

Code of Ethics-Overview and Developments

CA Shashikant Barve

Code of Ethics

- ICAI being member of International Federation of Accountants (IFAC) has considered the Ethics standards issued by International Ethics Standards Board for Accountants (IESBA) while framing Code of Ethics for CAs.
- ICAI Code of Ethics, 2019 issued on as a Guideline of the Council. It is based on International Ethics Standards Board for Accountants (IESBA) Code of Ethics, 2018 edition.
- It Will come into effect from **1st July, 2020**.
- ICAI Code of Ethics , 2019 has **3 Volumes**. Volume I and Volume III available on ICAI website. Volume II is yet to be made available.

Overview of Structure of Code of Ethics

Part 1 (Applicable to all Professional Accountants)
Complying with the Code, Fundamental Principles and Conceptual Framework

Part 2
Professional Accountants in
Business

Part 3
Professional Accountants in
Public Practice

International Independence Standards (Parts 4A & 4B)
Part 4A—Independence for Audits & Reviews (Sections 400 to 899)
Part 4B—Independence for Other Assurance Engagements (Sections 900 to 999)

Glossary (All Professional Accountants)

Professional Accountant = An individual who is a member of the Institute of Chartered Accountants of India
Professional Accountants in business; Modified to “professional accountant in service”

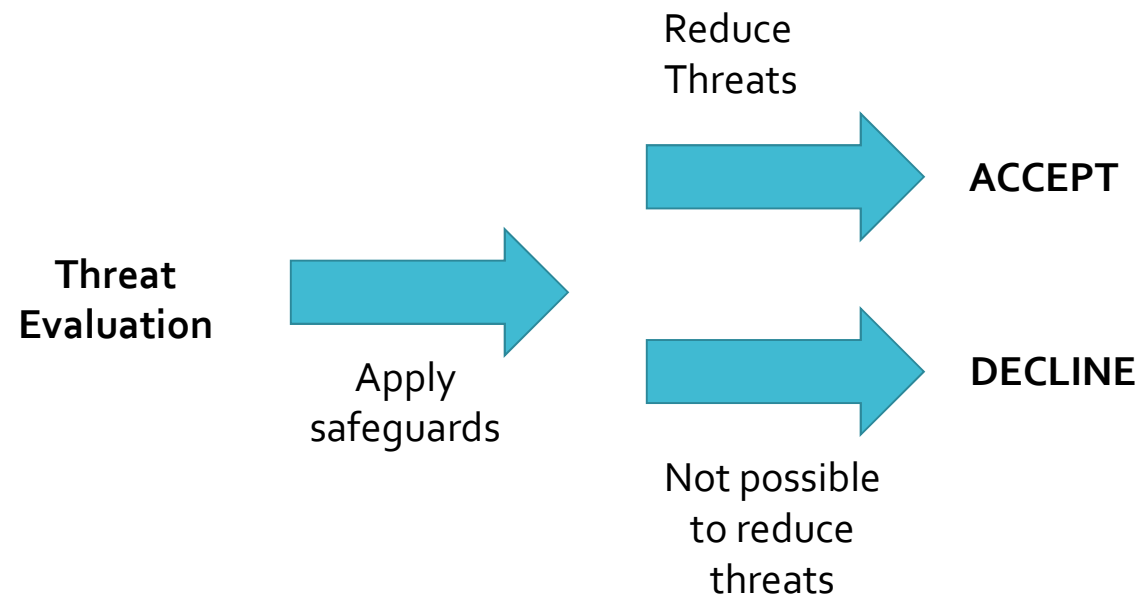
Fundamental Principles

- A professional accountant is required to comply with the following fundamental principles:
- **Integrity** – Being straightforward and honest in all professional relationships.
- **Objectivity** – Not allow bias, conflict of interest or undue influence of others to override professional judgments.
- **Professional Competence and Due Care** – Maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques.
- **Confidentiality** – The confidentiality of information acquired - should not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and employment relationships should not be used for the personal advantage of the professional accountant or third parties.
- **Professional Behaviour** – Should comply with relevant laws and regulations and should avoid any action that discredits the profession.

Threats in Compliance of Fundamental Principles

- **Threats :**
 - **(a) Self-interest threats**, which may occur as a result of the financial or other interests of a professional accountant or of a relative
 - **(b) Self-review threats**, which may occur when a previous judgment needs to be re- evaluated by the professional accountant responsible for that judgment
 - **(c) Advocacy threats**, which may occur when a professional accountant promotes a position or opinion to the point that subsequent objectivity may be compromised
 - **(d) Familiarity threats**, which may occur when, because of a relationship, a professional accountant becomes too sympathetic to the interests of others
 - **(e) Intimidation threats**, which may occur when a professional accountant may be deterred from acting objectively by threats, actual or perceived.
- **Safeguards :**
 - **(A) Safeguards created by the profession, legislation or regulation.**
 - **(B) Safeguards in the work environment –**
 - - Firm wide safeguards
 - - Engagement-specific safeguards
 - - Safeguards within the client's systems and procedures

Conceptual Framework Approach



“**Acceptable level**” defined as a level as the reasonable and informed third party knowing facts would likely conclude that the accountant complies with the fundamental principles.

Identified threats must be addressed in one of three ways:-

- Eliminate circumstances creating the threats;
- Apply safeguards; or
- Decline or end the service

Major Change in Code of Ethics 2019- Volume -I

Non-Compliance with Laws and Regulations (NOCLAR) - Sections 260 and 360

While providing a professional service to a client or for an employer, a Professional Accountant may come across an instance of non-compliance with laws and regulations (NOCLAR) or suspected NOCLAR committed or about to be committed **by the client or the employer**, or by those charged with governance, management or employees of the client or employer.

Accepting that PA has a prima facie ethical responsibility to not turn a blind eye to the matter, NOCLAR was introduced to guide him to deal with the situation considering how best to serve the public interest in these circumstances.

Laws and regulations that have a nexus to PAs' professional training and expertise

- Laws and regulations that have a direct effect on the determination of material amounts and disclosures in the financial statements
- Other laws and regulations, compliance with which may be fundamental to the entity's business and operations or necessary to avoid material penalties.

As per IESBA, following examples would be covered in NOCLAR:-

- Fraud, corruption and bribery, Money laundering, terrorist financing and proceeds of crime
- Securities markets and trading, Banking and other financial products and services
- Data protection, Environmental protection, Public health and safety
- Tax and pension liabilities and payments

Major Change in Code of Ethics 2019- Volume -I

- **Non-Compliance with Laws and Regulations (NOCLAR) contd..**
- Following matters not in scope of NOCLAR:-
 - Clearly inconsequential
 - Personal misconduct unrelated to the business activities
 - Non-compliance other than by the client or employer
- PA to address NOCLAR only when, and if, he encounters the same **in the course of providing a professional service to a client**
- Appropriate authority for disclosure will depend on the nature of the matter. E.g. SEBI for fraudulent financial reporting
- In 2019 Code, it has been initially made applicable to Auditors/Employees of **Listed entities in India**.
- Applicable to **only audit assignments** in India.

Major Change in Code of Ethics 2019- Volume -I

- **Fees – Relative Size**
- In the revised Code, where for two consecutive years, total gross annual professional fees from the audit client and its related entities represent more than 15% of total fees, the firm shall disclose to Those charged with Governance (TCWG)
- *It may be clarified that there is NOT a bar in the revised Code of Ethics on acceptance of more than 15% fees from a single client. There is only requirement of disclosure , and taking safeguards prescribed therein*
- No such ceiling on total fees of the Firm would be applicable where such fees does not exceed Rs. 5 Lakhs
- No such ceiling on the total fees would be applicable in the case of audit of government Companies, public undertakings, nationalized banks, public financial institutions or Government appointments.
- Restriction on more than 40% Fees from a single client in Self Regulatory Measures contained in Part-B of Code of Ethics, 2009 repealed.

Major Change in Code of Ethics 2019- Volume -I

- **Management Responsibilities (Sections 600.7 – 600.8)**
- In 2019 edition (Volume-I), there is a new section dealing with 'Management Responsibilities'. As per the same, **the firm shall not assume a management responsibility for an audit client.**
- However, providing advice and recommendations to assist the management of an audit client in discharging its responsibilities is not assuming a management responsibility.
- Providing administrative services to an audit client does not usually create a threat. Examples of administrative services include:-
 - *Word processing services.*
 - *Preparing administrative or statutory forms for client approval.*
 - *Submitting such forms as instructed by the client.*
 - *Monitoring statutory filing dates, and advising an audit client of those dates.*

Major Change in Code of Ethics 2019- Volume -I

- Existing prohibitions (in 2009 Code) on provision of certain types of Non assurance services to Audit clients to continue in 2019 Code (e.g. Internal audit, Accounting and Book keeping services etc.)
- New prohibitions of recruiting services in 2019 Code:-
 - Enhanced general description of recruiting services
 - Clearer guidance on types of recruiting services prohibited
 - New provisions to help avoid assuming management responsibilities when providing recruiting services–Similar to IT and internal audit
 - Prohibition on providing certain recruiting services now applies to all entities –Searching for or seeking out candidates
 - Undertaking reference checks of prospective candidates

Major Change in Code of Ethics 2019- Volume -I

- **Taxation services to the Audit clients**
- **ICAI Code Ethics, 2009** : Taxation to Audit client include compliance, planning, provision of formal taxation opinions and assistance in the resolution of tax disputes. Such assignments are generally not seen to create threats to independence
- **ICAI Code of Ethics, 2019 (600.4)** : Further guidance on Taxation matters provided. Generally, it states that providing tax services to an audit client might create a self review or advocacy threat –
- **Tax Return preparation** – Usually no threat
- **Tax Calculations for the Purpose of Preparing Accounting Entries (that will subsequently be audited by the Firm)** - Creates a self-review threat
- **Tax Planning /Other Tax Advisory Services** - Might create self-review/advocacy threat- appropriate safeguards to be adopted, E.g. Using professionals who are not audit team members to perform the service; **Tax Services Involving Valuations**- Might perform only where the result of the valuation will not have a direct effect on the financial statements
- **Assistance in the Resolution of Tax Disputes** - Might create a self- review or advocacy threat appropriate safeguards to be adopted – Not to provide if involves acting as advocate for the audit client OR amounts involved are material to the financial statements on which the firm will express an opinion.

