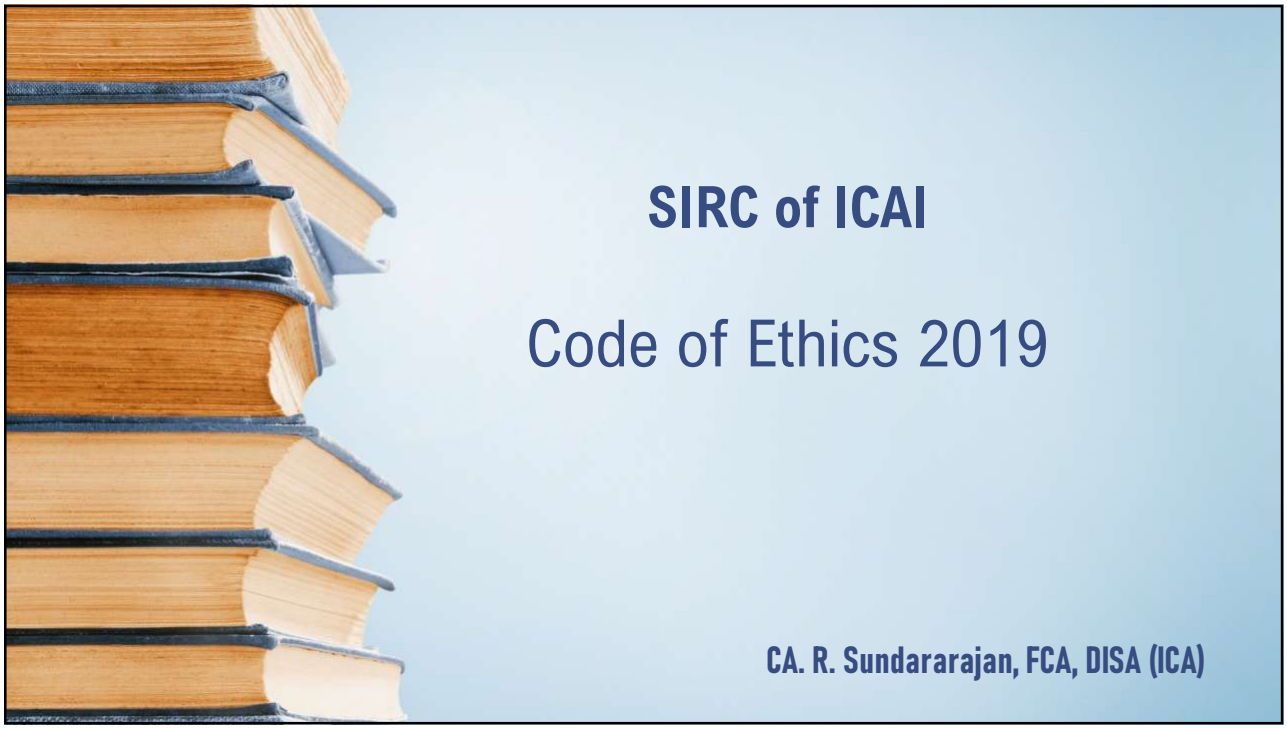


SIRC of ICAI

Code of Ethics 2019

CA. R. Sundararajan, FCA, DISA (ICA)

1

----- Word of caution !!!!

History shows that where ethics and economics come in conflict, victory is always with economics.

Vested interests have never been known to have willingly divested themselves unless there was sufficient force to compel them.
B. R. Ambedkar

Hence the need for COE

2

COVERAGE

- ✓ ICAI Code of Ethics 2019 – Why this New COE ?
- ✓ New Requirements (Now reasonably old) – a Recap
- ✓ Developments at ICAI
- ✓ Technical Standards
- ✓ Disciplinary Cases – Procedures
- ✓ Recent Developments & Cases
- ✓ FRRB findings – Common omissions in FS/CARO
- ✓ Certifications – Due Care

3

WHY THIS NEW CODE OF ETHICS

- Members have domestic as well as International Practice. Hence have to be aligned with International developments .
- Hence this new code of ethics.
- The New Code is applicable from 1st April 2020
- ICAI CoE converged with latest edition of IESBA Code of Ethics
- While the revised code retains the fundamental ethical principle from the earlier code, it covers a refreshed approach and revised requirement.

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ICAI Code of Ethics 2019

- New Requirements – a Recap

More a refresher

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New Requirements

- Long Association of personnel (Section 540)
- Non-assurance services to Audit client (Section 600)
- Key Audit Partner (in the context of partner rotation)

- The engagement partner, the individual responsible for the engagement quality control review, and other audit partners, if any, on the engagement team who make key decisions or judgments on significant matters with respect to the audit of the financial statements on which the firm will express an opinion

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New Requirements

- "Relative" as defined under the Companies Act, 2013 are reckoned if the client is a company while "immediate family" and "close family" are reckoned in case of other clients.

  - Immediate Family: A spouse (or equivalent) or dependent

  - Close Family: A parent, child or sibling who is not an immediate family member

- Responding to Non-Compliance of Laws and Regulations (NOCLAR).

  - In 2019 Code, it has been initially made applicable to Auditors/Employees of Listed entities in India.

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New Requirements

- Management Responsibilities
- Requirement restricting audit team members and Key Audit Partners from being compensated for providing non-assurance services to audit clients.
- Requirements and applicable guidance addressing situations where, as a result of a merger or acquisition, an entity becomes a related entity of an audit client, to assist the Chartered Accountant in evaluating previous or current interests and relationships
- Provisions relating to threats that are created by certain tax services

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New Requirements

- Requirement where the total gross annual professional fees from the audit client and its related entities exceed 15% of the total fees of the firm for two consecutive years.
- Detailed independence requirements included for assurance engagements.
- Auditor rotation requirements included under various local regulations
- In essence self review, self advocacy and conflict of interest are the main focus.

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Purpose & objectives ?!

TO OVER COME AND MITIGATE THE THREATS……

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Fundamental Principles

01 Integrity

02 Objectivity

03 Professional Competence and Due Care

04 Confidentiality

05 Professional Behaviour

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Ethical Requirements-Threats

- Firm should identify, assess and apply appropriate safeguards to eliminate or reduce the risk from threats



If threats are not eliminated or reduced firm must consider withdrawing from the assignement

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THREATS

Self Interest Threats

- Direct FI in a client
- Quoting a low fee to obtain a new engagement
- Close business relationship with client
- Access to confidential information that might be used for personal gain

Self-review threats

- Issuing assurance report on effectiveness of operation of financial systems, after self implementing the above-mentioned systems
- Prepared original data used to generate records that are the subject matter of assurance engagement

Advocacy threats

- Promoting the interests of a client
- Lobbying in favor of legislation on behalf of a client.

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THREATS

Familiarity Threat

- Close / immediate family member who is a Director or officer of the client
- Long association with the audit client.

Intimidation Threat

- Threatened with dismissal from a client engagement or the firm, because of a disagreement about a professional matter
- Pressured to agree with the judgment of a client
- Accepted a significant gift from a client and being threatened that acceptance of this gift will be made public

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Safeguards against the Threats

Safeguards created by the profession, legislation or regulation include, but are not restricted to:

(a) **Educational, training and experience** requirements for entry into the profession.
(b) **Continuing professional development** requirements.
(c) Corporate governance regulations.
(d) **Professional standards**.
(e) Professional or regulatory monitoring and disciplinary procedures.
(f) **External review** by a legally empowered third party of the reports, returns, communications or information produced by a professional accountant.

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Safeguards in the work environment:

- Compliance with the **fundamental principles**.
- Act in the public interest.
- To implement and monitor **quality control** of engagements.
- Identification and the application of safeguards.
- For assurance engagements - **documented independence policies.**
- To monitor and manage the **reliance on revenue received from a single client**.
- For Using **different partners and engagement teams** with separate reporting lines
- **Timely communication** of a firm's policies and procedures, including any changes to them, to **all partners and professional staff**, and **appropriate training and education** on such policies and procedures.
- Designating a member of senior management to be responsible for **overseeing** the adequate functioning of the **firm's quality control system**.
- Advising partners and professional staff of those assurance clients and related entities from which they must be independent.
- **A disciplinary mechanism to promote compliance** with policies and procedures.
- Published policies and procedures to encourage and empower staff to communicate to senior levels within the firm any issue relating to compliance with the fundamental principles that concerns them.

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Engagement- specific safeguards in the work environment

- Involving an additional professional accountant to review the work done or otherwise advise as necessary.
- Consulting an independent third party, such as a committee of independent directors, a professional regulatory body or another professional accountant.
- Discussing ethical issues with those charged with governance of the client.
- Disclosing to those charged with governance of the client the nature of services provided and extent of fees charged.
- Rotating senior assurance team personnel.

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Application of Conceptual Framework

- Professional Appointment
  - > Client Acceptance - Council Guidelines on KYC for Clients.
  - > Engagement Acceptance - Whether engagement can be accepted?
  - > Changes in a Professional Appointment - Communication with previous Auditors.
- Conflicts of Interest Second Opinions
- Fees and Other Types of Remuneration
- Marketing Professional Services
- Gifts and Hospitality
- Custody of Client Assets

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Precaution - Ineligible Services

- accounting and book keeping services;
- internal audit;
- design and implementation of any financial information system;
- actuarial services;
- investment advisory services;
- investment banking services;
- rendering of outsourced financial services;
- **management services; and**
- any other kind of services as may be prescribed

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Part - I of First Schedule

Professional Misconduct in relation to Chartered Accountants in practice

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

Clause (2): Sharing Fees or Profits with Non CA.

Clause (3): Receiving share in Profits from Non CA.

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

Clause (5): Securing Professional Business by non-permitted means

Clause (6): Solicitation of Professional Work

Clause (7): Advertisement of Professional and Other Achievements

Clause (8): Non Communication with Previous Auditor

Clause (9): Accepting Audit Appointment without ascertaining Company Law compliance

Clause (10): Charging Fees on the basis of Percentage or Contingencies

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

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

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Part - I of Second Schedule

Professional misconduct in relation to chartered accountants in practice

Clause (1): Disclosure of information without consent of Client

Clause (2): Submitting Report without verification of Financial Statements

Clause (3): Certifying Estimated Earnings

Clause (4): Audit of Concern in which having substantial interest

Clause (5): Failure to disclose material facts

Clause (6): Failure to report material misstatement

Clause (7): Grossly Negligent

Clause (8): Failure to obtain sufficient information

Clause (9): Failure to report material departures in accounts

Clause (10): Failure to keep client's money in separate A/c or using the same for it's purpose

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ILFS - Other services
– Audit Committee Approval Not obtained
- Staff rotation & familiarity threats

independence in mind required of the **Audit Firm**. The total fee for the 15 engagements listed in Annexure I was Rs. 666. 63 lakhs in comparison to the Audit Fee for the year 2017-18 of Rs. 401 lakhs for both the auditors. It may be noted that these 15 Engagements were from ILFS Ltd, the holding company of the group, or directly from IFIN, and do not include any of the several Engagements given by other Associates and Group Companies of IL&FS Group.

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Developments @ ICAI

It may further be noted that the Council at its 393rd Meeting held on 30th June to 1st July, 2020 has decided that due to the prevailing situation due to Covid-19, the following provisions of Volume-I of Code of Ethics, 2020 be deferred till further notification :-

1. Responding to Non-Compliance of Laws and Regulations (NOCLAR) [Sections 260 and 360]
2. Fees - Relative Size [Paragraphs 410.3 to R410.6]

(Further clarified that no prohibition – but communication to those in charge of governance & disclose)

3. Taxation Services to Audit Clients [Subsection 604]

With the exception of aforesaid provisions, all other provisions of revised Code of Ethics are applicable w.e.f 1st July, 2020.

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Developments @ ICAI

- Communication to Previous Auditor – Can be by Email
- Projections may be signed – Follow SAE 3400
- Provisional Statements – Signature can be on compilation – SRS 4410 – Different from Limited Review statements
- Decisions by Ethical Standards Board
- FAQs by ICAI

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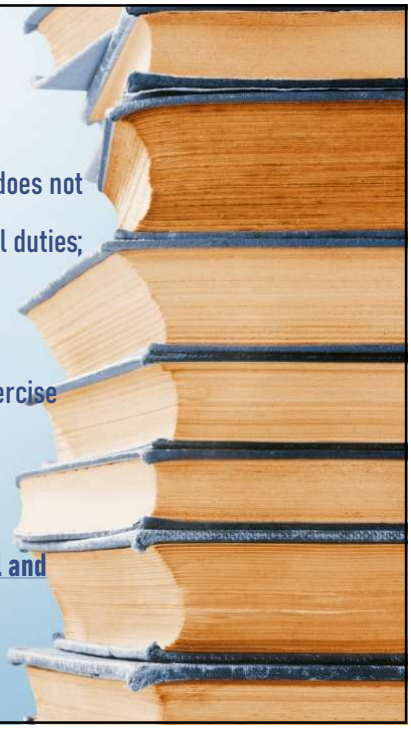
Clause (7) of Part I of First schedule

A CA 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;

Though very simply worded, it is a vital clause

In discharging his professional responsibilities it is expected that he would exercise a reasonable degree of diligence in his professional assignment.

The member should also act diligently in accordance with applicable technical and professional standards.



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Disciplinary Process

- A complaint is filed in form I, under section 21 of CA Act 1949..
- Registration of Complaint & allotment of Unique Number
- Director Discipline examines for Prima Facie Opinion – after communication with the Member and taking statements & rejoinders
- He shall place the matter before the Disciplinary Committee u/s.21B.

Action Trigger Point – for DC cases

- Bank scams,
  - **Projections**
  - Audits
  - Computerised audits
- CBI, Enforcement raids
- Black Money angle
- Benami Transactions
- **Records in Auditor's place**
- Sign – Forged
- Tax audit not signed
- **RBI – NBFC inspection points**

DSC
Records
Documents

Recent Issue – which can trigger DC

- Bank Branch Audits
  - LFAR issues
    - Manual vs automatic data updation
    - Quantitative reporting of advances verified – Both Standard and others
    - Manual intervention in IRAC norms
    - **NPAs of earlier years identified in current year**
    - Potential NPAs and Quick mortality
    - Lots of assertion and commitments – Like Stock audit/ratings/due diligence
  - Operations verification – Large accounts
  - Management Representations
  - **Multiple UDINs vs Two UDIN as stipulated by ICAI**
  - **Revision of MOC – resulting in revised audit report – New UDIN & reference of previous audit report also to be given**

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Recent Cases of DC

- Mainly from **Bank Issues & frauds**
  - Complaints by CBI
  - Complaints by CB – CID of various states
  - Generated out of various certifications and reports of auditors
- **Complaints from the Tax Departments on wrong claims or representations**
- Complaints from enforcement authorities
- Other complaints from clients' creditors
- Other complaints **from partners / trustees**
- Other complaints from **Professional brethren**

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Few Recent Cases

- Member signed Financial Statements of a Society
  - Complaint by **a group of members**
  - Expenditure **disproportionately increased not verified**
  - Ultimately it is found as fraudulent expenses
  - **Auditor himself did investigation and committed as fraudulent expenses**
  - Documentations insufficient
  - **Internal Audit reports and monthly certifications are not sufficient**
  - Management Certifications not sufficient
  - **Statutory auditor should exercise due diligence**

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Few Recent Cases – contd.

- Member Certified for Bank Loan
  - Complaint by the Bank on
    - **Wrong certificate of book debts**
    - Wrong certificate of capital infusion
    - **Auditor also doing bank fund arrangement**
  - Books of accounts not available for defence
  - **Capital infusion was by way of book entries**
  - Self Review Threat was blatantly violated
  - Statutory auditor should exercise due diligence

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Few Recent Cases – contd.

- Member Certified Assets & Liabilities
  - Complaint by the Bank on
    - **Inflated value of security**
    - Collusion with the management
    - Audited financials have inflated capital
  - Auditor depended on Valuation report which is inflated than the cost on a recent purchase
  - **Proprietor Assets and liabilities are stated without due verification**
  - Statutory auditor should exercise due diligence

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Few Recent Cases – contd.

- Concurrent Auditor not verified securities
  - Complaint by the Bank on
    - **Bogus Securities**
    - **Units not inspected sufficiently**
    - **Collusion with the branch management**
  - Auditor depended on Valuation report & appraisers
  - Auditor depended on terms of reference
  - **Concurrent auditor should be more careful** and exercise due diligence & periodically verify the securities and appraise with third branch appraiser

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Few Recent Cases – contd.

- Member Certified Balance Sheet with wrong figures
  - Complaint by one of the Creditor
    - Contingent Liaiblity not disclosed
    - MSME dues not disclosed
    - **Creditor figure misstated**
    - Auditor violated the provisions of ICAI by doing assignment
  - **Legal case not known to auditors**
  - **MRL taken – but DC considers not sufficient**
  - One assignment done in march and audit taken up in august considered violation
  - **Statutory auditor should examine Self advocacy/review threats before taking up audit**

Few Recent Cases – contd.

- Member Certified Balance Sheet with wrong figures
  - Complaint by CBI on account of Corporate Fraud
    - Inflated Debtors & Assets
    - Collusion with the management creating Loss to banks & FIs
  - **Dual Accounts purportedly maintained by the Client**
  - Auditor verified the records but sampling not sufficient
  - **Documentation not sufficient to prove diligence**
  - Dependence on Internal audit not fully sufficient
  - Statutory auditor should exercise due diligence/document the same concurrently during audit.

Take Home Message

- COE or DC is not only for High End issues like ILFS or Satyam
- Day to day certifications are raked up
- Bank concurrent audits – Increasing Menace
- Trusts and Societies – Disputes among members
- And Now Bank Branch Audits can trigger – Lots of commitments by Branch Auditors

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Due care while issuing certificates

Refer Certifications-Guidance Note by ICAI & SA 805

Critical Certificates issued by CAs

- ✓ Certificates on the support of financial books of accounts and annual FS such as- Capital contribution, Gross t/o, S. Debtors & closing stock, statutory liabilities etc.
- ✓ Certificates for foreign remittance outside India in form 15CB
- ✓ Certification of Documents for Registration of Charges
- ✓ Various Certificates needed by the Companies Planning for IPO
- ✓ Certification under Exchange Control legislation for imports, remittances, ECB, DGFT,etc.
- ✓ Certification for claim of refund under GST Act and other Indirect Taxes
- ✓ Certification of Fair Values of Shares of Company for the scope of merger/de-merger, Buy Back, Allotment of further shares and transfer of shares from resident to non-resident

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Critical Certificates issued by Cas – Contd.

- ✓ Certificates on the grounds of statutory records being maintained under Indian Companies Act, 2013 and other applicable laws.
- ✓ Certification for Export Incentives and other benefits
- ✓ Certification of Arms length price u/ 92 of the income Tax Act, 1961.
- ✓ Utilization certificates of various grants being discharge by Govt. of India to NGO's, Statutory Bodies, Autonomous Bodies, and charitable organizations.
- ✓ Certificates for claiming various deductions & exemption under various rules & regulation.
- ✓ Certification under the Income-Tax laws for various deductions and provisions, such as MAT, EOU, etc.

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One Final Word .....

When not permitted .....

Do not accept / undertake

When in doubt .....

Do not accept / undertake

When Looks acceptable .....

Do Accept / undertake ---- With Professional Skepticism !!!

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