

## J.B. Nagar CPE Study Circle of WIRC of ICAI

Venue: Hotel Kohinoor Continental, Andheri Kurla Road, J.B. Nagar, Andheri (East)

### “Disciplinary Committee (Code of Conduct)-Proceedings”

- CA Chandrashekhar N. Vaze

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#### **1. INTRODUCTION -**

Ethics means moral values. It is easier to be principled but difficult to be ethical. One can be transparent; but one needs to be accountable. I feel, ‘Ethics’ is nothing but accountability to one’s conscience. In the field of Ethics, one is either ethical or not ethical. There is no ‘in between’ stage.

The coverage of the topic is too vast. I propose to briefly deal with the essence of Code of Ethics.

#### **2. CODE OF ETHICS (COE) – ITS NECESSITY**

The whole foundation of any profession, particularly CA profession, is its credibility. The sole purpose of COE is to ensure and uphold this credibility. It distinguishes a profession from business. This is not to say that a business need not or does not have ethics.

Many of our members perceive COE as a burden. They are totally mistaken. On the contrary COE seeks to protect the interests of the profession as a whole. It is a shield that enables us to command respectability.

Another grievance among members is that when the entire world is behaving anyway it wishes, why CAs be subjected to such restrictions that are apparently outdated ! Answer is simple. Just as eternal vigilance is a cost of independence, the restrictions are the cost for the credibility and respect. In ancient Chaturvarnya system, Brahmin class enjoyed privileges. At the same time, there were maximum restrictions on that class. In today’s world, intellectuals and professionals are the Brahmin class.

On the other hand, there is a criticism against our Council that the complaints against CAs are not processed very seriously, there is considerable delay in disposing of the complaints, punishments awarded are too mild, and so on. Thus, the society expects the COE to be implemented very strictly.

### 3. **SOURCE OF COE** –

Our Institute's Motto – '**Ya Esha Supteshu Jagarti**' is adopted from Kathopanishad and it denotes 'eternal vigilance' – awakening when the world is asleep.

Ethics are as old as human civilization. It is nothing but the laws or rules of acceptable behaviour.

There are four recognised sources of law –

- First is 'custom'. E.g. Our Hindu law;
- Second is Legislation – Codified law. E.g. various Acts that we study.
- Third is judicial pronouncements; and
- Fourth is experts' opinions.

The Chartered Accountants' Act, 1949 (as amended by the CAs (Amendment) Act, 2006) contains certain provisions that give us this COE.

But I believe, the entire foundation of our COE can be traced back to a few scriptures from Taittireeya Upanishad. The Gurus (sages) used to send off their pupils with the following well-known preachings –

- Satyam Vada – Speak the truth
- Dharmam Chara – Follow the rules of the religion (perform duty); and
- Swādhyāyān-Mā-Pramadah – Do not commit default in self-study (This is our CPE).

### 4. **SUGGESTED READING / REFERENCES** –

- The Chartered Accountants Act, 1949 [as amended by the CAs (Amendment) Act, 2006].
- CA Regulations of 1988.
- ICAI publication on 'Code of Ethics' (Eleventh edition January 2009).
- Chartered Accountants (Procedure of Investigations of Professional and other misconduct and conduct of cases) Rules, 2007 published in official Gazette of India dated February 28, 2007 ('Enquiry Rules').
- FAQs published by ICAI. (Aug. 2004).
- Appellate Authority (Procedure) Rules, 2011.
- Manual for members.
- ICAI Website for various pronouncements.

- Ethical Standard Board ('ESB') website and Handy brochure namely Ethics Plus issued by the ESB

A note on important amendments made Chartered Accountants (Amendment) Act, 2006 is enclosed at **Annexure I**.

## **5. CODE OF ETHICS – ITS BROAD CONTENTS AND SCOPE :**

5.1 The provisions regarding 'misconduct' are contained in Chapter V of the Chartered Accountants Act, 1949 ('the Act'). Section 21 prescribes the procedure in enquiries relating to misconduct of the members while section 22 defines the professional misconduct. Basically 'professional misconduct' shall be deemed to include any act or omission specified in either of the schedules to the Act. However, the section further confers powers on the Institute to enquire into any '**other misconduct**' of a member. Thus, the scope is very wide and can cover any misconduct, which may not be committed in the course of professional work. **It refers to the conduct unbecoming of a professional.** The Amendment Act has inserted Sections 21 (Disciplinary Directorate), 21A (Board of Discipline), Sec. 21B (Disciplinary Committee), Sec. 21C (Authority of BOD, DC and Director Discipline), Sec. 22A (Appellate Authority).

5.2 There are two schedules to the Act.

### **5.3 There are four parts in the First Schedule**

**Part I** contains professional misconduct in relation to CAs **in practice**. There are twelve clauses.

**Part II** covers misconduct in relation to members **in service** and has two clauses.

**Part III** specifies three clauses of misconduct in relation to members in general.

**Part IV** contains two clauses of 'Other Misconduct' in relation to all members generally.

### **5.4 There are three parts in the Second Schedule**

**Part I** contains ten clauses in relation to CAs in practice.

**Part II** has four clauses relating to members generally.

**Part III** covers residuary cases of 'Other Misconduct'.

## 5.5 **Important Pronouncements Of ICAI:**

While performing our duties as a professional, the knowledge of laws and other Rules and regulations affecting a particular assignment is fundamental. It is a must. However, apart from the domain knowledge, one also needs to constantly bear in mind the provisions of CA Act, Regulations, technical pronouncements of ICAI and also a few notifications of ICAI. Violation of these pronouncements, doubtless, is a professional misconduct.

- **Guidelines for advertisement for the members in practice**
- **Website Guidelines**
- **Guidelines for practice in Corporate Form of Practice**
- **List of occupations which require general or specific permission** (Appendix 9 of CA Regulations, 1988)
- **Council General Guidelines, 2008**

The Guidelines pertain to –

- (i) Conduct of a member being an employee.
- (ii) Prohibition of appointment of member as cost auditor.
- (iii) Prohibition on expressing an opinion on financial statements of a relative.
- (iv) Maintenance of books of account by Members.
- (v) Ceiling on tax audit assignments (Max. 60 nos. other than clause (c) of Sec. 44AB of I.T. Act, 1961).
- (vi) Appointment of an auditor where undisputed audit fees of previous auditor are unpaid.
- (vii) Maximum number of audit assignments under Companies Act, 1956 (overall ceiling of 30 nos. despite the ceiling / liberties specified in Companies Act).  
Members are required to maintain a register of audits done.
- (viii) Ceiling on fees for other assignments of the same client whose statutory audit is done by a member.
- (ix) Not to accept audit where member is indebted for more than Rs.10,000/-
- (x) Directions on unjustified removal of auditors.
- (xi) Minimum audit fees in certain cases (this chapter has been repealed by the Council at its 306th Meeting held from 7th to 8th June, 2011).

CA Regulations 1988 have also been amended.

- **Other recommended self – regulatory measures – (Pages 324 to 327 of COE – Edition 2009)**
  - Branch audit and joint audit vis-à-vis no. of partners.
  - Ratio between qualified and unqualified staff.
  - Disclosure of interest by auditors in other firms.
  - Ceiling on the fees. Interestingly the clause relating to undercutting of fees is being deleted.
  - Know Your Client Norms
- The council has issued **Guidelines for conversion of CA firms in to LLPs** [Guidelines No.1 – CA (7)/03/2011, dtd. 4<sup>th</sup> Nov. 2011]. Members may also refer to MCA circular dated 4<sup>th</sup> April, 2011. It may be noted that the said Council Guidelines mention that LLPs shall be subject to the same regulations, as if they were partnership firm. Mere conversion into LLP does not give any privileges, which were not earlier with the CA firms. Thus, there is no immunity to LLPs from applicability of Code of Ethics.

5.6 The Council in its 281st meeting held in October 2008 considered an issue arising from the Guidance Note on Tax audit under section 44AB of the Income-tax Act, 1961 as to "Whether the internal auditor of an assessee, being an individual chartered accountant or a firm of chartered accountants can be appointed as his tax auditor".

***The Council decided that an internal auditor of an assessee, whether working with the organization or independently practicing chartered accountant or a firm of chartered accountants, cannot be appointed as his tax auditor.***

The said clarification of the council has been published in the January 2009 issue of The Chartered Accountants Journal.