Public Interest Entity

- Enhanced independence requirements for PIE clients in the new Code
- PIE is defined as :-
 - (i) A listed entity; or
 - (ii) An entity:
 - Defined by regulation or legislation as a public interest entity; or
 - For which the audit is required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to the audit of listed entities. Such regulation might be promulgated by any relevant regulator, including an audit regulator.
 - For purpose of this definition, it may be noted that Banks and Insurance Companies are to be considered as Public Interest Entities.
- Other entities might also be considered by the Firms to be public interest entities, as set out in paragraph 400.8. 36
- For example, providing a non-assurance service to an audit client that is a public interest entity might be perceived to result in a higher level of threat to compliance with the principle of objectivity with respect to the audit.
- Section 524 employment with an audit client
- Section 540 long association of personnel with an audit client

Inducements, Including Gifts and Hospitality

Code of Ethics, 2009	Code of Ethics, 2019 (Volume –I)
Offer of gifts/hospitality ordinarily gives rise to threats to fundamental principles	Inducements elaborated
Significance of such threats depend on the nature, value and intent behind the offer.	To first see whether prohibited by Laws and Regulations
Reasonable and Informed Third Party Test – If its within normal course of business without the specific intent to influence. Decision making or to obtain information, may conclude that it is acceptable	Reasonable and Informed Third Party Test –To see whether it is with the intent to improperly influence the behaviour of the recipient or of another individual.
If threats other than significant, must take Safeguards	Clarifications about appropriate boundaries for offering and accepting of inducements
Total prohibition in case of Assurance clients (except if inconsequential)	Extended to PAs in service also Total prohibition in case of Audit/Assurance clients to Continue

Documentation

- 2009 Code - Firms to document conclusions on compliance with independence requirements (290.27)
- 2019 Code - requirements of Documentation given in greater detail. PA encouraged to document:
 - The facts.
 - The accounting principles or other relevant professional standards involved.
 - The communications and parties with whom matters were discussed.
 - The courses of action considered.
 - How the accountant attempted to address the matter(s).
- Requirements for NOCLAR – has to be sufficient to enable an understanding of significant matters arising during the audit, the conclusions reached, and significant professional judgments made in reaching those conclusions. Thus, documentation is of critical importance in manifesting compliance with NOCLAR.

Breaches of the Code

- Mechanism of self-correction prescribed in the Code in case the PA on his own discovers an unintentional violation
- Mentions steps to be taken in case of breach of Independence Standards i.e. Parts 4A and 4B. A PA who identifies a breach shall evaluate significance of breach and its impact on PA's ability to comply with the fundamental principles.
- If a firm concludes that a breach of a requirement in this Part has occurred, it shall take prescribed steps therein e.g.:-
 - End, suspend or eliminate the interest that created breach
 - Consider applicable legal or regulatory requirements and apply them

Other Services by Auditors

Current Provision	New Provision
Insurance Financial Advisory services	
Insurance Financial Advisory Services under the Insurance Regulatory & Development Authority Act, 1999 , including Insurance Brokerage.	Insurance Financial Advisory Services under the Insurance Regulatory & Development Authority Act, 1999 including Insurance Brokerage <u>(not Including Insurance Agency).</u>
Valuation	
Valuation of shares and business and advice regarding amalgamation, merger and acquisition.	Valuation of shares and business and advice regarding amalgamation, merger and acquisition. <u>Acting as Registered valuer under the Companies Act, 2013 read with The Companies (Registered Valuers and Valuation) Rules, 2017.</u>

Major Change in Code of Ethics 2019- Volume -I

- **Changes in Professional Appointment (Section 320)**
- Code of Ethics, 2019 (Volume-I) contains detailed guidance on client and engagement acceptance / changes in professional appointment
- ICAI “Know Your Client” (KYC) Guidelines incorporated – which are mandatory for all attest functions w.e.f 1.1.2017
- In case of change of appointment, if unable to communicate with the predecessor accountant, the proposed accountant shall take other reasonable steps to obtain information about any possible threats.
- Duty of predecessor accountant to respond to communication (against the existing Code which is silent on this issue). He shall:-
 - (a) Comply with relevant laws governing the request; and
 - (b) Provide any information honestly and unambiguously.

Amendments in Volume- II

Important Aspects

- **Section 2 : Members who are deemed to be in Practice**
Management Consultancy and Other Services- added acting as Insolvency professional and Administrative Services.
- **Section 2 : Significance of the Certificate of Practice.**
- **Section 24 : Penalty for falsely claiming to be a Member etc** Section 24 provides that:- —Any person who
 - (i) not being a member of the Institute-
 - (a) represents that he is a member of the Institute;
or
 - (b) uses the designation Chartered Accountant;
or
 - (ii) being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practices as a Chartered Accountant, shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months or with fine which may extend to five thousand rupees, or with both. ll

Important Aspects

- **Section 7 : Practising Member is prohibited to use designation(s) other than 'Chartered Accountant'**
- Every member of the Institute in practice shall, and any other member may, use the designation of a chartered accountant and no member using such designation shall use any other description, whether in addition thereto or in substitution therefor:
- Provided that nothing contained in this Section shall be deemed to prohibit any such person from adding any other description or letters to his name, if entitled thereto, to indicate membership of such other Institute of accountancy, whether in India or elsewhere, as may be recognised in this behalf by the Council, or any other qualification that he may possess, or to prohibit a firm, all the partners of which are members of the Institute and in practice, from being known by its firm name as Chartered Accountants.

Important Aspects

- **Section 25 : Companies not to engage in Accountancy**

Companies not to engage in accountancy Section 25 provides that:-

(1) No Company, whether incorporated in India or elsewhere, shall practise as chartered accountants. Explanation – For the removal of doubts, it is hereby declared that the —companyll shall include any limited liability partnership which has company as its partner for the purposes of this section.

