

# The 1963 Code

- Ethics is a state of the mind, and there may be some act which, though it may not strictly fall under one of the items of the Schedule, may be one which may not be proper by any moral or ethical standards. In the larger interests of the Institute, the Council exhorts all members to **search their hearts and conscience** whenever in doubt, and thereby assist towards the maintenance of high principles of professional conduct established by the Council.

# New Code of Ethics



# The 2019 Code

## OVERVIEW OF THE CODE

### PART 1

#### **COMPLYING WITH THE CODE, FUNDAMENTAL PRINCIPLES AND CONCEPTUAL FRAMEWORK**

(ALL PROFESSIONAL ACCOUNTANTS - SECTIONS 100 TO 199)

#### **PART 2**

##### **PROFESSIONAL ACCOUNTANTS IN Service**

(SECTIONS 200 TO 299)

(PART 2 IS ALSO APPLICABLE TO  
INDIVIDUAL PROFESSIONAL  
ACCOUNTANTS IN PUBLIC PRACTICE  
WHEN PERFORMING PROFESSIONAL  
ACTIVITIES PURSUANT TO THEIR  
RELATIONSHIP WITH THE FIRM)

#### **PART 3**

##### **PROFESSIONAL ACCOUNTANTS IN PUBLIC PRACTICE**

(SECTIONS 300 TO 399)

##### **INDEPENDENCE STANDARDS**

(PARTS 4A AND 4B)

**PART 4A – INDEPENDENCE FOR  
AUDIT AND REVIEW ENGAGEMENTS**  
(SECTIONS 400 TO 899)

**PART 4B – INDEPENDENCE FOR  
ASSURANCE ENGAGEMENTS OTHER  
THAN AUDIT AND REVIEW  
ENGAGEMENTS**  
(SECTIONS 900 TO 999)

#### **GLOSSARY**

(ALL PROFESSIONAL ACCOUNTANTS)

# Five Pillars

Integrity
Objectivity
Professional Competence and Due Care
Confidentiality
Professional Behaviour

# Five Pillars explained

Pillar	Explanation
Integrity	to be straightforward and honest in all professional and business relationships
Objectivity	not to compromise professional or business judgments because of bias, conflict of interest or undue influence of others.
Professional Competence and due care	<ul style="list-style-type: none"><li>• Client receives competent professional service</li><li>• Act diligently and in accordance with applicable technical and professional standards.</li></ul>
Confidentiality	to respect the confidentiality of information acquired as a result of professional and business relationships
Professional Behaviour	to comply with relevant laws and regulations and avoid any conduct that the professional accountant knows or should know might discredit the profession

# Codes within the Code

- R- impose obligations
- A- context, explanations, suggestions for actions or matters to consider, illustrations and other guidance relevant to a proper understanding of the Code

# Conceptual Framework

- Identifying threats
- Threats cannot be eliminated- they should be at acceptable levels.

Self-interest threat
Self-review threat
Advocacy Threat
Familiarity Threat
Intimidation Threat

# Conceptual Framework

- Threats

Self- interest	Financial or other interest may inappropriately influence behaviour
Self-review	Not evaluating previous judgements made
Advocacy	Promote a client to such an extent that objectivity is compromised
Familiarity	Auditor knows the client too well and vice-versa.
Intimidation	Undue influence over the auditor.



# CODE OF ETHICS – SIGNIFICANT CHANGES

## 2009 Edition Vs Revised Edition

Code of Ethics, 2009 had parts – “A” & “B”. Was valid till 30.6.2020.

“Part-A” was based on IESBA Code as suitably incorporated. “Part-B” based on domestic provisions governing members.

Code of Ethics, 2019 or Volume - I - revised counterpart of Part-A - based on IESBA Code of Ethics, 2018. Effective w.e.f 1.7.2020.

Code of Ethics Volume –II - revised counterpart of Part-B - Effective w.e.f 1.7.2020.

Updated relevant Disciplinary Case laws issued as Code of Ethics Volume-III

All three Volumes available at [www.icaai.org](http://www.icaai.org)

## Five Most Important Substantive Changes

2009 Code	Volume-I of Revised Code
No such provision	Responding to Non-Compliance of Laws and Regulations (NOCLAR)
No prohibition on Taxation services to Audit clients	Restrictions on Taxation services to Audit clients
No such provision	Prohibition on Management Responsibilities to the audit clients
Recommendatory 40% restriction on Fees from an audit client	Safeguards on Fees from single client –if its is consecutively for 2 years. Requirement of disclosure to the Institute if exceeds prescribed threshold limit <b>(Appearing on subsequent slides)</b>
No such provision	Duty of Accountant in case of breach of <i>Independence Standards</i>

## Five Most Important Structural Changes

2009 Code	Volume-I of Revised Code
Independence for Assurance Engagements	Independence requirements for Audit and Review Engagements and other Assurance engagements differentiated
No characterization as Standards	Independence sections re-characterized as “ <i>Independence Standards</i> ”
Use of “Should”	Change in the drafting conventions e.g. “should” to “shall”
No such restructuring of Sections	New pattern of structuring of sections – Requirements distinguished
Lack of clarity for each entity	Increased clarity of responsibility for compliance - Firms, network firms, individuals within firms

IESBA Code of Ethics uses the term “Professional Accountant”

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Same term was adopted in 2009 edition of the Code , also continued in 2019 (Volume-I) of the Code of Ethics

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Defined in the Code of Ethics as *“An individual who is a member of the Institute of Chartered Accountants of India.”*

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IESBA Code of Ethics uses the term “professional accountants in business” implying members who are employees.  
Modified to “professional accountant in service” in our Code in line with usage in Chartered Accountants Act, 1949

## Overview of the Structure of Code of Ethics , 2009 (earlier)

### **Part-A**

#### **[Based on IFAC/IESBA Code of Ethics, 2005 edition]**

Chapter 1 – General application of the Code

Chapter 2 - Professional Accountants in public practice

Chapter 3 – Professional Accountants in service

### **Part –B**

#### **[Based on domestic Indian provisions ]**

Chapter 4 – Accounting and Auditing standards

Chapter 5 – The Chartered Accountants Act, 1949

Chapter 6 – Council Guidelines

Chapter 7 – Self Regulatory Measures Recommended by the Council

Appendices A – F

# Overview of the Structure of Code of Ethics, 2019 (Volume-I)

## **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

## **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)**

## New Pattern of Structuring of Each Section

No such structuring of Sections in 2009 Code.

In revised Code, each section is structured, where appropriate, as follows:-

**Introduction** – sets out the subject matter addressed and introduces the requirements and application material in the context of the conceptual framework.

**Requirements** - Designated by the Letter “R” – Includes the word “shall” which imposes an obligation on PA to comply. The requirements contain general and specific obligations w.r.t the subject matter addressed

**Application material** – Designated by the letter “A” - Provides context, explanations , suggestions for actions , or matters to consider, illustrations and other guidance to assist in complying with the requirements





## Responding to Non-Compliance with Laws and Regulations (NOCLAR) - Sections 260 and 360 - New Provision

- Refers to any act of omission or commission, committed by a client or employer contrary to prevailing laws or regulations.
- Recognizing that such a situation can often be a difficult and stressful one for the PA, and accepting that he has a prima facie ethical responsibility not to turn a blind eye to the matter, NOCLAR was introduced to help guide the PA in dealing with the situation and in deciding how best to serve the public interest in these circumstances.

For now, limited application of NOCLAR has been prescribed in Code of Ethics as against comprehensive application of NOCLAR to all assignments/employees in the IESBA Code.

Applicable to Audit Engagement of entities having net worth of Rs. 250 crores or more and where shares are listed on recognised stock exchange(s) in India.

- The applicability of Section 360 will subsequently be extended to all listed entities, at the date to be notified later.

In case of PAs in service, applicable to Senior professional accountants of listed entities

# NOCLAR – Applicability

Laws and regulations that have a nexus to PAs' professional training and expertise, i.e.:-

- 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 to avoid material penalties.

Examples of laws and regulations required to be addressed are :- Fraud, corruption and bribery, Money laundering, terrorist financing and proceeds of crime, Securities markets and trading, etc.

## NOCLAR – Scope of Laws and Regulations

Following matters are not in scope of NOCLAR:-

- Matters clearly inconsequential
- