, the Respondent has also established overseas branch councils/chapters in UK, UAE, Australia, Canada, KSA, Oman, Qatar and USA. In addition to the above, the Respondent has also sought registration as a foreign establishment in UK, UAE, Australia and Canada.
- 2.15 It was submitted that it is evident, the changed nomenclature is in no way an attempt at deceiving any person but rather aimed at facilitating fellows and members, with the aim of enhancing their global employability as well as depicting the internal operations/presence of the Respondent more appropriately.
- 2.16 The change in nomenclature of the certification, as with the case above, is driven by the sole purpose of facilitating members and aligning their qualifications with updated global norms. It is pertinent to note that for more than 20 years from its inception, members were designated as "Industrial Accountants," which was subsequently changed to "Cost and Management Accountant." This was done in line with changing global trends of the time, and which remains the motivation today.

- 2.17 It was submitted that the term “Cost and Management Accountant” has been replaced across the world by the term “Chartered Management Accountant” in most countries, and most accounting qualifications worldwide today use term "Chartered" or "Certified." For ease of reference, below is a list of selected Accounting Qualifications in the world, which are starting from either Certified or Chartered;
- i. Certified Public Accountant (CPA)
 - ii. Certified Management Accountant (CMA)
 - iii. Certified Internal Auditor (CIA)
 - iv. Certified Information System Auditor (CISA)
 - v. Chartered Accountant (CA)
 - vi. Chartered Certified Accountant (ACCA)
 - vii. Chartered Financial Analyst (CFA)
 - viii. Chartered Global Management Accountant (CGMA)
 - ix. Chartered Professional Accountant (CPA)
 - x. Chartered Public Finance Accountant (CPFA)
- 2.18 As a guiding example, in the UK, the Chartered Institute of Management Accounts (CIMA), amended its designation from "Cost and Management Accountant to "Chartered Management Accountant". Therefore, in view of the above and in order to facilitate students / members and in order to keep Pakistani expertise aligned with the global trends, the Respondent has adopted the use of the term "Chartered Management Accountant”.
- 2.19 It was emphasized that the Respondent has the statutory authority to define qualifications with respect to subjects, levels, stages, framework, learning methodology, examination criteria and other related matters from time to time without any further approval from any forum, as such the council approved the qualification title Chartered Management Accountant, which was previously informally known as ICMA Qualified.
- 2.20 By way of conclusion, the Respondent informed that it is a professional accounting body with its main aim and purpose to facilitate its students and professionals, and subsequently to improve job prospects locally and internationally. The aforementioned steps have been taken by the Respondent in order to assist its students and members better in order for their expertise to be recognized globally.
- 2.21 In furtherance of the reply submitted by the Respondent, another letter, dated 10th of May, 2022, was written to the Respondent to appear for a meeting on the 25th of May, 2022, to further clarify the following;
- i. The statutory authority of ICMAP, as referred to in the reply by the Respondent
 - ii. Jurisdiction of ICMAP and use of the word ‘International’
 - iii. Nomenclature of certification, i.e., ‘Chartered Management Accountants’

- iv. Bill for amendment to the ICMA Act as proposed in 2015
- v. Council resolution passed in favour of change of nomenclature and use of 'International', if any.

2.22 The meeting was rescheduled for 27th of May, 2022, vide letter dated 20th of May, 2022. However, the meeting was again rescheduled for the 1st of June, 2022 via correspondence over telephone.

2.23 The meeting was led by Mr. Aamir Ijaz Khan, Executive Director ICMAP, Ms. Hanya Haroon, Senior Associate and Mr. Saif Ahmad, Associate, Ali & Associates. From the Commission, the meeting was attended by Ms. Kishwar Khan, Director General, Mr. Salman Zafar, Sr. Director, and Ms. Urooj A. Awan, Deputy Director, Office of Fair Trade.

2.24 During the meeting, a set of documents were handed over by the Senior Associate in response to the clarifications sought vide letter referred to in Para No. 2.21 above.

2.25 The submissions during the meeting included the following documents:

- i. Extract of minutes of 380th meeting of the National Council held on Thursday, June 13, 2019, titled "Registration of overseas Branches and Branding", bearing SR. No. 5029.5;
- ii. Extract of minutes of 384th meeting of the National Council held on Saturday, June 13, 2020, titled "Titles of Qualifications/ Certifications and alignment of Regulations specially related to Education and Exams of the Institute", bearing SR. No. 5064.8;
- iii. List of Institutes with Royal Charter;
- iv. CIMA Journey;
- v. CIMA Wikipedia;
- vi. 2015 Bill [to be introduced in the National Assembly];
- vii. The Cost and Management Accountants Act, 1966; and
- viii. Cost and Management Accountants Regulations, 1990.

2.26 A brief summary of the 380th National Council Meeting, referred to in Para No. 2.25 (i) above, explained that the Council deliberated that in order to facilitate their members in various countries; Institute should have its own legal entity registered over there. To start with,

preference should be given to the countries where Overseas Branch Councils have been formed i.e. UAE, KSA, Canada and Australia.

- 2.27 The ED apprised the Council that the Respondent has now started its operations i.e. education, exams, CPD activities, job placements, technical support etc. in various overseas branches. In this regard, various concerns have been shown by the overseas branch representatives that title of the Respondent should have the words like Global or Worldwide or International as being used by ACCA and CIMA to market themselves. In contrast to this, their overseas branches are facing constraints to market their activities.
- 2.28 ED suggested to market the Institute as ICMA International, this change in the title will enable them to market their activities in a better way at par with the international counter parts. In addition, this will also enhance the confidence of Pakistan based students and other stakeholders that the Respondent is an organization which is performing globally or internationally. Council after thorough deliberation decided to also market the Institute with the new logo/brand name title and website name as "ICMA International" and slogan should be "Lead Strategically" whereas the legal name of the Institute will remain the same. Council also authorized the Executive Committee to get this new logo/ brand name reserved with IPO and ensure its implementation.
- 2.29 In the 384th meeting, referred to in the Para No. 2.25 above, the Council considered the recommendations of the Executive Committee and approved the following and related titles of qualifications and certifications of the Institute:
- i. Affiliate Financial Accountant (Informally known as ICMA Inter)
 - ii. ***Chartered Management Accountant (Informally known as ICMA Qualified)***
 - iii. ***Chartered Cost Accountant (will be introduced as specialization in Cost Accounting Standards and Rules)***
 - iv. ***Chartered Cost and Management Accountant (as additional titles)***
 - v. Certified Professional Accountant (as additional titles)
 - vi. Certified Corporate Director (for Directors Training Program)
 - vii. Certified Business Strategist (as additional titles for FCMAs)
- 2.30 Regarding changes in Regulations, Executive Director presented the suggested amendments required in Regulations related to Education, Examination, Student Affairs and digitalization of various processes which are in contradiction with the decisions of the Councils and need to be amended for more than a decade, this will help to remove the ambiguities existing in processes.
- 2.31 The National Council approved the suggested changes as per attached Annexure and authorized the Executive Committee to get these approved by the Ministry of Finance.