(2) If any company contravenes this provision then, without prejudice to any other proceedings which may be taken against the company, every director, manager, secretary and any other officer thereof who is knowingly a party to such contravention shall be punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent conviction to five thousand rupees.

Guidelines for Corporate Form of Practice To empower the members to face the emerging challenges in the service sector as well as to equip them for the opportunities in the non-audit service area, the Council in 2006 decided to allow members in practice to render Management Consultancy and Other Services in Corporate form in accordance with the Guidelines issued in this regard.

Important Aspects

- **Section 26 : Unqualified persons not to sign documents**

Unqualified persons not to sign documents Section 26 provides that:-

- 1) No person other than a member of the Institute shall sign any document on behalf of a chartered accountant in practice or a firm of such chartered accountants in his or its professional capacity.
- (2) Any person contravenes this provision shall, without prejudice to any other proceedings, which may be taken against him, be punishable on first conviction with a fine not less than five thousand rupees but which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year or with fine not less than ten thousand rupees but which may extent to two lakh rupees or with both.

Important Aspects

- **Section 27 : Maintenance of Branch Offices**
- Where a chartered accountant in practice or a firm of such chartered accountants has more than one office in India, each one of such offices shall be in the separate charge of a member of the Institute: Provided that the Council may in suitable cases exempt any 7 chartered accountant in practice or a firm of such chartered accountants from the operation of this subsection.
- Every chartered accountant in practice or a firm of such chartered accountants maintaining more than one office shall send to the Council a list of offices and the persons in charge thereof and shall keep the Council informed of any changes in relation thereto.
- In view of the Council's decision, however, the exemption is granted under proviso to Section 27(1) of the Chartered Accountants Act, 1949 to a member or a firm of Chartered Accountants in practice to have a second office without such second office being under the separate charge of a member of the Institute, provided (a) the second office is located **in the same premises**, in which the first office is located or (b) the second office is **located in the same city**, in which the first office is located or (c) the second office is located within a **distance of 50 km.** from the municipal limits of a city, in which the first office is located. A member having two offices of the type referred to above, shall have to declare, which of the two offices is his main office, which would constitute his professional address.

Disciplinary Mechanism

- **Section 21 : Procedure in Inquiries for Disciplinary Matters relating to misconduct of the members of the Institute**

The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

- **Section 22 : Conduct of the members in any other circumstances**

For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this Section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

Sharing of Fees or Profits

- **Part – I of The First Schedule**
- **Clause (2) : Sharing Fees or Profits with Non CAs:-**A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than -
 - a member of the Institute or a partner or a retired partner or
 - the legal representative of a deceased partner, or
 - a member of **any other professional body** or
 - with **such other persons having such qualifications** as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

Sharing of Fees or Profits

- **Part – I of The First Schedule**
- **Clause (3): Receiving Share in Profits from Non CA**
- A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute; Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this Part

Sharing of Fees or Profits

- Regulation 53 A of Chartered Accountants Regulation 1988 -
- **Prescribed Professional Bodies :**
 - The Institute of Company Secretaries of India
 - The Institute of Cost and Works Accountants of India
 - Bar Council of India
 - The Indian Institute of Architects
 - The Institute of Actuaries of India
 - Professional bodies or institutions outside India whose qualifications relating to accountancy are recognised by the Council.
- **Prescribed Qualifications :**
 - CS, ICWA, Actuary.
 - B.E., B.Tech., Architect, Bachelor in Law from a University established by law or an institution recognised by law
 - Master in Business Administration from Universities established by law or technical institutions recognised by All India Council for Technical Education.
- Sharing of Fees or Profits (giving or receiving) with above persons is allowed.
- No bar in sharing of fees if stipulated by any Statute.
- **Referral Fees amongst members has been now permitted. (Disclosing to the clients any referral fees paid to or received from another professional accountant for recommending services might address a self-interest threat.)**

Entering in Partnership

Clause (4): Entering in Partnership with Persons other than CAs in practice :-

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he enters into partnership, in or outside India, with any person other than a chartered accountant in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under Clause (v) of sub-Section (1) of Section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of permitting such partnerships

Persons Qualified- CS, CWA, Actuary, Architect, Advocate, BE, B.Tech, M.B.A. from respective recognised Institutions / University. However, Multi Disciplinary Partnerships not approved by Institute.

Multi Disciplinary Partnerships (MDP)

Despite Regulations 53 A(3) and 53B, Members can not form MDPs till such time that Regulators of such other professions also permits partnership with Chartered Accountants and Guidelines in this regards are issued by the Council.

Appointment as Auditors

- Clause 9 of Part-I of First Schedule.

Accepting Audit Appointment without ascertaining Company Law compliance :-

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 of the Companies Act, 1956 (1 of 1956), in respect of such appointment have been duly complied with;

- **Council Guidelines:**

- Ensure that the notice was properly served on the members & outgoing auditors.
- Obtaining copy minutes duly verified & signed by Chairman.

- **Important Points :**

- Proper Appointment Letters, ensuring that it is from proper authority.
- *Ensuring compliance with the provisions of Section 225 of Companies act, 1956 stipulated in Clause (9)* on the part of Incoming Auditor to be read as compliance with Sections 139 and 140 of Companies Act, 2013.*

Communication with Previous Auditor

- **Part – I of The First Schedule**
- **Clause (8): Non Communication with Previous Auditor :-**

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing;

- **Important Points :**
 - Applicable to all types of audits.
 - Position previously held by CA (and not previous year's CA) for same or similar assignment comprising same/similar scope.
 - Communication to be made before acceptance of Audit.

Communication with Previous Auditor

- **Council General Guidelines, 2008**
- A member of the Institute in practice **shall not accept** the appointment as auditor of an entity in case the undisputed audit fee of another Chartered Accountant for carrying out the statutory audit under the Companies Act, 1956 or various other statutes has not been paid:
- Provided that in the case of sick unit, the above prohibition of acceptance shall not apply.
- Explanation 1: For this purpose, the provision for audit fee in accounts signed by both - the auditee and the auditor shall be considered as “undisputed” audit fee.
- Explanation 2: For this purpose, “sick unit” shall mean where the net worth is negative.
- **Clause 1 of Part-II of Second Schedule.**
- A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council
- **Hence unless there is concrete proof available for payment of undisputed audit fees of the previous auditor, the new auditor shall not accept the audit. Otherwise it will be Mis-conduct as per Clause 1 of Part-II of Second Schedule.**

Communication with Previous Auditor

- **Mode of Communication**

Members should communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the delivery of the communication to the addressee. In the opinion of the Council following modes would in normal course provide evidence of communication –

- communication by a letter sent “Registered Acknowledgement due”
- by hand against a written acknowledgement,
- acknowledgement of the communication from retiring auditor’s via email address registered with the Institute or the last known official email address; and
- through Unique Identification Number (UDIN) generated on UDIN portal (subject to separate guidelines to be issued by the Council in this regard)
- Email Communication now allowed with some conditions :

- **Duty on Previous Auditor in case of change of Auditor :**

On the request of the Incoming Auditor to the retiring auditor for providing known information regarding any information of which, in the retiring auditors opinion, the Incoming auditor needs to be aware before deciding whether to accept the engagement, the retiring auditor shall provide the information diligently

Communication with Previous Auditor

Factor	Existing	Revised
Premises are locked	Silent	Communication received back by the Incoming Auditor with "Office found Locked" written on the AD shall be deemed as delivered
Firm not found at the given Registered address	Silent	If Communication sent by with remarks "No such office exists at this address", and address is registered with Institute - deemed to be delivered, unless the retiring auditor proves that it was not really served and that he was not responsible for such non-service.
Communication in case of certification	Healthy practice	Dispensed with

Charging Fees on Percentage Basis

- **Part – I of The First Schedule.**
- **Clause (10): Charging Fees on the basis of Percentage or Contingencies :-**

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he charges or offers to charge, accepts or offers to accept in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or results of such employment, except as permitted under any regulation made under this Act;

Charging Fees on Percentage Basis

- Regulation 192. Restriction on fees No Chartered Accountant 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 results of such work: Provided that:
 - in the case of a receiver or a liquidator, the fees may be based on a percentage of the realization or disbursement of the assets;
 - in the case of an auditor of a co-operative society, the fees may be based on a percentage of the paid up capital or the working capital or the gross or net income or profits; and
 - in the case of a valuer for the purposes of direct taxes and duties, the fees may be based on a percentage of the value of the property valued.
 - in the case of certain management consultancy services as may be decided by the resolution of the Council from time to time, the fees may be based on percentage basis which may be contingent upon the findings, or results of such work;
 - in the case of certain fund raising services, the fees may be based on a percentage of the fund raised;
 - in the case of debt recovery services, the fees may be based on a percentage of the debt recovered;
 - in the case of services related to cost optimization, the fees may be based on a percentage of the benefit derived; and
 - any other service or audit as may be decided by the Council.
- Note :- Following activities have been decided by the Council under —hll above :- (i) Acting as Insolvency professional (ii) **Non-Assurance Services to Non-Audit Clients**

Engagement in Other Business or Occupation

- **Regulation 190 A & Appendix 9 to CA Regulations, 1988. (Illustrative list)**
- **General Permission-**
 - Employment with CA Firm, Private Tutorship, Author of Books & Articles, Holding Public Offices like
 - MLA/MP etc., Honorary Office bearer in Charitable, Educational or Other Non Profit Organisation,
 - Notary, SEM, Valuation of Papers, Paper setters, Examiners etc., part time tutor in coaching organisation of Institute, Editorship of Professional Journals.
 - Acting as Loss Surveyor under Insurance Act, Recovery consultant in Banks.
 - Owning Agricultural land and carrying agricultural activity.
- **Special Permission :**
 - Lecturer in University/Colleges- Total direct teaching hours should not exceed 25 hours.
 - Editorship other than Prof Journals, Mg. Director, Whole time Director

Engagement in Other Business or Occupation

- Part – I of The First Schedule :

Clause (11): Engaging business/occupation other than CA :-

HUF vis-à-vis member in practice

- Guidance on a member in practice being member / Karta in a HUF doing business incorporated
 - Must result from inheritance/succession/partition of the family business
 - Only after specific and prior approval of the Council
 - Karta cannot have active role
 - Attest functions not permitted
- Clarification incorporated that a member engaged as Karta of a HUF doing family business, will be within the limit prescribed by Council if he makes investments from the funds pertaining to HUF only, provided, he is not actively engaged in the management of the said business.

Engagement in Other Business or Occupation

- Part – I of The First Schedule : Clause (11): Engaging business/occupation other than CA :-
- A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he engages in any business or occupation other than the profession of chartered accountants unless permitted by the Council so to engage ... Provided that nothing contained herein shall disentitle a chartered accountant from being a director of a Company, (not being a managing director or a whole time director), unless he or any of his partners is interested in such company as an auditor; Hence Director simplisiter or Independent Director (no involvement in affairs except for Board Meetings) is allowed.
- *"Director Simplicitor" means an ordinary/simple Director, who is not a Managing Director or Whole time Director and is required only in the Board Meetings of the company and not paid any remuneration except for attending such meetings.*
- *No equivalent of Director Simpliciter in LLPs : A member in practice cannot become a partner/ designated partner (non-working and non-remuneration drawing) in an LLP not carrying out professional work.*

Independence

- **Part – I of The Second Schedule :**
 - **Clause (4): Audit of Concern in which having substantial interest :-**
 - A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he expresses his opinion on financial statements of any business or enterprise in which he, his firm or a partner in his firm has a substantial interest;
 - Appendix 9 to CA Regulations, 1988 - Substantial Interest
- a member shall be deemed to have a “substantial interest” in a concern
- in a case where the concern is a Company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of voting power at any time, during the relevant years are owned beneficially by such member or by any one or more of the following persons or partly by such member and partly by one or more of the following persons: (a) One or more relatives of the member; (b) Any concerns in which any of the persons referred to above has a substantial interest;

Independence

- in the case of any other concern, if such member is entitled or the other persons referred to above or such member and one or more of the other persons referred to above are entitled in the aggregate, at any time during the relevant years to not less than twenty percent of the profits of such concern.
- Modification in the situations of Conflict of Interest in accordance with Companies Act, 1949
- Other situations of conflict based on Council decisions incorporated e.g. Internal auditor not to be the Tax auditor simultaneously
- Cooling off period after completion of tenure as Director - A member not to be the auditor of a Company for a period of two years from the date of completion of his tenure as Director

Allowing Non CAs to Practice

Part – I of The First Schedule.

Clause (1): Allowing Non CA to practice in his name :-

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he allows any person to practice in his name as a chartered accountant unless such person is also a chartered accountant in practice and is in partnership with or employed by him;

- To safeguard the public against unqualified accountants.-

Clause (12): Allowing Persons other than practicing CA to sign on his behalf:-

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, any balance- sheet, profit and loss account, report or financial statements.

Council Clarification: Delegation allowed where professional opinion/authentication not required – Issue of Audit Queries, Forwarding Observations , Asking information etc. during Audit.

Suggested Steps:

In every engagement involving attestation, prepare Report or Certificate adhering to 'Guidance Note on Reports or Certificates for Special Purposes' with Sign, Seal, Date and Place.

Create UDIN for the same

Audit and Reports

- **Part – I of The Second Schedule.**
- A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he-
 - Clause (2): Submitting Report without verification of Financial Statements :-**
certifies or submits in his name, or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice
 - Clause (5): Failure to disclose material facts :-**
fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;
 - Clause (6): Failure to report material misstatement :-**
fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;
 - Clause (7): Grossly Negligent :-** A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;
 - Clause (8): Failure to obtain sufficient information :-**
fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;
 - Clause (9): Failure to report material departures from Generally accepted audit procedure :-**
fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances

Audit and Reports

- The materiality in context of Audit is mentioned Standard on Auditing (SA) 320,
- The words financial statements used in this clause would cover both reports and certificates
- Diligence means care; caution; attention and care required from a person in a given situation and the expression 'due diligence' means a measure of prudence, activity, or alertness, as is proper to be expected from, and ordinarily exercised by, a reasonable and prudent member in practice under the particular circumstance.
- The member should also act diligently in accordance with applicable technical and professional standards. Diligence encompasses the responsibility to act in accordance with the requirements of an assignment carefully and thoroughly.
- it is necessary to judge whether the accountant has honestly and reasonably discharged his duties.
- Generally Accepted Audit Procedure - Engagement and Quality Control Standards, Statements, General Clarifications, Guidance Notes and Technical Guides, Practice Manuals, Studies and Other Papers.
- **(Requirements of Peer Review)**
- **The members are required to mention the Membership number and Firm registration number to all reports issued pursuant to any attestation engagements, including certificates, issued by them as proprietor of/ partner in the said firm.**
- **The members may note that UDIN (unique document identification number) is mandatory from 1st July, 2019 on all Corporate/ Non- Corporate Audit, Attest and Assurance Functions.**

Confidentiality and Custody of Client's Assets/Money

Part – I of The Second Schedule.

- A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he-
- **Clause (1): Disclosure of information without consent of Client :-**
- discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client or otherwise than as required by any law for the time being in force.
- **Clause (10): Failure to keep client's money in separate A/c or using the same for it's purpose:-**
- Fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time.

Part – II of The Second Schedule.

- A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he
- Clause (2): being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment except as and when required by any law for the time being in force or except as permitted by the employer
- Clause (4): defalcates or embezzles moneys received in his professional capacity.

Not Providing Information/ Providing Wrong Information

- **Part – III of The First Schedule.**
- A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he
 - Clause (2):** does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority;
 - Clause (3):** While inviting professional work from another chartered accountant or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in items (6) and (7) of Part I of this Schedule, gives information knowing it to be false.
- **Part – II of The Second Schedule.**
 - Clause (3):** includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false;

Professional/ Other Misconduct

- **Part – II of The Second Schedule**

Clause (1): A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he **contravenes** any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council

- **Part – IV of The First Schedule**

Clause (2) : A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he in the opinion of the Council, **brings disrepute** to the profession or the Institute as a result of his action whether or not related to his professional work.

The Council has been empowered to opine on any action of a member which brings the Institute or profession in disrepute as misconduct.;

Solicitations, Advertisements

- **Part – I of The First Schedule**
- **Clause (5): Securing Professional Business by non permitted means**

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he secures, either through the services of a person who is not an employee of such chartered accountant or who is not his partner **or by means which are not open to a chartered accountant**, any professional business:

Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this Part;
- **Clause (6): Solicitation of Professional Work :-**

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he solicits clients or professional work either **directly or indirectly** by circular, advertisement, personal communication or interview or **by any other means**; Provided that nothing herein contained shall be construed as preventing or prohibiting—

 - (i) any chartered accountant from applying or requesting for or inviting or securing professional work from another chartered accountant in practice;
 - (ii) a member from responding to tenders or enquiries issued by various users of professional services or organisations from time to time and securing professional work as a consequence;

Solicitations, Advertisements

- **Part – I of The First Schedule**

- **Clause (7): Advertisement of Professional and Other Achievements**

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he advertises his **professional attainments or services**, or uses any **designation or expressions other than chartered accountant** on professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Chartered Accountants of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council;

Provided that a member in practice may advertise through a **write up**, setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council;

- **Advertisement Guidelines, 2008.**

“**write up**” means the writing of particulars according to the information given in the Guidelines setting out services rendered by the Members or firms and any writing or display of the particulars of the Member(s) in Practice or of firm(s) issued, circulated or published by way of print or electronic mode or otherwise including in newspapers, journals, magazines and websites (in Push as well in Pull mode) in accordance with the Guidelines

Solicitations, Advertisements

- **Important Issues/ Decisions**
- Write ups can include Photographs, Services provided. It should not be claiming superiority , not be indecent, sensational, should not contain testimonials or endorsements, should not include the names of the clients, font size not more than 14, should not contain information about achievements/award or any other position held. (Amendments discussed in subsequent slides)
- **Associations with "Network" as a medium of referral of professional work is permissible only if the Network is registered with the Institute, comprising only of Chartered Accountants/ Chartered Accountant Firms, and governed by the Institute's Network Guidelines.(Announcement on 11.12.2019)**
- Press Advertisement for changes in partnership, address etc., giving actual facts- Allowed.
- Giving Public interviews; may be mentioning details about him/ his firm, not leading to Advertisement - Allowed. (should not highlight professional attainments).
- Greeting Cards, Invitations- Generally allowed.
- ICAI Diploma can be mentioned on card; not certificate course.
- Descriptions like ' President of ----- Club' etc. should not be used on Professional stationery.
- Descriptions like 'established since---' should not be mentioned on Professional stationery.
- Adjectives like 'ITAT lawyer', 'Finance Consultant' etc. should not be mentioned on Cards/Letterheads.
- Rowing enquiries/applications for professional work should not be made

Solicitations, Advertisements

- **Important Guidelines/ Announcements**
- Advertisement Guidelines 2008 available on ICAI website.
- Website Guidelines issued by Council.
- Restriction on manner of entries in Directories.
- Guidelines for use of CA Logo.
- Guidelines on Advertisement by Write ups 14th May, 2008
- Council Guidelines for responding to Tenders issued on 7th April, 2016
- Announcement on use of designation other than 'Chartered Accountant'
- Announcement reg. abstaining from sharing of Firm details intended for comparison of Firms.
- Announcement on Advertising by members in practice engaged in Coaching/Teaching activities in 2017.
- **All the above Guidelines/ Announcements have been included in Volume-II now , with amendments, discussed herein.**

Solicitations, Advertisements

- **Important Amendments :**
- **Prohibitions -**
Members being Directors in Companies, members of Political parties or CA Cells in the political parties , holding different positions in clubs or other organizations not permitted to mention these positions as they would be violative of Section 7 of the Act
- **Permissible -**
“Insolvency Professional”, “Registered Valuer”
Mentioning qualifications of Accounting Institutes which have MRA/MOU with ICAI permitted.
- **For Council / Regional council members –**
Last highest position held in ICAI (as an elected representative) on his visiting card , provided it is without ICAI emblem and the visiting card is of individual member only, and not of CA Firm , wherein he may be the partner

Solicitations, Advertisements

- **Important Amendments (contd.):**
- **Sponsorship** : Member or Firm not permitted to sponsor an event. However, may sponsor an event conducted by a Programme Organizing Unit (PoU) of ICAI , provided it has prior approval of CPE Directorate.
- **Sponsorship** : Members sponsoring activities relating to CSR may mention their individual name with the prefix "CA". However, the mention of Firm name or CA Logo is not permitted.
- **Uploading Educational Videos** : Educational videos may be uploaded by members; however , no reference should be made to the CA Firm wherein he may be a partner/proprietor.
- **Advertising of Coaching** : Provisions of ICAI Announcement dt. 18.5.2017 of bar on Advertisement of Coaching /teaching activities incorporated.
- **TV/ Movie Credit** : Member's / firm's name allowed in TV/Movie Credits , provided not mentioned differently from other persons.

Solicitations, Advertisements

- **Important Amendments (contd.):**
- **Interview :** Sharing of Firm details during interview not to result in publicity if such detail are given only on a specific question and of factual nature only.
- In Books, Articles and presentations, Professional attainments are prohibited however use of prefix of “CA” or name of Firm permitted.
- **Advertisements for Celebrations on Silver Jubilee etc. :** Considering the need of interpersonal socialization/ relationship of members through such get together occasions ,advertisement for Silver, Golden, Diamond, Platinum or Centenary celebrations of CA Firms may be published in newspaper.
- **illumination of Sign Board :** With regard to the size of sign board for his office that a member can put up, it is a matter in which the members should exercise their own discretion and good taste. Use of glow signs or neon lights on large-sized boards as is used by traders or shopkeepers would not be proper, while keeping in mind the appropriate visibility and illumination of the sign Board.

Solicitations, Advertisements

- **Important Amendments (contd.):**
- **Internet added to TV / Films under commentary to Clause (7) :** Members may appear on television, films **and Internet** and agree to broadcast in the Radio or give lectures at forums and may give their names and describe themselves as Chartered Accountants. Special qualifications or specialized knowledge directly relevant to the subject matter of the programme may also be given. **Firm name may also be mentioned, however, any exaggerated claim or any kind of comparison is not permissible.** What he may say or write must not be promotional of him or his firm but must be an objective professional view of the topic under consideration.
- **Network**
 - Reference of Revised Network Guidelines
 - Not permissible for Firms to join Networks not registered with the Institute (by whichever name called)
- **Logo**
 - Continuing prohibition on Firm logo
 - Reference of permission to use common CA Logo incorporated
 - CA Logo Guidelines added as vide a new Appendix.

Write Up

- It shall be honest and truthful.
- There shall be no exaggerated claims for the services offered by the member or the Firm, or the qualifications or experience of the member or any of the partners or any other person associated with the Firm.
- The write-up should not be of a nature that may bring the profession into disrepute
- The write-up should not contain testimonials or endorsements concerning Member(s) or names of clients (both the past and present) or the fees charged
- It must not be violative of any provisions of Chartered Accountants Act, 1949, Chartered Accountants Regulations, 1988, or Code of Ethics
- The write-up should not be of font size exceeding 14.
- The write-up should not contain any information about achievements /awards (except the awards given by the Central or State Governments or Regulatory bodies) or any other position held , or any accreditations granted by any organisation. Monogram of any kind or use of any kind of catch words is not permissible.
- The membership no./FRN (as may be applicable) is mandatory to be mentioned in the write-up.
- The Institute of Chartered Accountants of India may issue directive for removal or withdrawal of the whole write-up or of any part(s) thereof

Recent Decisions/Announcements of Ethical Standards Board

- A CA Firm may register itself on Udyog Aadhar, a web portal of Ministry Micro, Small and Medium Enterprises.
- There is no prohibition for internal auditor of a company to acquire/purchase shares of the said Company.
- It is not permissible for a member to use WhatsApp to send messages to make people aware about his practice, and mention the services provided therein.
- A Chartered Accountant in practice being Director Simplicitor in a Company cannot sign ROC Forms of the Company as it is a direct conflict of role.
- A Chartered Accountant in practice can act as Authorized Representative of a Foreign Company, provided he is not the auditor of the said Company.
- It is permissible for two or more Chartered Accountants in practice collectively to have joint training session for their clients on GST, and share the fees collected from the clients thereof.
- A chartered accountant in practice can provide services through kiosk only if the services provided are professional activities of a practicing chartered accountant, permitted under the Act.
- In case where Chartered Accountant in practice is a non-executive director in a company, he or a Firm in which he is a partner, should not accept the appointment as a statutory auditor of a Company which is a joint venture of the original Company, as it would impact independence.

Recent Decisions/Announcements of Ethical Standards Board

- 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.
- **A Chartered Accountant, who is a member of a Trust, cannot be the auditor of the said trust.**
- A Chartered Accountant in practice may engage himself as Registration Authority (RA) for obtaining digital signatures for clients.
- **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.**
- **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.**
- **A chartered accountant cannot exercise lien over the client documents/records for non payment of his fees.**
- 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.
- It is not permissible for chartered accountants in practice to take agencies of UTI, GIC or NSDL.
- It is permissible for a member in practice to be a settlor of a trust.

Recent Decisions/Announcements of Ethical Standards Board

- Members in practice engaged in Coaching/Teaching activities are advised to abstain from advertising their association with Coaching /teaching activities through hoardings, posters, banners and by any other means, failing which they may be liable for disciplinary action, as per the provisions of Chartered Accountants Act, 1949 and Rules /Regulations framed thereunder .
- The Council of ICAI approved the KYC Norms which are mandatory in nature and shall apply in all assignments pertaining to attest functions.
- Certain decisions on GST Practice (Ref. FAQs on ethical issues relating to GST dt. 15.11.2017)
- The member /Firm can conduct training through seminars etc. on GST but only invite its existing clients to such training programmes.
- He can send presentation on GST /write-up on GST only to existing clients, and to a proposed client if an enquiry was received from the proposed client with regard to the same.
- In terms of provisions of Clause (7) of Part-I of First Schedule to The Chartered Accountants Act, 1949, it is not permissible for a member to mention himself as GST Consultant.
- A member can share GST updates, mentioning himself as “CA” with individual name, provided the communication is limited to providing updates. Mention of Firm name is not allowed.
- member can publish testimonials /appreciation letters received by him with regard to GST Training assignments on CA Firm website, but not on social media like Facebook, LinkedIn etc.
- GST training can be provided to the existing clients. In case of non-clients, training can be provided only if the member is invited to provide such training.