5.7 Further, Ethics Plus (brochure) issued by the ESB has dealt with the following issues in question-answer format. The extract of important question-answer has been reproduced herewith:

***“53. Whether a statutory auditor can accept the system audit of same entity?***

*Yes, the statutory auditor can accept the assignment of a system audit of the same entity, provided it did not involve any scrutiny/review of financial data and information.*

**66. Can a Concurrent Auditor of a Bank also undertake the assignment of quarterly review of the same bank?**

*No, the Concurrent audit and the Assignment of quarterly review of the same entity cannot be taken simultaneously as the concurrent audit is a kind of internal audit and the quarterly review is a kind of statutory audit. It is prohibited in terms of the 'Guidance Note of Independence of Auditors'.*

**67. Can a member act as an Insurance Agent and arrange business for Insurance Company?**

*No, members are permitted to render Insurance Financial Advisory services. It is not permissible to the members to do any kind of marketing and business procurement for any insurance company. These services should remain limited to professional services in the form of advisory and consultancy services".*

- 5.8 Every member of the Institute is entitled to designate himself as a Chartered Accountant. Section 2(2) of the Act defines the members who are deemed to be in practice. In terms of section 7, a member in practice cannot use any designation other than that of a Chartered Accountant. He cannot use any other description such as 'Tax Consultant'. However, he may indicate membership of accountancy bodies, which have been approved by the Council. E.g. the Council has permitted the description of DISA for those who have completed the ISA course. **But the members are not permitted to use the initials 'CPA' and 'CISA'.**

Section 8 enumerates the disabilities for the purpose of membership such as less than 21 years of age, unsound mind, undischarged insolvency, conviction of an offence involving moral turpitude, etc.

Members would be well advised to refer to the ICAI publication on Code of Ethics – ***Eleventh edition January 2009 (reprinted edition being of May 2009).***

- 5.9 As per amendment brought by the Ministry of Corporate Affairs in December 14, 2015 to the Companies (Audit and Auditors) Rules, 2014, if an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government.

- 5.10 A few selected items of importance where a member may need to take specific care are listed in **Annexure II.**

## 6. **Authority attached to the various documents issued by the Institute :**

- 6.1 There are various pronouncements made by the Institute from time to time. It is necessary to know their binding nature.
- 6.2 **Statements** – These are issued on critical matters and are mandatory. It is the duty of the members to follow these statements while discharging their attest function. The deviation from the statement should be adequately disclosed.
- 6.3 **Accounting Standards and Auditing and Assurance Standards (AAS)** which are now known as **Standards on Auditing ('SA')**. These become mandatory from the dates notified by the Institute from time to time. Till then, the 'statements' remain in force. Once an AS/SA becomes mandatory, the concerned statement or its relevant part stands withdrawn.
- 6.4 **Guidance Notes** - These are recommendatory in nature. A member should ordinarily follow them except where he is satisfied that in the circumstances of the case, it may not be necessary to do so. He may also consider a suitable disclosure in this regard.

## 7. **Authorities to Implement COE –**

- A. **Director (Discipline) ('DD')** - Section 21
- B. **Board of Discipline ('BOD')**– Section 21A (to deal with offences under First Schedule)
- C. **Disciplinary Committee ('DC')** – Section 21B (to deal with offences under Second Schedule)
- D. **Appellate Authority ('AA')** – Section 22A to section 22G (Both the schedules)  
Central Government will constitute Appellate Authority.

## 8. **Important principles –**

- 8.1 Action for misconduct can be initiated either on receiving a Complaint or information from any source. There can be *suo moto* action by the Council.



- 8.2 Complainant need not come with clean hands. Council is not concerned with nor has jurisdiction over the complainant's behaviour or conduct.
- 8.3 Complaint once lodged cannot ordinarily be withdrawn except with the permission of the BOD/DC.
- 8.4 Council has jurisdiction basically over an individual member; and not over firms; or on outsiders.
- 8.5 Even if complainant pardons the respondent, or offers to withdraw the complaint, or does not pursue it, or remains absent in the hearing, Respondent is not automatically absolved. Council steps into the shoes of the complainant and takes it to logical conclusion.
- 8.6 In terms of Rule 12, a complaint may not be entertained if it is filed beyond a period of 7 years from the date of occurrence of event complaint against. This is at the discretion of the Director Discipline (DD) if he is satisfied that enquiry would be procedurally inconvenient or difficult. Difficulty in producing the evidence or charges in circumstances may be the relevant factors.
- 8.7 It is of no avail even if Respondent compensates the complainant for any losses. It does not undo the misconduct.
- 8.8 The fact whether complainant or anybody else is aggrieved or has suffered any loss or not is of no consequence while holding a member guilty.
- 8.9 It includes both professional misconduct as well as 'other misconduct'. The latter is too wide; and goes beyond the 'Code'. – i.e. beyond the items listed in the schedules. It implies a behaviour unbecoming of a professional.
- 8.10 There is no time limit for disposal of complaint! Proceedings may continue for years together!

**9. Broad procedure –**

- 9.1 Complaint to be filed in Form I.
- 9.2 Filing fee Rs.2,500/-
- 9.3 Complaint forwarded to Respondent for his explanation.
- 9.4 Explanation forwarded to complainant for his rejoinder.
- 9.5 After these three documents, DD may call for any information as he thinks necessary; and decides whether there is a 'prima facie' guilt under either of the schedules or 'other misconduct'.
- 9.6 If no prima facie finding of 'guilt', the matter is closed with the concurrence of BOD.
- 9.7 If prima facie guilty, then BOD/DC depending upon the nature of offence conducts a detailed enquiry.
- 9.8 BOD/DC to give report on its findings as to the guilt.
- 9.9 One more hearing to decide the punishment.
- 9.10 Orders then passed by BOD/DC are appealable to AA. Member of ICAI aggrieved by order of BOD/DC; or the DD may prefer an appeal.
- 9.11 Appeal is to be filed within 90 days from the date of receipt of the order.
- 9.12 Filing fee Rs.5,500/-

**10. Persons authorised to represent**

- Any other member of ICAI
- Any advocate
- Any member of ICSI or ICWA

There are certain persons who are treated as disqualified for representing.

**11. Punishment –**

Punishment may be any one or more of the following –

**For First Schedule** (by Board of Discipline)

- i) Reprimand
- ii) Suspension upto 3 months
- iii) Fine upto rupees one lakh.

**For Second Schedule** (by Disciplinary Committee)

- ii) Reprimand
- iii) Suspension for any period or permanently
- iv) Fine upto rupees five lakhs.

Now, there is no need to refer the case to High Court.

Apart from these direct statutory punishments, there are other consequences – viz. From the date a member is held prima facie guilty, he is disqualified for allotment of audits from RBI, other banks, C & AG and other Government Bodies. It may be clarified here that these restrictions are of those respective Bodies and not of our Institute. If there is suspension of membership, the disqualification continues for a few more years. Even eligibility to train articles is lost. It is ultimately a stigma. Almost invariably, the process itself is more torturous and painful than the punishment itself.

## **12. Persons who normally complain**

- 12.1 Normally, the users of our services – viz. Clients, Financial Institutions, Banks, Lenders, Investors, Regulatory Authorities are the complainants.
- 12.2 Apart from these, the staff members, articled trainees, co-professionals and total strangers also file complaints. There are instances where members have complained against their partners.
- 12.3 Private complaints come mainly out of ego-problem, rivalry or under mistaken belief that by harassing the auditor, one may settle a score against somebody else. It is used as an 'arm-twisting' measure.
- 12.4 There are even professional 'black mailers' in this field.
- 12.5 Unfortunately, there is considerable ignorance in this regard. This results in a mental agony to the Respondent for a long time (a few years). Quite often, there is an unintended hardship and complainant often repents for this.

## **13. Other exposures / vulnerability –**

Complainants often are a little too enthusiastic. Apart from resorting to the disciplinary proceedings, they also approach –

- Police, with criminal complaint
- Press, for defamation
- Consumer Forum

- 13.1 The profession is so vulnerable and the complaints are so damaging that the respondent member has hardly anything in his hands even to protect himself, let alone retaliation. Unfortunately, no one can really help in such a night-marish situation.
- 13.2 More often than not, the complaints are either frivolous or ill-motivated. It also entails considerable expenditure of the Institute. There is no mechanism to avoid such wasteful exercise. The only key, perhaps, is 'Do Good and Be Good'.
- 13.3 In this connection, '**Peer Review**' could be a good preventive step. It should be taken and implemented in its proper spirit by our members in their own self interest.

**14. Introduction of Arbitration –**

There is one welcome development. For resolving the disputes or grievances among the members inter-se; or between articulated trainees and members, ICAI is planning to introduce the concept of arbitration. It is expected to lessen the hardship, shorten the time and reduce the expenditure. At the same time, it could be more effective.

**15. Common observations –**

Thanks to my experience in this field over past 10 years and having handled dozens of cases involving all types of firms & proprietary concerns, I believe, my observations would be useful and enlightening –

- 15.1 Members do many things in too much of 'good faith'.
- 15.2 Members don't care even for basic documentation. They overlook two maxims – viz.
- Work should not only be done, but it should be seen that it is done. And
  - Faintest of Ink is stronger than the strongest of memories.
- 15.3 Members lack pro-activeness and fail in time-management. Many a time, quality is compromised due to the seasonal pressures of meeting statutory deadlines.
- 15.4 Members are so obsessed with tax-considerations, that principles of accounting and auditing are side-lined.

- 15.5 It has been a common observation that many members lack communication skills. They are not assertive especially when it comes to saying 'No' to unjustified demands of client or other party. Training in soft skills will help overcome many problems.
- 15.6 Greed is an all pervasive phenomenon in the present Kaliyug and that leads to several compromises. Sometimes it is even the economic compulsion of a practitioner that compels him to compromise on his ethics. .
- 15.7 Members lack unity. There is no collective action except in academic exercises.
- 15.8 One tends to believe that the profession as a whole lacks courage. It appears to be spineless. Whether professionals are able to exercise independence is a question.
- 15.9 There are constraints of resources. Many members do not have proper infrastructure, manpower, library for reference books and space to preserve the records.
- 15.10 Corruption at all levels may compel an ordinary member to adopt undesirable means.
- 15.11 Too many technicalities in various legislations tend to be either meaningless or unwarranted or disproportional to the size of business. It is impossible to keep pace with such so-called developments. One needs to think whether the field of accounting, audit and finance really warrants so much of refinement! Thus, the need for 'knowledge-updation' is rather excessive, expensive and at times practically impossible to keep track of.
- 15.12 Once any complaint is received the immediate reaction of the respondent is to counter attack the complainant and to prove that the complainant himself is a bad person. In this process, the focus on the merits of the case is diluted. It is advisable for the respondents to concentrate on merits in their own defence.
- 15.13 Procedurally, there is no system of counselling to both the parties – before the stage of admission of a case as 'prima facie guilty'. That can prevent good amount of wasteful exercise.

- 15.14 People who administer/implement this COE – bureaucrats as well as the members of BOD/DC need to be trained in the processing of complaints.
- 15.15 Invasion by the firms of different culture have brought a degree of hypocrisy and double standards in the profession. It has destroyed the ‘good faith’ and ‘mutual trust’. There is a feeling of skepticism, suspicion and distrust.
- 15.16 It may sound a little odd or orthodox; but excessive use of technology also leads to many hazards. The check-list approach has taken the place of ‘application of mind’. In fact, there is no ‘mind’ in the work at all. There is a blind faith in the result given by the software.
- 15.17 Too many regulations have made the professionals as only ‘compliance-machines’. There is no room for creativity.
- 15.18 Expertise in the field of finance is getting equated to manipulative skills.
- 15.19 The very survival of the profession depends on the Government’s mercy. So also, clients with economic power always dominate the scene. We have not been able to establish ourselves as ‘indispensable’ to the society. Frankly, there is no respectability. On the contrary professionals are taken for granted.
- 15.20 Ambiguities in laws and regulations; including the CA Act, Rules and Regulations.
- 15.21 Politicisation of entire social life. It has vitiated everything and our profession is no exception.
- 15.22 With the advent of the mall culture – of show-manship, an average, sincere, practicing chartered accountant has lost his identity. Not only that his next generation does not join the father’s practice; but the father himself winds up his practice and joins a corporate firm! There is no heart in the practice. This mindset gives rise to many mistakes.
- 15.23 By and large, there is a sense of dejection in the minds of many professionals. There was an interesting saying - By honest business (profession), one can become a millionaire; but before that one has to be a billionaire! This nervousness destroys the motivation to acquire new skills.

15.24 We blame corruption and perceive it only in the form of bribery. But what about corrupt thought? Corrupt behaviour? CAs have developed a habit of 'managing' everything.

**16. Plausible remedies –**

16.1 Truly speaking, all the points mentioned earlier are themselves suggestive of remedies. All of us should get rid of intellectual dishonesty; and see the things in an unbiased manner.

16.2 First and foremost, one fact should be firmly registered in our mind that the attest function is the true monopoly of our profession. But unfortunately, many members seem to be moving away from this function. Many senior members and those younger ones who aspire to become tax-specialists scrupulously avoid attest function.

16.3 People go to the extent that where they find it risky or improper to sign a particular audit, they expect their juniors or some other CA to do so.

16.4 Independence is the essence of any effective audit. Audit should be conducted without fear or favour. All thinking and all energies of the concerned persons – the professionals, bureaucrats, socio-economic thinkers, regulators should be focused on one singular agenda – of ensuring auditor's independence.

16.5 Audit should be made compulsory only above a respectable limit of turnover – say Rs. 5 crores or above a particular asset value. Below these limits, it may be optional.

16.6 Even the purpose and coverage of audit report need to be revisited. Should a normal statutory audit be so omnibus at all? If that is so, what is the need for a separate tax audit or VAT audit? Is an average investor really interested in or capable of understanding so many details? Normal statutory audit should be simple, brief, reporting only on essential key areas. Rest should be need-based reporting – depending upon the preferences of the users. It is like a need-based pathology report. Ideally, it should be entrusted to different professionals so that the normal auditor may automatically become more diligent and alert.

16.7 Training in terms of ethics and soft skills should be strengthened. Many complaints can be avoided merely by timely and appropriate communication with the concerned person.

- 16.8 Many of the clauses in the Schedules need to be rationalized. They need to be more clear and detailed.
- 16.9 A system of Advance Ruling or a prior opinion may be introduced. Since the disciplinary proceedings are quasi-criminal in nature and since the consequences are very grave, a clearer definition of misconduct is desired.
- 16.10 Counseling can be introduced at decentralized places. Both complainant and respondent may be advised on the repercussions of the proceedings. In certain trivial or technical matters, disputes can be resolved by reconciliation or mediation.

## 17. **Conclusion** :

The ultimate, fool-proof remedy is the moulding of mindsets, the 'Sanskaras'. Academic knowledge is ever-changing and is of secondary importance. Presently, we are operating at the levels of 'Information' and 'knowledge'; but we need to reach the stage of 'wisdom'.

I have not dealt with any particular item of misconduct from the schedules. That would have made the paper too lengthy. I wanted to share the thought underlying the Code of Ethics and its implementation. Nevertheless, for the convenience of the readers, a note on a few specific items has been given in Annexure II to this paper.

For the consideration of participants the following is given as annexures:

1. Important amendments brought about by the Chartered Accountants (Amendment) Act, 2006 – **Annexure I**
2. Details on certain important items of misconduct – **Annexure II**
3. **Important / Recent decisions of ESB - Annexure – III**
4. A few case studies have been given in the **Annexure – IV** to this paper.
5. Similarly, the gist of a few cases handled by me is given in **Annexure – V**
6. Certain important points in tabular form for easy reference - **Annexure VI**
7. Provisions relating to Proposed National Financial Reporting Authority under section 132 of the Companies Act, 2013 (**Annexure VII**)

If we become good human beings and then the professionals, the Code of Ethics will flow from within and will not have to be imposed from outside.



**Important amendments brought about by the Chartered Accountants  
(Amendment) Act, 2006 –**

These are only the highlights and not an exhaustive discussion.

**1. Amendments related to schedules and relevant section of the CA Act, 1949**

	<b>Amendments</b>	<b>Earlier</b>
<b>Insertion of new section 22</b>	The heading of the section 22 now changed to : “Professional and other misconduct”	Previously – only ‘professional misconduct’.
<b>First schedule</b>	Now four parts	Earlier three parts
	Members can now share fees with member of those professional bodies as may be prescribed by the Council.  The Council has notified the following professional bodies: 1. ICSI 2. ICWA 3. Bar Council of India 4. The Indian Institute of Architects 5. The Institute of Actuaries of India	Earlier sharing fees with lawyer, auctioneer, broker etc. was not allowed
	Members are now allowed to secure work from another chartered accountant in practice	Earlier soliciting work from any source was not allowed
	Members are now allowed to respond to tenders or enquiries	
	Limited advertisement through write up now allowed	
	Clause prohibiting under cutting now deleted	
	Any act bringing ‘disrepute’ to the profession now included as	

	misconduct under Part IV. This clause read with sec. 22 now defines 'other misconduct'.	
<b>Second schedule</b>	Now three parts	Earlier two parts
	Clause 4 to second schedule now amended to the effect that where a member or his firm or a partner has a substantial interest, he is not entitled to express his opinion on financial statement of such entity	Earlier a member was allowed to express his opinion of such entity provided he discloses the interest also in the report.
	Clause 7 now amended to include "lack of due diligence" also	

2. Under the old Act (prior to amendment in 2006) the Council had a power in terms of clause (ii) of Part II of Second Schedule to the Act, to issue Notifications. Under these Notifications, Council could provide that a breach of any of its Notifications would be regarded as a misconduct. Under the amended Act, such power is missing. As a consequence, the Notifications issued between 1965 to 2004 stand repealed with effect from 08.08.2008.

In lieu of these, the ICAI has now issued 'Council General Guidelines – 2008' by a Notification dated 08.08.2008. These are published at page nos. 686 to 689 of CA journal of October 2008. More or less, these are the same ones as were issued between 1965 to 2004. (See page 333 of BCA journal, November 2008 – ICAI and its Members)

### 3. Disciplinary proceedings:

3.1 Now, there will be three authorities (layers)

Disciplinary Directorate (Director)

Board of Discipline (BOD)

Disciplinary Committee (DC)

3.2 BOD will decide cases of First Schedule; and if guilty may award punishment –

- a) Reprimand
- b) Remove from membership for a period not exceeding 3 months **or**
- c) impose fine upto Rs. one lakh

- 3.3 DC will decide cases of 2<sup>nd</sup> Schedule or mixed cases of 1<sup>st</sup> and 2<sup>nd</sup> Schedule; and award-
- a) Reprimand
  - b) Remove from membership permanently or for such period as it deems fit **or**
  - c) Impose fine upto Rs. 5 lakhs.
- 3.4 Council to constitute BOD.  
BOD will consist of 3 persons with Director as its Secretary.
- a) An eminent person in the field of law to preside
  - b) One member of the Council.
  - c) One nominee of Central Government
- 3.5 Council to constitute DC  
DC will consist of 5 persons
- a) President or Vice – President
  - b) 2 members of Council
  - c) 2 nominated by Central Government
- 3.6 Appellate Tribunal  
Central Government will constitute Appellate Tribunal.
- a) Chairperson – Judge of High Court
  - b) 2 members (not sitting)
  - c) 2 nominee of Central Government
- 3.7 Withdrawal of Complaint now permitted to a limited extent.
- Schedule 1 – Consent of BOD
  - Schedule 2 – Consent of DC
- 3.8 Complaint in Form I (Fees increased from Rs. 100/- to Rs. 2,500/-)

3.9 i) Complaint

ii) Written statement (21 days) extension not exceeding 30 days

iii) Rejoinder (21 days extension not exceeding 30 days)

3.10 Director to decide 'prima facie' guilt.

If Director decides not 'prima facie' guilty, BOD to finally decide (for both the schedules). No reference to DC in that case.

3.11 BOD – Quorum is 2. Follow summary procedure CA, CS, ICWA or Advocate can represent.

Adjournment not more than once. If 'guilty' – then one more opportunity of hearing.

3.12 DC – Quorum 3. CA, CS, ICWA or Advocate can represent.

- Witnesses can be called.
- Rules of natural justice to be followed.
- Adjournment not more than once. Inability of representative shall not be a valid ground.

If guilty, one more opportunity to the Respondent.

A FEW IMPORTANT ITEMS OF MISCONDUCT

A few selected items of importance are discussed below:

1. Advertisement and solicitation.
2. Communication with outgoing auditor
3. Compliance with provisions of Companies Act
4. Engaging in other profession or occupation
5. Undercutting
6. Attest function where the member is personally interested
7. Sharing of fees or profits with a non-member or partnership with a non-member, charging fees based on the results of the work.
8. Code of ethics and technical lapses
9. Other misconduct
10. Miscellaneous Points
11. Recent / important decisions by the Ethical Standard Board ('ESB')

*(please also refer Annexure V for easy reference)*

**1. Advertisement and solicitation (Clause 6 of Part I of the First Schedule) –**

1. The logic and spirit behind this clause is indeed very laudable. Advertisement, if permitted, often degenerates into cheaper forms of publicity. The point that some of the ethical norms should change with the time is well taken. Nevertheless, there is abundant wisdom in the belief that the work of a professional is his best advertisement. I am tempted to quote from the ICAI publication on COE –

***“The satisfaction of clients would be the best advertisement which would lead to other clients. Unabashed advertisement would affect the public esteem in which the profession is held and would act to the disadvantage of its members. An advertisement is not a key to success in the profession. It is the quality of service which attracts and retains the clients.”***

2. Although advertisement is permitted abroad, the following questions still remain -

Whether the advertisement is appropriate?

Whether it will benefit our members as well as the users of our services?

Whether it focuses on service or on brand – building?

The Council and the concerned Committee feels that no change is warranted in the present position.

3. Nevertheless, the Council in its meeting held in January 2001 has approved the detailed guidelines for posting certain particulars on **website by CAs** in practice and the firms in practice. There are 23 points in the Guideline. Further, the Council at its meeting held in July, 2003 amended sub-clauses (8) and (20) of the said guidelines. The guidelines in full are published in the Institute's February, 2004 Journal as 'Announcement'. It can be in the individual name or trade name. There is neither any standard format nor any restriction on colour. The most important point is that it should run on a **"pull" model and not a "push" model** of the technology to ensure that any person who wishes to locate the Chartered Accountants or Chartered Accountants' firms would only have access to the information and the information should be provided only on the basis of **specific "pull" request**. The information in the website should not be circulated by e-mail etc. nor can there be an invitation to visit the website. **The website address may be printed on the stationery**. The information allowed to be displayed is firm name, year of establishment, phone, fax, e-mail, nature of services (pull request), partners' details as well as passport-sized photographs), employees' details, job vacancies, number of articled trainees etc. **With effect from 01.07.98, no logo is permitted anywhere**. The listing on suitable search engine is permitted. However, the field of search should be restricted to the field of "CA", "Indian CA" etc. **The address of the website should be intimated to the ICAI within 30 days**. (For updated guidelines, refer p. 382 of Chartered Accountant **Journal of September 2004**). The Council has also now permitted some form of advertisement, vide its guidelines issued on 14<sup>th</sup> of May, 2008.

The following amendment was brought to Website guidelines pursuant to the decision taken by the Council at its 345th Meeting held on 14th -16th August, 2015:

*“ Disclosure of names of clients and/or fees charged, on the website is permissible only where it is required by a regulator, whether or not constituted under a statute, in India or outside India, provided that such disclosure is only to the extent of requirement of the regulator. Where such disclosure of names of clients and/or fees charged is made on the website, the member/ firm shall ensure that it is mentioned on the website [in italics], below such disclosure itself, that “This disclosure is in terms of the requirement of [name of the regulator] having jurisdiction in [name of the country/ area where such regulator has jurisdiction] vide [Rule/ Directive etc. under which the disclosure is required by the Regulator]”.*

4. **Tenders** – There is no prohibition to respond to tenders and requests made by users of professional work.
5. **Application for empanelment** for allotment of audit and other professional work – If a member knows that such panel is maintained by a Government Department, Corporations, Courts, Co-operative Societies, Banks etc., he may write to them for inclusion of his name on the panel. However, he cannot make roving enquiries as to whether such panel is maintained. Having empanelled, one cannot also request for allotment of work. Similarly, members are advised not to respond to such empanelment where a registration fee or deposit is required. **Guidelines were revised in June 2004.** Registration fees etc. continue to be prohibited for exclusive fields of audit. However, such fees are now permitted for non-exclusive fields (even if only CAs are invited).
6. **One cannot solicit work even from other chartered accountants by issuing circulars or advertisement.** However, this has been relaxed in the sense that one may apply, request, invite or secure professional work from another CA in practise. It implies that, one can seek work on one to one basis.

7. **Publication of name in the telephone directories** published by telephone authorities or private bodies is permitted provided it is **not conspicuous**. The member should belong to that town or city. The entries should be in **normal type** and alphabetical order and should not give an impression of advertisement. The payment of fees, if any, should not be unreasonable. The entries should be open to all CAs in the particular city or town.
8. **It is now permissible to quote fees on enquiries being received or respond to tenders from the organisations requiring professional services which maintain such panel.** There is however a prohibition on distributing literature ostensibly for guidance of persons, except where it is meant for regular clients. Similarly, in a book or article published by a member, his association with any firm of CAs should not be mentioned. Issuing greeting cards or invitations for functions is permitted provided these are sent only to clients, relatives and friends. Similarly in public interviews, **the information about the firm should not be unduly publicized.**
9. **A member is permitted to issue a classified advertisement in the Journal / Newsletter** of only the Institute to give information for sharing professional work on assignment basis or for seeking professional work on partnership basis or salaried employment in the field of accounting profession provided it only contains the accountant's name, address, telephone, fax number and e-mail address.

## **2. Communication with outgoing auditor (Clause 8 of Part I of the First Schedule)-**

1. Unfortunately, this seemingly simple requirement is not taken very seriously by members. **In fact, it is meant for our protection from unscrupulous clients.** These clients give various reasons to create an **artificial urgency** and pressurize the other auditor to take and expedite the audit.
2. It is important that the communication in writing should be made **before accepting the audit itself and not before signing the report.** There has to be a fool-proof evidence of communication reaching the previous auditor. Therefore, **an RPAD** letter is advisable though not expressly prescribed. The certificate of posting or courier or speed-post may not satisfy the test. **Even if it is hand-delivered, the proof of delivery to outgoing member is a must.**



3. The communication is necessary for all types of audits like internal audit, stock audit, concurrent audit etc. It is necessary **even when the appointment is made by Government agencies** like C& AG, RBI etc.
4. The audit can be accepted only after a reasonable period has elapsed after the delivery of the letter. **Actual NOC letter is not a pre-condition.**
5. It is also pertinent to note that vide notification dt. 13.11.99 (page 83 of CA Journal, January 2000) **non-payment of undisputed audit fee** is a ground for professional objection. Outstanding fees appearing in the balance sheet signed by the auditee are regarded as undisputed. Accepting an audit assignment if any undisputed audit fees of another auditor are unpaid is itself a misconduct.
6. It is always essential and desirable to obtain **a fresh letter of appointment every year** even for continuance of audit.
7. The Council has taken a view that it is not obligatory for the auditor appointed to conduct a special audit u/s 233A of the Companies Act, 1956, to communicate with previous auditor who had conducted the regular audit.
8. As per the detailed guidelines laid down by the Council, the requirement for communicating previous auditor applies to all types of audit viz. statutory audit, tax audit, internal audit, concurrent audit or any other kind of audit.
9. It is desirable that the previous auditor should reply to such communication promptly. He may mention the reason why the change took place; but should **not disclose any information about the client.**
10. A general 'NOC' by previous auditor is not sufficient. Writing to him is a must.

### 3. Compliance with provisions of Companies Act (Clause 9 of Part I of the First Schedule) –

1. Whenever there is a change of auditors, the incoming auditor should take utmost care to ensure that the requirements of Section 225 of the Companies Act, 1956 (now sections 139 to 141 of the Companies Act, 2013) are complied with. Such compliance should not be taken for granted even in the case of small, family-owned organizations. **Actions taken in good faith and trust prove to be dangerous when there are disputes or bad times.**
2. **Mere appointment letter in such case of change of auditors is not sufficient.** It is advisable to verify the **minutes** of the Board/AGM/EGM and all incidental evidence. Communication with previous auditor is a further safeguard.

### 4. Engaging in any other profession or occupation (Clause 11 of Part I of the First Schedule) –

1. This clause is often perceived as unduly restrictive especially in smaller towns where members come from large families and have some interest in certain family-run business etc.
2. **In Appendix 10 to the Regulations (1988)**, the circumstances in which the permission to engage in other occupation is granted are enumerated. Part A grants a **general permission** whereas for occupations in **Part B, a specific permission is required**. It is interesting to note that even a part-time teaching job requires specific permission.
3. **Permission is granted for becoming a sleeping partner in a family-run business.** ICAI has been taking a pragmatic view, provided, the member **is diligent and not casual**. Problems often arise due to initial lethargy and hesitation, which is perpetuated due to fear for delay.

4. **One should also be cautious when one is doing business in the name of wife or other family member.** In case it is proved to be a 'benami' activity, the member may be in trouble. There is a sound reason behind this restriction. The involvement in the business may impair one's independence and professional judgment. Further, it might hamper the standing and the respect in the eyes of the society. Therefore, it is **in the members' own interest, not to engage in such business.**
5. A member is permitted to be an **ordinary/simple director** in a company including a board-managed company even if he or his relatives hold substantial interest in the company. **He can also be a promoter** of a company. He can also be a karta of an HUF, but should not be actively engaged in the carrying on of the activities.
6. In terms of a Resolution passed by the Council under Regulation 190A reported on Page 1392 of The Chartered Accountant Journal (June 2004 issue) the following restrictions have been imposed –

The general and specific permission granted by the Council is subject to the condition that any member engaged in any other business or occupation (in terms of general or specific permission granted as per Appendix 10) shall not be entitled to perform **attest function**. However, some exceptions have also been specified – members holding certificate of practice and also engaging themselves **in teaching assignment(s) for not exceeding 25 hours** in a week in a recognized University and /or College or institution affiliated to a University set up under law. **Further, a member who is not entitled to perform attest function shall not be entitled to train articled trainees. This is effective from 01.04.2005.**

#### 5. **Undercutting (Clause 12 of Part I of the First Schedule)** – (now deleted)

1. This clause prohibited the acceptance of audit "in such condition as to constitute undercutting." There is no absolute bar on charging lower fees. One has to objectively justify the same on facts.

2. There may be significant reduction in the sales or volume of business. The difference in fees may also arise due to a difference in the pattern of charging, such as fees inclusive of expenses (lump sum) vis-à-vis the fees and expenses charged separately.
3. **It is interesting to note that in the amendments to the Act in 2006, this clause has been deleted. However, members are expected to keep in mind the spirit of the said clause (though deleted) and use discretion in such matters.**

**6. Attest function where the member is personally interested (Clause 4 of Part I of the Second Schedule)**

1. The clause reads as follows -

“Expresses his opinion on financial statements of any enterprise in which he, his firm or a partner in his firm has a substantial interest, unless he discloses the interest also in his report. **The expression ‘unless he discloses the interest also in his report’ has been omitted by the Amendment. Hence, the restriction becomes absolute; and the mere disclosure will not help.**
2. Performing such attest function in itself was not previously a breach of ethics. At the same time, the statutory restrictions, if any, were always applicable. **For example Section 226 (3) and (4) of the Companies Act, 1956 (now section 141 of the Companies Act, 2013).**
3. A person who does the accounts writing of the same auditee; or an internal auditor cannot be the statutory auditor. Similarly, the fees for consultancy assignment from the said auditee cannot exceed certain limit with reference to the audit fees.

**7. Sharing of fees or profits with a non-member or partnership with non-member (Clause Nos. 2, 3 and 4 of Part I of First Schedule), charging fees based on the results of the work – (Clause 10 of Part I of First Schedule)-**

1. The purpose is to prevent unscrupulous practice of securing professional work through brokers, commission agents or unhealthy associations with non-professionals. Similarly, charging the fees based on the profits or the results of a finding etc. is also undesirable.
2. **However, in terms of a recent resolution, the ICAI has in principle permitted a partnership with the members of sister-professionals, namely, ICSI, ICWAI and lawyers. Following are the important conditions,**
  1. There should be a reciprocal permission from the respective professional bodies, and
  2. Work in the exclusive areas of a CA, such as statutory audit, attestation of financial statements of companies cannot be undertaken in such multi-disciplinary firms.
  3. The liability of the partners would be unlimited, like any other partnership and the partners would be regulated by their respective professional bodies for any violation of code of conduct and ethics.
3. A member in CA practice is now permitted to share his fees from professional practice with other professionals. He can also get his share of fees from such other professionals. Further, he can now accept professional assignments by an arrangement with such other professionals. The list of other (permitted) professionals is now in the Regulation no. 53A – viz . CS, CWA, Actuary, B.E., B. Tech, Architect, Lawyer and MBA.

Also see Regulation 53-B for CA entering into partnership with such professionals.

## **8. Code of ethics and technical lapses –**

Clause nos. 5, 6, 7 and 8 of Part I of the Second Schedule talk of technical lapses on the part of the auditor which are viewed as negligence or failing in the professional duty. The auditor is expected to report and disclose all material facts so as not to make the financial statements misleading. This is the very essence of the attest function. **Clause (7) talks of gross negligence whereas clause (8) deals with failure to obtain information.** Clause (10) requires that **a separate bank account be maintained for clients' moneys.**

The Council has clarified that no separate bank account is necessary for fees received in advance and for moneys which are intended to be spent within a reasonably short time. (e.g. prescribed statutory fees, purchase of stamp paper, etc.) it is relevant to note that every small lapse or minor negligence or deficiency does not amount to “gross negligence”. There should be an “ill-motive”, or utter disregard to the technical standards.

**In Clause (7) of Part 1 of Second Schedule – the scope is enlarged by Amendment. It not only mentions ‘gross negligence’; but also now covers ‘lack of due diligence’.**

#### **9. Other misconduct –**

As stated earlier, Section 22 talks of not only the items of misconduct specified in the Schedules but also covers “other misconduct”. The Council is empowered to take action in such cases with a view to upholding the overall image of the members in the society. Thus, **a person’s conduct may be unbecoming of a professional, even as a human being.**

Without prejudice to the generality of the coverage of ‘Other Misconduct’, now, both the Schedules contain separate parts specifying ‘Other Misconduct’. These parts cover mostly offence of civil or criminal nature or any act that would bring disrepute to the Institute.

#### **10. Miscellaneous points –**

Other items of misconduct from Part I of the First Schedule are –

1. Allowing any person to practice in his name as a CA unless such person is also a CA and is his partner or employee. (Clause 1)
2. Sharing of fees directly or indirectly with a non-member (Clause 2), subject to the relaxation in respect of a few professionals as explained earlier.
3. Accepting any part of the profits of the professional work of a lawyer, auctioneer, broker or other agent who is not a member. (Clause 3)

4. Entering into partnership with a person other than a CA. However, by a very recent decision, the Council has in principle permitted a partnership with sister professionals, namely CS, ICWA and lawyers provided the respective professional bodies also approve the same. Further, the work which is exclusively for CAs (audits) cannot be taken in these firms. (Clause 4).
5. No CA in practice shall charge or offer to charge, accept or offer to accept, in respect of any professional work, fees which are based on a percentage of profits; or which are contingent upon the findings, or result of such work. (Clause 10). However, Regulation 192 provides certain exceptions to this rule.
6. The Council has, in its 292<sup>nd</sup> meeting held that the members would now be required to mention firm registration number also in addition to other requirements. Further, the members should ensure that the firm registration number is mentioned in the resolution passed by the company for appointment of the statutory auditor.

**IMPORTANT / RECENT DECISIONS OF ESB**

**The below mentioned decisions are cited on the ESB website:**

1. A Chartered Accountant in practice may be an equity research adviser, but he cannot publish retail report, as it would amount to other business or occupation.
2. A Chartered Accountant, who is a member of a Trust, cannot be the auditor of the said trust.
3. A Chartered Accountant in practice may engage himself as Registration Authority (RA) for obtaining digital signatures for clients.
4. A Chartered accountant can hold the credit card of a bank when he is also the auditor of the bank, provided the outstanding balance on the said card does not exceed Rs 10000 beyond the prescribed credit period limit on credit card given to him.
5. A Chartered Accountant in practice can act as mediator in Court, since acting as a “mediator” would be deemed to be covered within the meaning of “arbitrator”; which is inter-alia permitted to members in practice as per Regulation 191 of the Chartered Accountants Regulations, 1988.
6. A Chartered Accountant in practice is not permitted to accept audit assignment of a bank in case he has taken loan against a Fixed Deposit held by him in that bank.
7. The Ethical Standards Board in 2013 generally apply the stipulations contained in the then amended Rule 11U of Income Tax generally, wherein statutory auditor /tax auditor cannot be the valuer of unquoted equity shares of the same entity.

The Board has at its recent Meeting (January, 2017) has reviewed the above, and decided that where law prohibits for instance in the Income Tax Act and the rules framed thereunder, such prohibition on statutory auditor/tax auditor to be the valuer will continue, but where there is no specific restriction under any law, the said eventuality will be permissible, subject to compliance with the provisions, as contained in the Code of Ethics relating to independence.



8. The Ethical Standards Board had in 2011 decided that it is not permissible for a member who has been Director of a Company, upon resignation from the Company to be appointed as an auditor of the said Company, and the cooling period for the same may be 2 years.

The Board has at its recent Meeting (January, 2017) has reviewed the above, and noted that the Section 141 of Companies Act, 2013 on disqualification of auditors does not mention such prohibition; though threats pertaining to the said eventuality have been mentioned in Code of Ethics.

Further, the Board was of the view that a member may take decision in such situation based on the provisions of Companies Act, 2013 and provisions of Code of Ethics.

9. A chartered accountant in practice cannot become Financial Advisors and receive fees/commission from Financial Institutions such as Mutual Funds, Insurance Companies, NBFCs etc.
10. A chartered accountant cannot exercise lien over the client documents/records for non-payment of his fees.
11. It is not permissible for CA Firm to print its vision and values behind the visiting cards, as it would result in solicitation and therefore would be violative of the provisions of Clause (6) of Part-I of First Schedule to the Chartered Accountants Act, 1949.
12. It is not permissible for chartered accountants in practice to take agencies of UTI, GIC or NSDL.
13. It is permissible for a member in practice to be a settlor of a trust.
14. A member in practice cannot hold Customs Brokers Licence under section 146 of the Customs Act, 1962 read with Customs Brokers Licensing Regulations, 2013 in terms of the provisions of Code of Ethics.
15. A Chartered accountant in service may appear as tax representative before tax authorities on behalf of his employer, but not on behalf of other employees of the employer.

16. A chartered accountant who is the statutory auditor of a bank cannot for the same financial year accept stock audit of the same branch of the bank or any of the branches of the same bank or sister concern of the bank, for the same financial year.
17. A CA Firm which has been appointed as the internal auditor of a PF Trust by a Government Company cannot be appointed as its Statutory Auditor.
18. A concurrent auditor of a bank 'X' cannot be appointed as statutory auditor of bank 'Y', which is sponsored by 'X'.
19. A CA/CA Firm can act as the internal auditor of a company & statutory auditor of its employees PF Fund under the new Companies Act (2013).
20. The Ethical Standards Board while noting that there is requirement for a Director u/s 149(3) of the Companies Act, 2013 to reside in India for a minimum period of 182 days in the previous calendar year, decided that such a Director would be within the scope of Director Simplicitor (which is generally permitted as per ICAI norms) , if he is non – executive director, required in the Board Meetings only , and not paid any remuneration except for attending such Board Meetings.
21. Permitting the use of firm name by client, mentioning the firm as a "Knowledge Partner" or in the "Thank You" advertisement, is not permissible.
22. Concurrent auditor of an entity cannot accept an assignment under any statute.
23. A chartered accountant in practice may establish a TIN – FC, and may as well establish a TIN - FC under franchise from the other entity which is already a TIN – FC.
24. Quick Response Code (QR Code) may be printed on the visiting Card by a member in practice, provided that the Code does not contain information that is not otherwise permissible to be printed on a visiting Card.
25. A statutory auditor and tax auditor cannot be valuer of the unquoted equity shares as it would create threats to independence of the auditor, which may not possibly be reduced by application of safeguards.
26. The use of banner with name of CA firm is not permissible in terms of provisions of Items 6 and 7 of Part –I of First Schedule to The Chartered Accountants Act, 1949.

27. Doing internship for company secretary by a CA in practice is akin to attending classes, which is in turn, is covered under Clause (5) of the 'Permission granted generally' of Appendix 9 of the Chartered Accountants, 1988, and as such, the same is permissible.
28. No communication under clause 8 of Part-I of Schedule-I to the Chartered Accountants Act, 1949 is required in case of death of the previous Auditor. However, the new auditor may be required to get a letter from the entity to confirm the factum of death of previous auditor.
29. It is not permissible for a member who has been Director of a Company, upon resignation from the Company to be appointed as an auditor of the said Company, and the cooling period for the same may be 2 years.
30. Images of non – personal items such as books etc. on the website of a CA Firm are not violative of website guidelines. As regard the use of images of people, the images of the people who are not the members of the firm are not permissible.
31. The use of 'Dr.' with the designation 'CA' may be left to the discretion of member (i.e. whether to use 'CA' first, or 'Dr. First, or use 'Dr.' only before the name of the member).
32. CA. in practice can be a 'Director Simplicitor', which includes an independent director. The independent directors are part of the Board where the Accounts are approved, they being party to approval of financial statement. As such, there is no bar in their signing the financial statement. However, they can not be involved in the day to day affairs of the company.

**Other important question-answer from Ethics Plus brochure issued by the ESB:**

33. **Can a Chartered Accountant in practice use/fix a monogram of the Institute on any column/wall located inside the office or on professional documents?**

No, in view of the Council directions under Clause (7) of Part I of the First Schedule to the Act, a Chartered Accountant in practice is not permitted to use/fix a monogram of the Institute on any column/wall located inside the office or on any professional documents.

**34. Can a member in practice be Promoter/Promoter Director of the Company?**

Yes, there is no bar for a member to be a promoter/signatory to the Memorandum and Articles of Association of any company. There is also no bar for such a promoter/signatory to be a Director Simpliciter of that company irrespective of whether the objects of the company include areas, which fall within the scope of the profession of chartered accountants. Therefore members are not required to obtain specific permission of the Council in such cases. There is also no bar on holding any number/percentage of shares in the company.

**35. Can a member act as an Insurance Agent and arrange business for Insurance Company?**

No, members are permitted to render Insurance Financial Advisory services. It is not permissible to the members to do any kind of marketing and business procurement for any insurance company. These services should remain limited to professional services in the form of advisory and consultancy services.

**CASE - STUDIES -**

**Advertisement:**

1. On the occasion of Silver/Golden Jubilee of a firm –
  - (a) Can it print on the letterhead and other stationery as 'In the \_\_\_ Jubilee Year'?
  - (b) Can this be added in all other communications – like e-mails?
  - (c) Can it put such a sticker on its outgoing mails?
  
2. Three firms with different areas of specialization merge into one. Can they write to their existing clients that they are now in a position to render other services as well? (About which the clients may have been enquiring earlier). Can they write to other CA firms?
  
3. On the occasion of Mr. A starting practice, some of his relatives/friends issue an advertisement in the local newspaper giving his photograph and congratulating A, mentioning there under his name and office address. No qualification or description is mentioned in the advertisement. Would the issuance of such advertisement be a breach of code of ethics?
  
4. Profit & Loss and Balance Sheet of a client is typed on the letterhead of the member or on the stationery on which his name was printed. The client submits the said financial statements to the bank for obtaining loan. Whether there is any misconduct?
  
5. If a member is a partner in more than one firm, is it permissible to print the names of all the firms on visiting cards, letter-heads, stationery, etc.?
  
6. Whether public notice published in the newspaper for acquisition of land by the client given by the member jointly with Advocate of the client is permissible?
  
7. Sec. 225 of the Companies Act requires that if a member of company requires that retiring auditor should not be reappointed, a special notice has to be sent to other members. In that special notice, the company mentions the professional attainments of the partner and his firm. Does this amount to advertisement?

### **Types of audit**

8. Can a concurrent / internal auditor accept statutory audit of another branch of the same bank?
9. Can an internal auditor also be tax-auditor or VAT auditor of the same entity?
10. Can a statutory auditor accept appointment as cost auditor of the same company?
11. Whether a CA is qualified to be appointed as statutory auditor of one subsidiary company when he is the internal auditor of another subsidiary of the same holding company?
12. Can a CA be auditor of a subsidiary company and director of its holding company at the same time?
13. As per the Council guidelines dated 8<sup>th</sup> August, 2008, a member shall not accept the appointment as statutory auditor of a PSU / Government Company / listed Company / other public company having turnover of 50 crores or more in a year, if his fees from other work in regard to the same undertaking exceeds fees from statutory audit. A&Co. is statutory auditor of a listed company XYZ Ltd. A&Co has also accepted to undertake other work of XYZ Ltd. During the year, the turnover of XYZ Ltd exceeded Rs. 50 crores. A&Co realised that the fees from other work (which it has already accepted) exceeds its fees from statutory audit. What should be the further course of action?
14. Whether a statutory auditor can accept the system audit of same entity?
15. Can a concurrent auditor of an entity accept assignment under any other statute?
16. Can concurrent auditor of a bank also undertake the assignment of quarterly review of the same bank?

### **Sharing of fees**

17. A client sells his large immovable property. The chartered accountant does the job jointly with a lawyer. Client pays lump sum fees to the CA who in turn passes on a part of it to the lawyer for his services. Does it amount to sharing of fees with a non-member?

18. In a CA firm, two articled trainees who have not been able to pass their final CA, are rendering accounting, sales-tax and allied services. Client pays lump sum amount for accounting, sales tax, income-tax services and also for tax - audit. The CA passes on the appropriate amounts to the concerned trainees – who are not employed with the CA. Does it amount to sharing of fees with a non-member? Are any other clauses of misconduct attracted?
19. The said trainees also help the CA in completing the audits. Since they are not employees, can the CA be said to have engaged responsible persons? Can he rely on their work? Will it make any difference if another CA is engaged to carry out the audit, who is not an employee?

### **Communication with the previous auditor**

20. Mr. B was duly appointed as auditor in place of Mr. A. However, before he could conduct any audit, he had to resign/withdraw for some technical/personal reason. If Mr. C is appointed in his place, from whom should C seek NOC – Mr. B or Mr. A?
21. Tax audit was conducted two years back. There was no audit required for the intervening period of two years. For the year under consideration, the client is liable to tax audit. Now the previous auditor has changed his office address / shifted to other city / is taken over by another firm. So another auditor, other than the previous auditor has been proposed to be appointed as the tax auditor. What should be the course of action for incoming auditor?
22. Is RPAD compulsory? What if a letter, courier or e-mail is sent by the incoming auditor to the previous auditor and there is a confirmation that the same is received by the previous auditor?
23. The incoming auditor is informed by the previous auditor of some serious irregularities due to which the audit work was given up by the previous auditor. What should be the course of action of incoming auditor–
  - i) Should he still accept the audit work?
  - ii) If yes, should he qualify his report in next F.Y.?
24. PQR is a partnership firm. ABC is a limited company. Statutory audit of ABC Ltd. was conducted by PQR and was specifically handled by partner P. Now PQR has split into two firms - P & Co. and QR & Co. Audit of ABC Ltd. is taken over by QR Co.

- i) Should QR & Co. make any communication with P & Co., considering them as previous auditor?
- ii) Should ABC follow the procedure of Sec. 225?
- iii) What if the undisputed fees of PQR are not yet paid?

### **Articles**

25. A Chartered Accountant failed to pay monthly stipend to his articled trainee. The stipend was paid only after the articled trainee left him after working for a few months. Whether the member is guilty of misconduct?

### **Other occupation**

26. Can Mr. D a CA provide following services as part of CA practice –
- a) Management of NRI funds
  - b) Portfolio Management Services
  - c) Collection Agent
  - d) Broker
27. Can a Chartered Accountant working in a CA firm –
- i) Hold COP?
  - ii) Do attest functions?
  - iii) Keep articled trainees?
28. Can a CA in practice also practice as an advocate? Can he use the designation 'CA' and 'advocate' simultaneously?
29. Whether a member can take up the membership of Association of Mutual Funds in India (AMFI).
30. Can a member act as an Insurance Agent and arrange business for insurance company?

### **Use of designation**

31. Mr. A institutes a prize in the name of his firm – 'A & Co.' He does not indicate the designation – 'Chartered Accountants'. Has he violated any code of ethics? Would your answer differ if he indicates the designation – 'Chartered Accountants'?



**ACTUAL CASES –**

1. Certificate for SICOM Loan – Revised Guidelines – Treatment of internal accruals – Loan completely repaid – SICOM had no grievance.
2. Wording of letter to previous auditor – Requesting NOC on or before previous day of compliance.
3. Absence of letter of appointment or reappointment – Good faith.
4. Backdating of report – signing of balance sheet – subsequent e-mails contradictory.
5. Non-maintenance of working papers – at least basic documents like bank reconciliation, cash certificate, query sheets, management representation letter.
6. Report silent on likely tax-liability of a housing society.
7. Non-obtaining of a copy of resolution with appointment letter.
8. Non obtaining of a copy of Board Resolution approving the accounts – Expert Advisory Committee's opinion – Sec. 215 of Companies Act, 1956.
9. Getting the work done through 'associates' – Qualified or non-qualified assistants, colleagues – who are not your employees.
10. Accounting and auditing by same person –Accounting bill in spouse's name –
11. Non-inclusion of a particular item in audit programme.
12. Member becoming a partner in the capacity as Karta of HUF.
13. Allowing an old business account to continue – which was opened before qualifying as a CA – Explain that the transactions did not pertain to business.
14. Sub broker-ships in wife's name – Operations through CA's office – wording of Power of Attorney – Signing on behalf of wife – in an 'introduction' form (without mentioning P/A)

15. Petty disputes between partners of a CA firm.
16. Executing an agreement on behalf of a company.
17. Share dealing. Business income.
18. Signing the balance sheet when only one director has signed.
19. Rendering service in the field of legal drafting.
20. Non-observance of AAS 28
21. Car held in personal name of director. No mention in notes.
22. Negative balance of cash on a few dates in accounts.
23. Bank reconciliation not seen.
24. Banker processing unsigned balance – sheets.
25. Misuse of e-communication modes like email (ids), digital signature, mobile phones etc.
26. There was a resignation of director in a particular company say PQR Ltd. Based on the minutes and extract of relevant resolution for resignation of director, the CA submitted Form 32 alongwith his digital signature and membership number. Later on the director who claimed to have resigned filed a disciplinary proceedings stating that he had never resigned and that the Form 32 was filed fraudulently.
27. A member CA was director in a particular company ABC Pvt. Ltd. The said company had only two directors. For the sake of convenience the member CA was made joint signatory to cheque. Disciplinary proceedings were initiated on the ground that the CA was engaged in 'other business or profession'.

28. Negative result in income tax proceedings – disciplinary proceedings were initiated by the client stating that the CA had not done proper representation before the Income tax Authorities.
  
29. A member CA issued certain cheques to his cousin as a financial help. The said cousin had assured that he would not encash the cheques and that the said cheques would be used only to convince the other financiers. After few months, contrary to the assurance given, the said cousin encashed the cheques. The cheques got dishonored for lack of funds. The said cousin filed a complaint under the Negotiable Instrument Act before the Magistrate. The said case was treated as 'Information' case by the Institute and disciplinary proceedings were initiated.

**Certain important points in tabular form for easy reference:**

1.	Circulation of letter to small group of clients for soliciting work	<b>Prohibited</b>
2.	Announcement in newspaper for changes in partnership or address etc.	<b>Permitted.</b> Should be limited to a bare statement of facts
3.	Classified advertisement in the journal / newsletter of ICAI for sharing or seeking professional work	<b>Permitted.</b> Should contain only accountant's name, address, etc.
4.	Advertisement for soliciting clients under box numbers in the news paper	<b>Prohibited</b>
5.	Words like income-tax consultant, cost accountant, company secretary, cost consultants, management consultant, member of parliament, municipal councilor, etc.	<b>Prohibited</b> on professional documents
6.	Use of designation "Corporate Lawyer"	<b>Prohibited</b> for CA in practice
7.	Use of initials "CPA"	<b>Prohibited</b> on visiting cards
8.	Date of setting up the practice	<b>Prohibited</b> on letterheads. In website – permitted on "pull" request
9.	Where a member practices both as a CA and as a lawyer.	Designation "Chartered Accountant" should not be used in matters involving practice of advocate
10.	Members eligible to work as Company Secretaries / Cost Accountants	<b>Permitted</b> to practice as such. But cannot use designations of the said institutes and "Chartered Accountant" simultaneously
11.	Publication of photographs and brief particulars of members in magazines	<b>Permitted</b> provided no payment is made for such publication

12.	Notice in press relating to success of students	<b>Permitted</b> provided it should not amount to undesirable publicity
13.	Members appearing on television, radio, giving public interviews etc.	<b>Permitted.</b> In case of practicing members no reference of the firm should be given.
14.	On being appointed as a director of the company	Prospectus, public announcements or public communications by the company should not advertise his professional attainments. Members may bring this to the notice of the company and ensure that before any public document is released, it may be got approved by the member
15.	Network of Indian CA firms	<b>Permitted.</b> Member may use the words "Affiliates / Members of ...." on professional stationery. Please refer February 2005 issue of CA Journal.
16.	Use of logo, monogram of any kind / form / style / design / colour	<b>Prohibited</b> on any display material or media e.g. paper stationery, documents, visiting cards, internet etc. for members in practice
17.	Issue of greeting cards or invitations	<b>Permitted.</b> Only designation "Chartered Accountants" and name of the firm to be used
18.	Publication of books or articles	<b>Permitted.</b> Name of the firm should not be mentioned.

**Provisions relating to Proposed National Financial Reporting Authority under section 132  
of the Companies Act, 2013**

**Section 132 of the Companies Act**

- Sub-section (2): General function of NFRA:
  - Make recommendation to the Central Government on accounting and auditing policies
  - Monitor and enforce compliance with accounting standards and auditing standards
  - Oversee the quality of service of the professions associated
  - Perform any other functions as may be prescribed
  - Sub-section (3): Constitution of NFRA
    - Chairperson and other members (part time and full time) not exceeding 15 members
    - Chairperson and full time members shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment and two years after ceasing of appointment
  
- Sub-section (4)
  - Power to investigate – suo motu or on reference made by the Central Government – such class of bodies corporate or persons
  - Proviso – where NFRA has initiated investigation – no other institute can initiate or continue any proceedings in such matter of misconduct
  - Explanation – expression “professional or other misconduct” shall have the same meaning assigned to it under section 22 of the CA Act, 1949.

- punishment:
  - Penalty :
    - In case of individuals – Not less than Rs. 1 lakh which may extend to five times the fees received
    - In case of firms – Not less than Rs. 10 lakhs which may extend to ten times the fees received
  - Debarring the member or firm from engaging himself / itself from practice for a minimum period of six months or such higher period not exceeding ten years

### **Draft NFRA Rules**

- Chairperson – Chartered Accountant
  - Accounting member
  - Auditing member
  - Enforcement Member
  - One representative of MCA
  - One representative of RBI
  - One representative of SEBI
  - A retired Chief Justice of a High Court or a person who has been Judge of a High Court for 5 years
  - President of ICAI (ex-officio)
- Maximum 15 members (see section 132 (3)) ----

### **Structure of Authority**

- Committee on Accounting Standards
  - Committee on Auditing Standards
  - Committee on Enforcement
- These are sub committees of NFRA

## **Draft NFRA Rules**

### **Standard Setting**

- Based on recommendations received from the Committee of Accounting Standards, Recommend the standards to the Central Government
- Monitoring, compliance review and overseeing quality of service
- Receive reports from the Committee of Accounting and Committee of Auditing
- Forward reports to the Committee on Enforcement with its recommendations

### **Enforcement:**

- (a) receive any reference from the Central Government for investigation;
- (b) receive recommendations from the Member – Accounting and Member – Auditing for any investigation based on the monitoring and compliance review or investigation of auditor or audit firm undertaken by them;
- (c) suo motu determine any investigation to be undertaken by the Authority;
- (d) forward such requirements to the Committee on Enforcement;
- (e) receive the final investigation report from the Committee on Enforcement on matters referred to them whether arising out of the Quality Review process or based on investigation requests made to the Committee on Enforcement;
- (f) issue a notice in writing to the company or its branch investigated or the Professional on whom action is proposed to be taken;
- (g) provide the opportunity of being heard to the company or its branch
- (h) accept or overrule, in writing, clarifications received and objections raised;
- (i) take suitable action or pass orders imposing penalty or debarring the Professional or firm concerned.



### **Investigation on:**

- **Authority to take investigation or conduct quality review of audit on following class of companies:**
  - Listed companies
  - Unlisted companies with net worth of not less than 500 crores or paid up capital of not less than 500 crores or annual turnover of not less than 1000 crores
  - Companies having securities listed outside India
- **Authority to take investigation against following class of auditors or audit firms which conduct the audit of the following category of companies or their branches (including through the network or brand to which it belongs), whether “directly or indirectly”, :**
  - Audit of 200 companies or more in a year
  - Audit of 20 or more listed companies
  - Companies (including listed companies) having net worth of not less than Rs. 500 crores or paid up capital not less than 500 cr or turnover not less than 1000 cr
  - Companies having securities listed outside India
- **Proviso :**
  - provisions in respect of class or classes of companies shall not be applicable where a reference is made by the Central Government or any Regulator or where the Authority, in public interest, suo motu decides to exercise powers under sub-rule (4) or (5), as the case may be.

### **Committee on Accounting Standards and its functions**

- To examine the matters relating to formulation and laying down accounting standards and to submit the same for consideration by the Authority.
- conduct scrutiny of financial statements of such class of companies and in such manner as may be decided by the Committee or the Authority:

- For a period of two years from the commencement of these rules, the Committee may conduct scrutiny under this rule through the Registrars of Companies or in cooperation with Financial Reporting Review Board set up by the ICAI;
- Refer matters to the Authority for the Authority to decide on further course of action, through the Committee on Enforcement.

### **Committee on Auditing Standards and its functions**

- To examine the matters relating to formulation and laying down auditing standards and shall submit the same for consideration by the Authority.
- investigate or review selected audit and review engagements, including specifically the working papers, of any auditor including an individual, a firm or an LLP;
- refer matters to the Authority to decide on further course of action, through Committee on Enforcement, where violations of laws, rules or professional standards have been observed triggering investigations, disciplinary action, or reference to other regulators or law enforcement agencies. There will be no direct referrals to Committee on Enforcement before referring to Authority.

### **Committee on Enforcement and its functions**

- to examine the matters referred to it by the Authority (whether emanating from the Committee on Accounting, Committee on Auditing, or otherwise) requiring further enquiry or investigation
- to investigate, on a reference made by the Authority, matters relating to professional and other misconduct committed by the professional or auditor (individual or firm or LLP) and recommend to the Authority appropriate action under sub-section (4) of section 132

### **Procedure of Investigation related to Compliants and Information**

- Filing of compliant in Form I to Member- Enforcement
- Information case received shall be dealt accordingly. Anonymous information will not be entertained
- Member- Enforcement, on examination of compliant – to form Prima Facie Opinion.
- This Prima Facie Opinion to be placed before the Committee of Enforcement

## **NFRA – Pros and Cons**

- Pros
  - An independent body will ensure more discipline in the fraternity
  - In most countries outsiders oversee work of accountants. This increases confidence of outsiders towards the fraternity
  - ICAI can then focus on capacity development and other programmes for growth of the profession
- Cons
  - Will take away significant regulatory power from the ICAI
  - ICAI will be reduced to a mere exam giving agency