- 2.32 The documents also included a list of institutes possessing a Royal Charter, wherein the list has been emphasized on the entry of “The Institute of Cost and Management Accountants” being granted a Royal Charter with the change in name to “The Chartered Institute of Management Accountants”, more commonly known as CIMA.
- 2.33 Following the reply, the current enquiry was initiated by the Commission, whereby another opportunity was given to the Respondent vide letter dated 21st of Dec, 2022, to further clarify the mandate of the enquiry.
- 2.34 The Respondent replied vide letter dated 31st of Dec, 2022, wherein the Respondent emphasized that the initiation of the enquiry was improper and not maintainable. The Respondent referred to the Section 31 of the Cost and Management Accountants Act, 1966, relevant excerpts of which are reproduced below;

“31. Protection of action taken in good faith-

No suit, prosecution or other legal proceedings shall lie against the [Federal Government] or the Council in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any regulation or order made thereunder.”

- 2.35 The Respondent stressed upon the fact that it had acted in good faith and assisted the Commission and in this regard, the authorized officer of the Respondent, along with ICMAP's legal representatives personally attended the meeting dated 2nd June 2022 and earlier had already submitted a detailed response vide letter dated 20th April 2022. It was submitted that this highlights the Respondent's bona fide, however this should not be construed as the Respondent waiving the statutory issue as highlighted.
- 2.36 Notwithstanding the above, the Respondent submitted the following detailed response:
- 2.37 With regards to the Respondent's use of word 'International' on its various marketing material, accordingly, it has changed its nomenclature from 'ICMA-Pakistan' to 'ICMA-International'. That the step has been adopted as a necessary modernizing change in order for the professional management of accounting in Pakistan to come at par with international standards and alleviate any difficulty faced by Pakistani professionals in being recognized in local and global markets. As such this step is an important branding exercise to assist Pakistani expertise in domestic as well as International markets as the previous nomenclature was hindering the progress of students and members, restricting the brand image of the Respondent to Pakistan only.
- 2.38 In the concerns cited by individuals, it is inferred that professional qualifications and qualifying bodies are bound by territorial jurisdiction, and that perhaps was true in the past

but is no longer the case. The global profession of accountancy / management accountancy has been going through significant changes and qualifying organizations are no longer confined to their countries but are actively conducting international outreach and offering global qualifications.

- 2.39 An example of the above is the alliance between the Association of International Certified Professional Accountants (AICPA), USA, and Chartered Institute of Management Accountants (CIMA), UK, who formed a joint-venture in 2011 and created a new global designation, Chartered Global Management Accountant (CGMA). This was followed in 2016 by the two bodies coming together in 2017 to form The Association of International Certified Professional Accountants which as per their statement "represents 696,000 members, students and engaged professionals in public and management accounting and advocates for the public interest and business sustainability on current and emerging issues. With broad reach, rigor and resources, the Association advances the reputation, employability and quality of CPAs, CGMA designation holders and accounting and finance professionals globally.
- 2.40 These international organizations, along with international universities such as the University of London, are actively operating in Pakistan and offering qualifications to Pakistani residents. In order to keep abreast with these significant changes, the Respondent has actively sought to broaden its outlook in the interests of its members and students. Pivotal to this strategy are International affiliations and today the Respondent is affiliated with numerous international programs/boards, including but not limited to; International Federation of Accountants (IFAC), International Accounting Standards Board (IASB), The International Integrated Reporting Council (IIRC), International Corporate Governance Network (ICGN), Confederation of Asian and Pacific Accountants (CAPA) and South Asian Federation of Accountants (SAFA). It is pertinent to mention here that the Respondent's qualifications are aligned with its parent body IFAC, on whom the Respondent has based its Curriculum and pedagogy; as a result of which the Respondent enjoys the highest rating of IFAC Statements of Membership Obligations (SMOS) i.e. 7 out of 7 at Sustain level. Moreover, all the International Financial Reporting Standards (IFRS) & International Auditing Standards (IASS) are also being taught to the students of the Respondent.
- 2.41 In addition to this, the Respondent is engaging with international bodies and organizations for reciprocal arrangements and actively seeking to expand the recognition of the qualifications garnered by its students / members internationally so that they so as to ensure that they are able practice outside Pakistan. This can be further established from its modus operandi wherein the Respondent is providing its students and members with distance learning programs globally to the extent that its examinations are even conducted vide remote proctoring worldwide.

- 2.42 It was reiterated that the Respondent is providing its members who even reside abroad with CPD activities and currently it has approximately 1500 members who serve in over 40 countries across the world. Lastly the Respondent has also established overseas branch councils/chapters in UK, UAE, Australia, Canada, KSA, Oman, Qatar and USA. In addition to the above, it has also sought registration as a foreign establishment in UK, UAE, Australia and Canada. As is evident, the changed nomenclature is in no way a violation of Section 10 of the Competition Act or an attempt at deceiving any person but rather aimed at facilitating fellows and members, with the aim of enhancing their global employability as well as depicting the internal operations/presence more appropriately.
- 2.43 In response to the change in the nomenclature of the certification offered by the Respondent from 'Cost and Management Accountants' to 'Chartered Management Accountants', it was submitted that it is driven by the sole purpose of facilitating members and aligning their qualifications with updated global norms.
- 2.44 It is pertinent to note that for more than twenty (20) years from its inception, members were designated as "Industrial Accountants," which was subsequently changed to "Cost and Management Accountant." This was done in line with changing global trends of the time, and which remains the motivation today. The term Cost and Management Accountant has been replaced across the world by the term Chartered Management Accountant in most countries, and most accounting qualifications worldwide today use term "Chartered" or "Certified." A list of selected Accounting Qualifications in the world have been reiterated by the Respondent, which have not been reproduced again for the sake of brevity.
- 2.45 It was submitted that as a guiding example, in UK the Chartered Institute of Management Accounts (CIMA) amended its designation from "Cost and Management Accountant" to "Chartered Management Accountant". Therefore, in view of the above and in order to facilitate students/members and in order to keep Pakistani expertise aligned with the global trends, the Respondent has adopted the use of the term "Chartered Management Accountant".
- 2.46 It is pertinent to note that the Respondent has the statutory authority to define qualifications with respect to subjects, levels, stages, framework, learning methodology, examination criteria and other related matters from time to time without any further approval from any forum, as such the council approved the qualification title Chartered Management Accountant, which was previously informally known as ICMA Qualified.
- 2.47 In this regard, the requisite extracts from the Cost and Management Accountants Act, 1966 were reproduced as below:

14. Functions of the Council.-

(1) The Council shall exercise such powers and perform such functions as may be necessary to carry out the purpose of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provision, the powers and functions of the Council shall include-...

(c) The prescribing of qualifications for entry of persons as members of the Institute;

(d) The recognition of foreign qualifications and training or experience for purposes of membership of the Institute;...

(1) The regulation and maintenance of the status and standard of professional qualifications of the members of the Institute;...

(m) The exercise of such other powers and the performance of such other functions as are required to be, or may be, exercised or performed by the Council under this Act or regulations made thereunder.

- 2.48 Upon concluding, it was submitted that the Respondent is a professional accounting body with its main aim and purpose to facilitate its students and professionals and subsequently to improve job prospects locally and internationally. The aforementioned steps have been taken by the Respondent in order to assist its students and members better in order for their expertise to be recognized globally.
- 2.49 That the Respondent hopes the aforementioned satisfies the concerns while bearing in mind Section 31 of the Act, it can note that the subject enquiry is improper and the same to be withdrawn.

3. ANALYSIS:

- 3.1 The Enquiry Committee was given the mandate to conduct an investigation and to submit the enquiry report by giving its findings and recommendations, *inter alia*, on the following issues:
- i. *Whether the conduct of the Respondent is capable of harming the business interest of other undertakings, prima facie, in violation of Section 10 (2) (a) of the Act?*
 - ii. *Whether the Respondent is disseminating false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the place of production, properties, suitability for use, and quality of goods, prima facie, in violation of Section 10 (2) (b) of the Act?*

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iii. *Whether the conduct of the Respondent is in violation of Section 10 (1) of the Act in general;*

iv. *Whether there is a spillover effect of the conduct of the Respondent?*

- 3.2 At the outset, it is stated that the Respondent in its reply has invited attention of the Commission towards the provisions contained in Section 31 of the ICMA Act, which is reproduced hereunder for reference:

“31. Protection of action taken in good faith-

No suit, prosecution or other legal proceedings shall lie against the [Federal Government] or the Council in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any regulation or order made thereunder.”

- 3.3 In this connection, it is pointed out that the Respondent has misconstrued the contents of Section 31 of the Act, because neither the council is a body of the Government nor the institute can claim itself as part of Government particularly, keeping in view the definition provided by the Hon'ble Supreme Court of Pakistan vide its Judgement in the Mustafa Impex Case (2016 PLD 808).
- 3.4 Before moving forward, it is necessary to establish the difference between false and misleading information. The Commission, in its order held against **M/s CMPak Limited¹**, has defined “**False**” and “**Misleading**” information as deceptive marketing practices in the following manners:

False Information:

‘False information’ can be said to include: oral or written statements or representations that are; (a) contrary to truth or fact and not in accordance with the reality or actuality; (b) usually implies either conscious wrong or culpable negligence; (c) has a stricter and stronger connotation, and (d) is not readily open to interpretation.

Misleading Information:

“Whereas ‘misleading information’ may essentially include oral or written statements or representations that are; (a) capable of giving wrong impression or idea, (b) likely to lead into error of conduct, thought, or judgment, (c) tends to misinform or misguide owing to vagueness or any omission, (d) may or may not be deliberate or conscious and (e) in contrast to false information, it has less onerous connotation and is somewhat open to interpretation as the circumstances and conduct of a party may be treated as relevant to a certain extent.”

¹ <http://cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%202029-09-09%20.pdf>

- 3.5 The above reference suggests that the information distributed via marketing campaigns, which results in the flow of business/economic value away from a competitor/s or helps gain an undue competitive advantage in the market, thereby harming business interest of other undertakings, amounts to deceptive marketing practices in terms of Section 10 (2) (a) of the Act.
- 3.6 Similarly, distribution of false or misleading information which is capable of giving a wrong impression with respect to a good or service, thereby inducing a consumer into distorted decision making and causing potential of consumer injury, amounts to deceptive marketing practices in terms of Section 10 (2) (b) of the Act.
- 3.7 Moreover, it can be deduced from the precedent cited above that the distribution of false information is deliberate whereas the distribution of misleading information can be either intentional or purely coincidental. Either way, the distribution of both through marketing activities is a violation of Section 10 (1) of the Act, irrespective of the intent of the undertaking.
- 3.8 In light of the principles set out by the Commission in its previous orders, we will now analyse the facts of the current matter within the mandate defined by the Commission.
- 3.9 There are two marketing practices of the Respondent that have been brought under scrutiny by the Commission in the instant enquiry, which are as follows;
- a. The use of the word ‘International’ along with the abbreviation ICMA by the Respondent across various marketing media
 - b. The change in nomenclature of the certification ‘Cost and Management Accountants’ to ‘Chartered Management Accountants’

a. The use of the word ‘International’ along with the abbreviation ICMA by the Respondent across various marketing media

- 3.10 The Respondent was constituted under the ICMA Act, wherein the word *Institute* has been defined under Section 2 (f)² as:

“‘Institute’ means the Institute of [Cost and Management Accountants of Pakistan] constituted under this Act;”

- 3.11 The name ‘Cost and Management Accountants of Pakistan’ was substituted for the prior name ‘Institute of Cost and Industrial Accountants’ through an amendment to the ICMA Act in 1976.

² https://www.icmap.com.pk/pdfs/act_n_regulations.pdf

3.12 Therefore, in light of the definition provided by the ICMA Act, the institute is to be abbreviated as 'ICMA Pakistan'. Moreover, the same abbreviation also appears across the headers throughout the ICMA Act³.

3.13 Moving on, the preliminary chapter of the ICMA Act defines the extent of the Respondent as;

"1. Short title, extent and commencement.-

(2) – it extends to the whole of Pakistan."

3.14 The extent defined by the ICMA Act has clearly limited the scope of the Respondent to the jurisdiction of Pakistan.

3.15 The Respondent, during correspondence, has submitted that since its inception, it has over 15,000 students, more than 200 faculty members, over 260 employees, 07 regional and 06 overseas Branch Councils, 11 education campuses and 20 examination centres. Moreover, it has submitted that through the inception of overseas Branch Councils and conducting online tuition and examinations for overseas students in foreign lands, it has achieved the status of an international institute, and thereby the use of the word 'International' with its name in replacement of 'Pakistan' is substantiated and justified.

3.16 In this regard, it is important to revisit the definition of a Branch Council, as given within the ICMA Act, for reference;

"17. Branch Councils.–

(1) For the purpose of advising and assisting it in the discharge of its functions, the Council may constitute one or more Branch Councils as and when it considers necessary.

(2) A Branch Council shall be constituted in such manner and perform such functions as may be prescribed."⁴

3.17 This suggests that a Branch Council is only formed to further the functions of the Respondent as defined within the ICMA Act, which have already been jurisdictionally limited to the boundaries of Pakistan.

3.18 Taking into account the provisions of the ICMA Act, it can be deduced that the Respondent has been incorporated to provide education within the jurisdiction of Pakistan. The certification acquired so is globally recognizable, however, this still does not entitle the Respondent to call itself an 'International' institute without prior approval in the form of an amendment to the ICMA Act. As of date, no bill has yet been presented to the National Assembly with suggestion of change of the Respondent's name to 'ICMA International'.

³ *ibid*

⁴ *ibid*

3.19 Therefore, the use of the title 'ICMA International' is contrary to the facts of the matter.

3.20 The Respondent has been found to be using the abbreviation 'ICMA International' across various marketing media, including but not limited to,

- its webpage found at <https://www.icmainternational.com/>,
- its promotional flyers distributed in print and electronic form such as via emails to its members
- through its Facebook page named as "**ICMA International | Karachi**" found at <https://www.facebook.com/icmapak/>,
- through its official YouTube page named as "**ICMA International Official**", found at <https://youtube.com/@ICMAPakistanOfficial>,
- through its Twitter account named as "**ICMA International (@icmapdotpk)**", found at <https://twitter.com/icmapdotpk>,
- through its Instagram account named as "**ICMA International (@icmapak)**", found at <https://www.instagram.com/icmapak>.
- through its office stationary, including but not limited to, its letterheads (*As acknowledged by the Respondent itself, referred to in Para No. 2.5 above*).

(Attached as **Annex-A** for reference)

b. The change in nomenclature of the certification 'Cost and Management Accountants' to 'Chartered Management Accountants'

3.21 The ICMA Act defines its members under Section 7 as:

"7. Members to be known as Cost and Management Accountants.—

(1) Every member of the Institute in practice shall, and every other member may, use the designation of Cost and Management Accountant.

(2) No member of the Institute in practice using the designation of Cost and Management Accountant shall use, whether in addition thereto or in substitution thereof, any other costing designation:

Provided that nothing in this sub-section shall be deemed to prohibit any such member from adding any other description or designatory letters to his name, if entitled thereto, to indicate membership of such other institute of accountancy whether in Pakistan or elsewhere, as may be recognised by the Council in this behalf, or any other qualification that he may possess, or to prohibit a firm, all the partners of which are members of the Institute in practice, from being known by its firm name as Cost and Management Accountants.⁵

⁵ *ibid*

- 3.22 The ICMA Act has clearly defined its members to be known as Cost and Management Accountants.
- 3.23 In this regard, it has been found during investigation, also acknowledged by the Respondent, that a bill for amendment to the ICMA Act was presented to the National Assembly in year 2015, with suggestion for change in nomenclature of the certification among other suggestions. It was suggested in the bill to change the nomenclature of the certification to 'Chartered Management Accountants' in line with the global practices.
- 3.24 The Bill of 2015, as passed by the National Assembly, was put forth the Senate of Pakistan in year 2017. The relevant excerpts from the report of the Standing Committee on the Cost and Management Accountants (Amendment) Bill, 2017⁶, read;
- "6. The representative of the ICMA apprised the Committee that they had proposed two amendments in the Cost and Management Accountants Act, 1966, i.e., change of designation of the members from "Cost and Management Accountant" to "Chartered Management Accountant" and Sector Specific Certification in Cost Accounting, however, the National Assembly Standing Committee on Finance while considering said amendment recommended that the word "Chartered" should not be part of the amendment."*
- And;
- "9. In view of the above, the Committee recommended that the Cost and Management Accountants (Amendment) Bill, 2017, as passed by the National Assembly, may not be passed by the Senate."*
- 3.25 In light of the above Bill for amendment, it is evident that the same was not approved and therefore, the use of such, without prior amendment to the ICMA Act, is contrary to the law and facts.
- 3.26 It is also important to bring into consideration that the word 'Chartered' is used by institutes that have been granted a Royal Charter. A Royal Charter is an instrument of incorporation, granted by The [Queen]ⁱ, which confers independent legal personality on an organisation and defines its objectives, constitution and powers to govern its own affairs Incorporation by Charter is a prestigious way of acquiring legal personality and reflects the high status of that body. The authority for the grant of a Charter comes from the Royal Prerogative, that is to say, the grant is made by the Sovereign (on the advice of the Privy Council)⁷.
- 3.27 A list of all bodies granted a Royal Charter to date can be accessed at <https://privycouncil.independent.gov.uk/wp-content/uploads/2023/03/2023-03-24-Record-of-Charters-Granted.pdf>.

⁶ https://senate.gov.pk/uploads/documents/1492512375_947.PDF

⁷ <https://web.archive.org/web/20190621160229/https://privycouncil.independent.gov.uk/royal-charters/chartered-bodies/>

- 3.28 Upon an inspection of the list, it is found that '*Institute of Cost and Management Accountants*' was, through an amendment in its Royal Charter on 12th Feb, 1975, renamed as '*The Chartered Institute of Management Accountants*', also widely known as CIMA for the sake of brevity. It is important to emphasize here that the CIMA qualified members are known as 'Chartered Global Management Accountants'.
- 3.29 Whereas, contrary to the above, the Respondent being the *Institute of Cost and Management Accountants of Pakistan* has not been granted a Royal Charter. Therefore, the use of the word 'Charter' is contrary to the facts of the matter.
- 3.30 The Respondent has been found to be using the nomenclature 'Chartered Management Accountants' across various marketing media, as already specified in Para No. 3.20 above.
- i. **Whether the conduct of the Respondent is capable of harming the business interest of other undertakings, prima facie, in violation of Section 10 (2) (a) of the Act?**
- 3.31 In light of the Para No. 3.10 and 3.30 above, it is evident that the use of the word 'International' along with the Respondent's firm name, whilst replacing word 'Pakistan', and the change of nomenclature of qualification from 'Cost and Management Accountants' to 'Chartered Management Accountants' is contrary to the facts and circumstances of the matter.
- 3.32 Moreover, as defined in Para No. 3.4 above, any information disseminated through marketing communication, which is contrary to the facts, is considered a false information under Section 10 of the Act.
- 3.33 Furthermore, in light of the Bill for amendment proposed and rejected, it is evident that the Respondent had knowledge of the fact that the replacement and dissemination of the nomenclature 'Chartered Management Accountants' is false and fraudulent. The Respondent, while being aware of the status of the Bill proposed, deliberately chose to continue to use the replaced nomenclature without making the consumer aware of the facts of the matter.
- 3.34 By calling the institute 'International', and changing the nomenclature to 'Chartered Management Accountant', the Respondent has gained an undue competitive advantage, thereby creating potential to harm the business interest of other undertakings in the market offering similar certifications.
- 3.35 In light of the analysis drawn above, the Respondent is, through the use of 'ICMA International' as a firm name, and 'Chartered Management Accountant' as nomenclature, found to be, *prima facie*, engaged in the dissemination of false information, which is capable of harming the business interest of other undertakings, thereby in violation of Section 10 (2) (a) of the Act.

ii. **Whether Whether the Respondent is disseminating false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the place of production, properties, suitability for use, and quality of goods, prima facie, in violation of Section 10 (2) (b) of the Act?**

3.36 It can be deduced that the nomenclature 'Chartered Management Accountant' strikes a great resemblance to that of the 'Chartered Global Management Accountants' acquired through CIMA qualification, and 'Chartered Accountant' acquired through the Institute of Chartered Accountants of Pakistan qualification.

3.37 The fact that the nomenclature has the ability to cause confusion between different qualifications raises potential of making a wrong decision. For the purposes of the Act, a consumer is construed in the widest possible angle and does not have to be diligent. A consumer, for the purposes of the Act is a common foreseeable user. In this regard, there is a high likelihood that a consumer might get confused or deceived by the use of a different nomenclature than what has been defined within the ICMA Act.

3.38 Furthermore, implying that an institute is international through name, without having justification or substantiation for the same, has potential of causing confusion in the minds of the consumer regarding the position/ status/ ranking of the institute on the global forum. It has implied meanings that an institute possesses a certain kind of international stature, which is contrary to the facts of the instant matter.

3.39 In light of the above, the Respondent is, through the use of 'ICMA International' as a firm name, and 'Chartered Management Accountant' as nomenclature, found to be engaged in the dissemination of false information lacking a reasonable basis, related to the place of production, properties, suitability for use, and quality of goods, *prima facie*, in violation of Section 10 (2) (b) of the Act.

iii. **Whether the conduct of the Respondent is in violation of Section 10 (1) of the Act in general?**

3.40 As summarised in Para No. 3.35 and 3.39 above, by having found to be *prima facie* violating Section 10 (2) (a) & (b) of the Act, the Respondent has been found to be engaged in Deceptive Marketing Practices, thereby violating Section 10 (1) of the Act.

iv. **Whether there is a spillover effect of the conduct of the Respondent?**

3.41 As regards the effect of anti-competitive behaviour spilling over territorial limits of other provinces is concerned, it is noted that the services of the Respondent are spread nationwide thereby, removing the intra provincial territorial boundaries.

4. CONCLUSION & RECOMMENDATION:

- 4.1 In light of the analysis, the Respondent is, through the use of 'ICMA International' as a firm name, and 'Chartered Management Accountant' as nomenclature, found to be, *prima facie*, engaged in the dissemination of false information which is capable of harming the business interest of other undertakings, thereby in violation of Section 10 (2) (a) of the Act.
- 4.2 Moreover, the Respondent is, through the use of 'ICMA International' as a firm name, and 'Chartered Management Accountant' as nomenclature, found to be engaged in the dissemination of false information lacking a reasonable basis, related to the place of production, properties, suitability for use, and quality of goods, *prima facie*, in violation of Section 10 (2) (b) of the Act.
- 4.3 Therefore, the Respondent is also found to be *prima facie* engaged in deceptive marketing practices, in violation of Section 10 (1) of the Act.
- 4.4 The conduct of the Respondent is not bound by territorial limitations of the provincial boundaries.
- 4.5 To ensure free and fair competition in the market undertakings should be stopped from marketing their products in deceptive and misleading manner. The undertakings should be encouraged to resort to the marketing practices that are transparent and give consumers/customers true and correct information. Therefore, in light of the above mentioned findings, it is recommended that the Commission may consider initiation of proceedings against M/s Institute of Cost and Management Accountants of Pakistan under Section 30 of the Act for the, *prima facie*, violation of Section 10 of the Act.

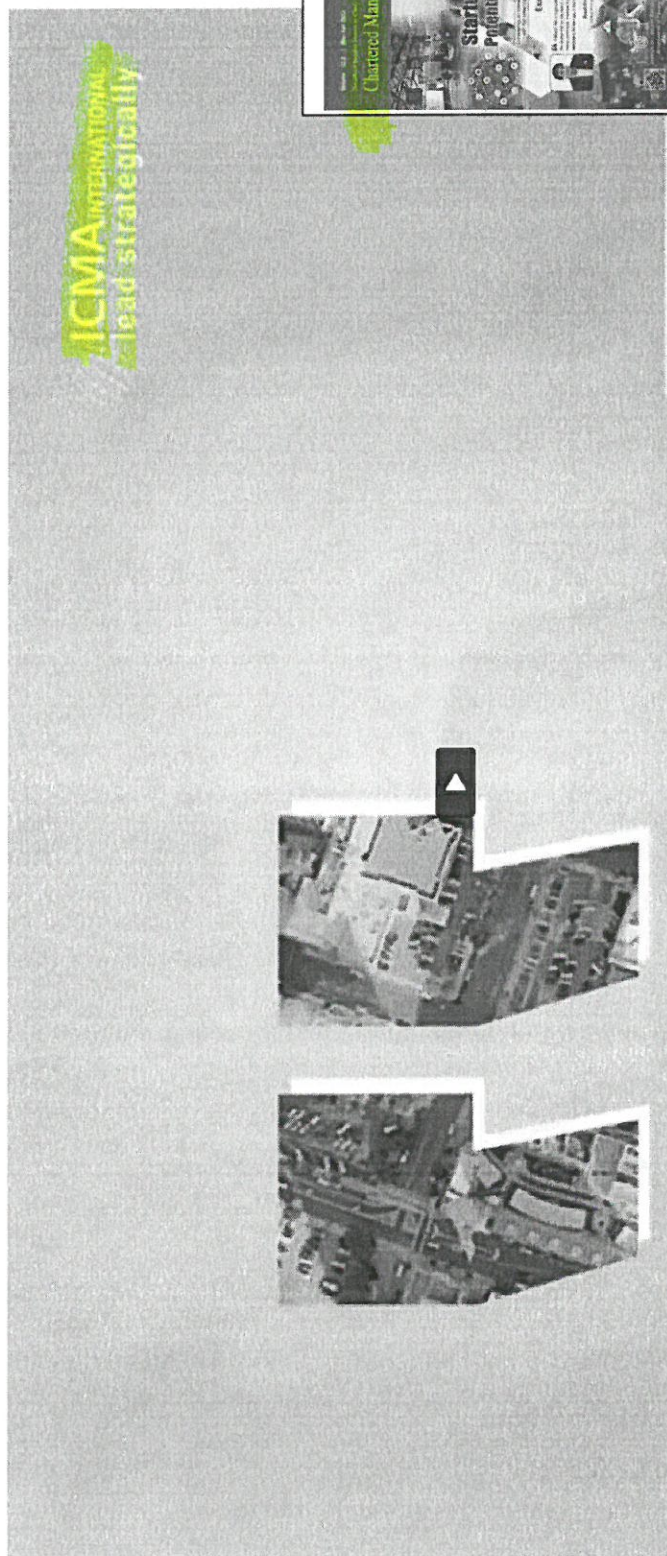


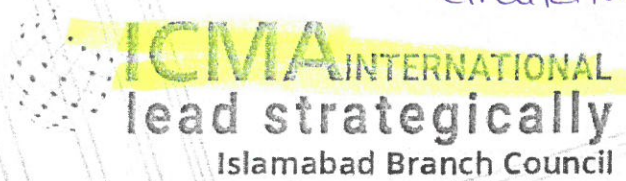
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Joint Director (OFT)
Enquiry Officer



Ms. Urooj A. Awan
Deputy Director (OFT)
Enquiry Officer

ⁱ To be read as the current Sovereign of the State





Seminar on International Women's Day



**'DigitALL: Innovation and Technology
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Chief Guest:

Ms Palwasha Behram - Senator
Mr. Shehzad Ahmed Malik- President ICMA

Guests of Honour:

Farhatullah Babar (The Ex-Senator)
Shahida Rehmani - MNA & Chairman Standing Committee
President Women chamber (RCCI)
FBR Asst Commissioner
Asif Khan, CEO, Shaheed Bhutto Foundation
Dr. Alshan Huma, Professor
Saleem Mandviwala
Ms. Ayesha Khan - CEO Hashoo Foundation
Ms. Maliha Hasmi (Senior Journalist)

Moderator:

Dr.Sadia Kamal (Journalist)

Program Details:

Day, Date & Timing:

Wednesday, March 8, 2023, 04:00 pm to 07:00 pm
(Followed by Dinner)

Venue: ICMA H-9, Islamabad

Participants:

Students/ Members/ Affiliates

CPD: 3 Hours

Investment:

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Contact for registration:

Zahir Mehmood Abbasi (ICMA)

Ph. 051-4435170, Mobile: 0300-9832906

Miss Faiza Khatoon

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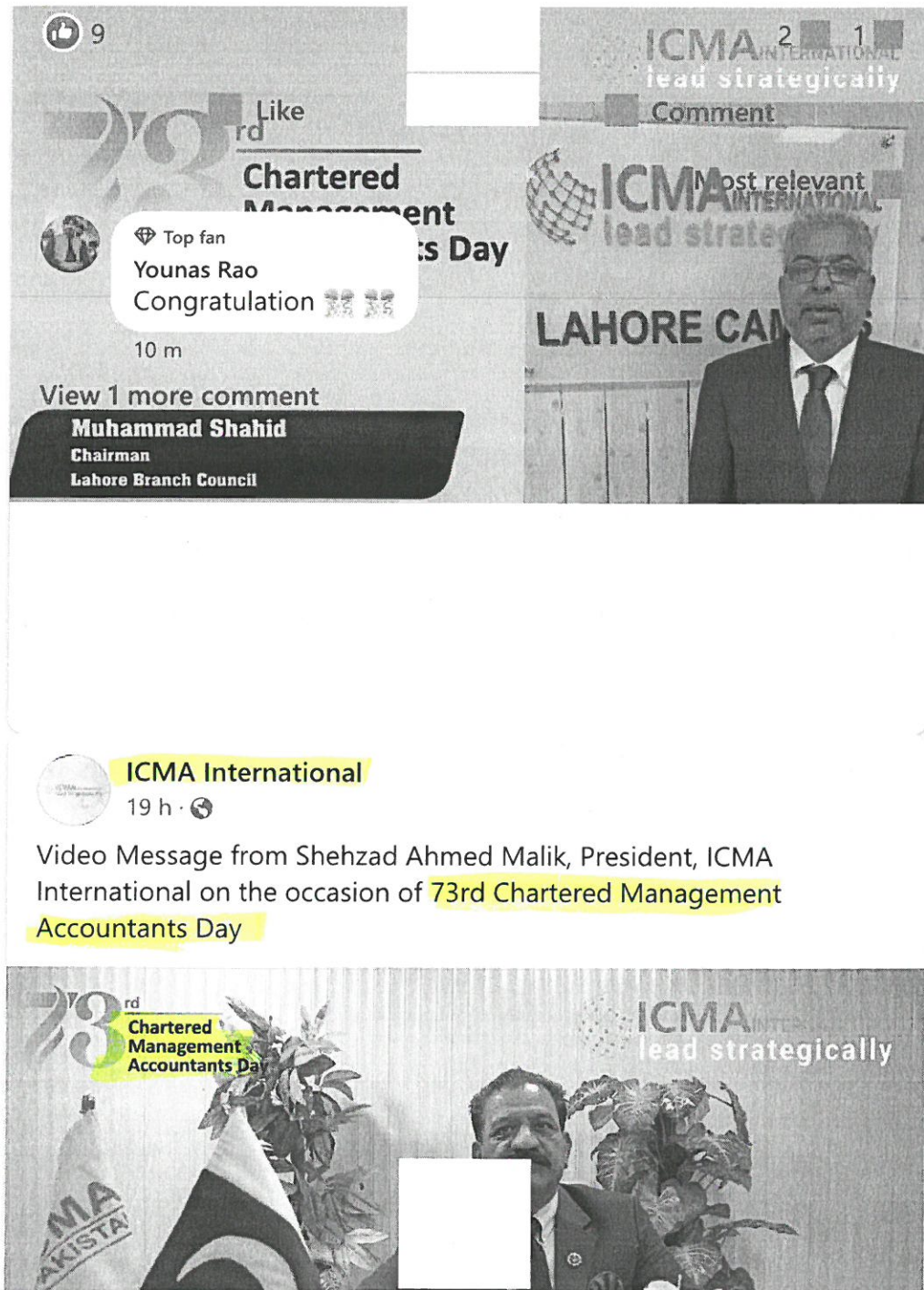
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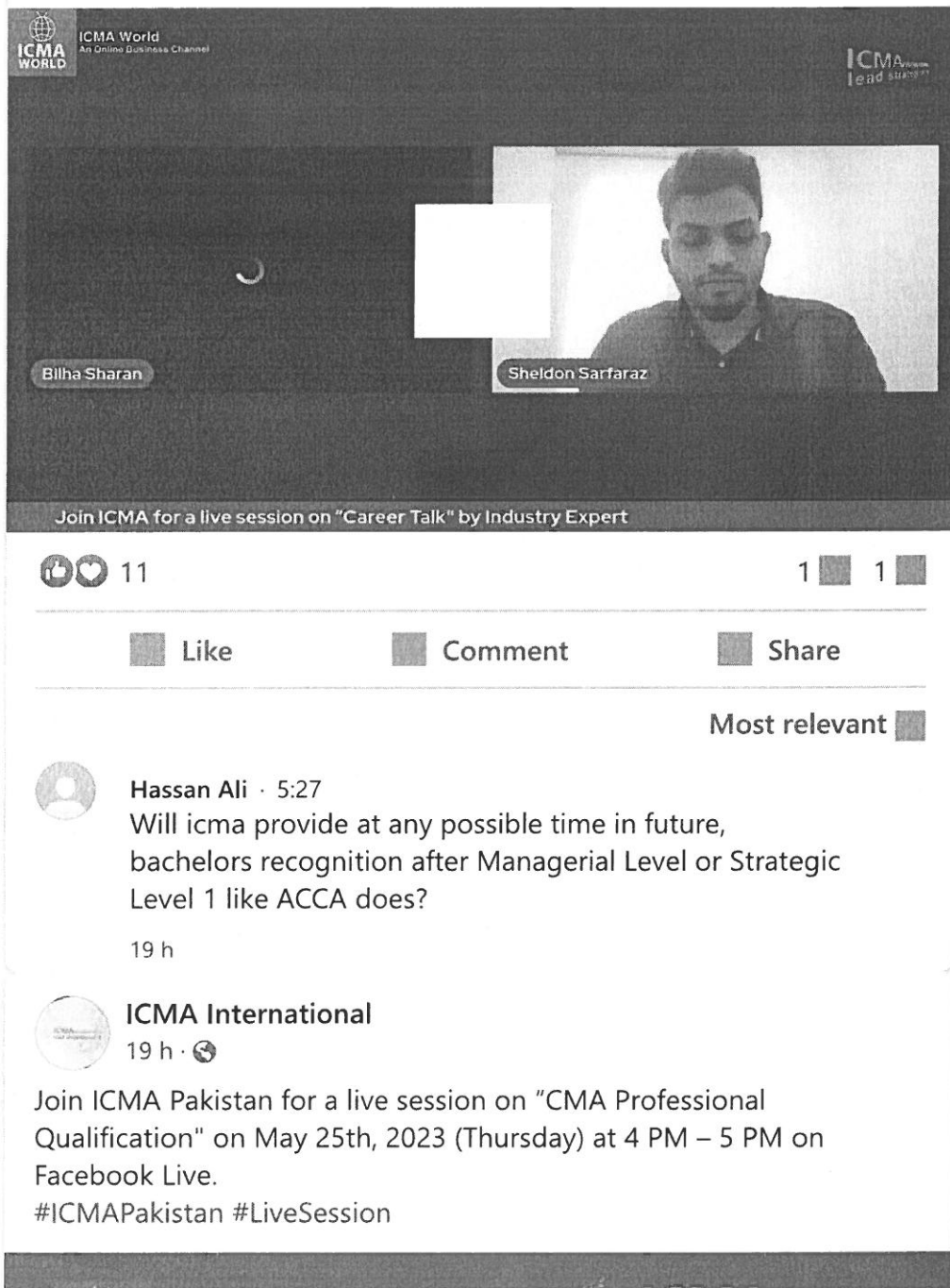
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Message from Senator Mohammad Ishaq Dar - Federal Minister for Finance & Revenue on the occasion of **73rd Chartered Management Accountants Day**.

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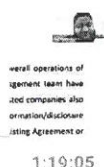
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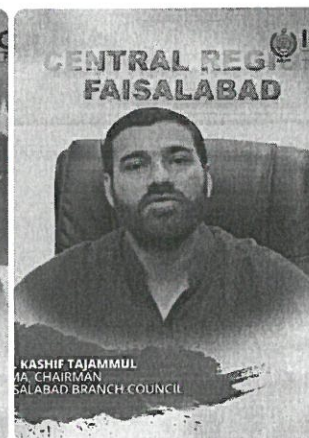
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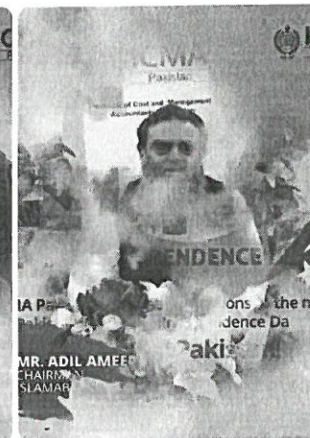
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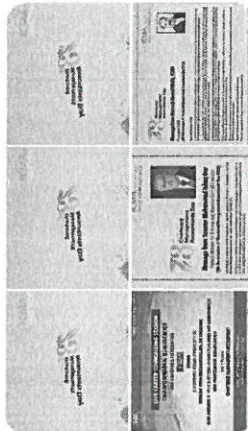
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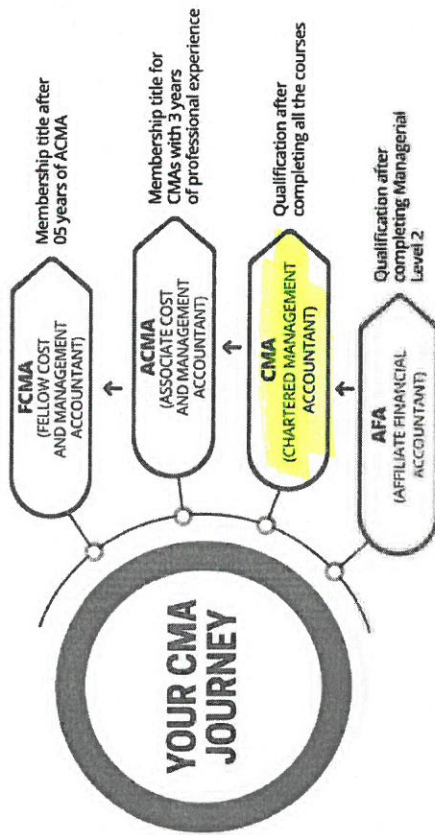
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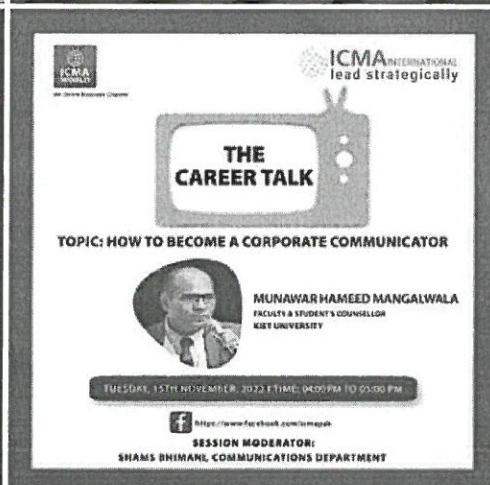
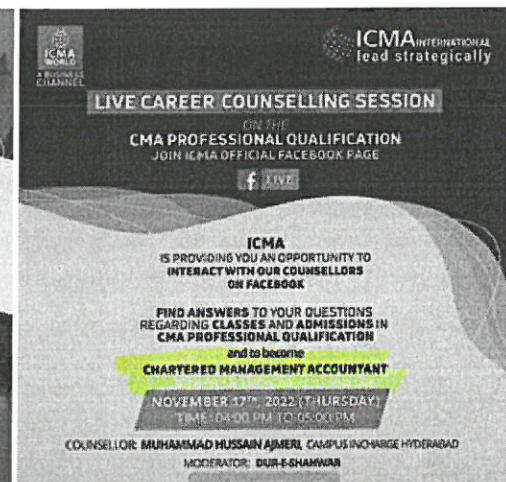
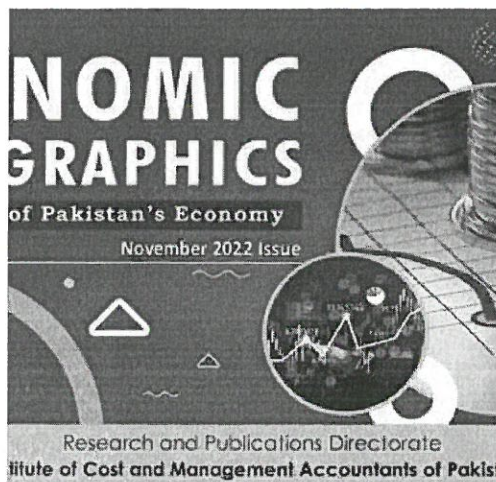
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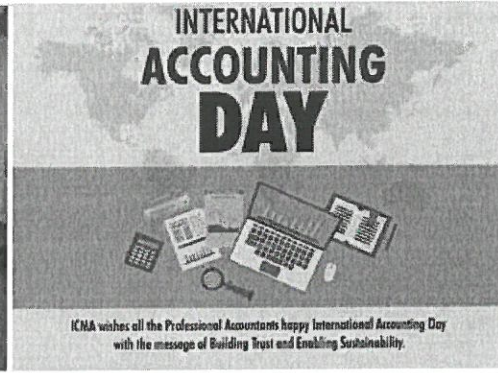
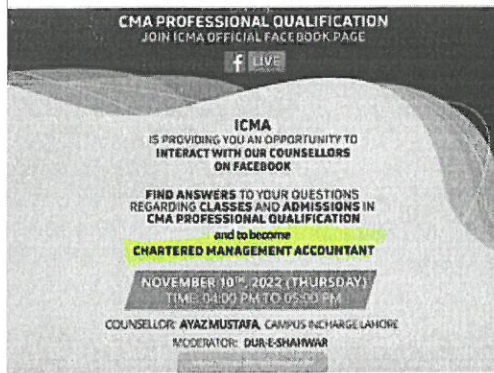
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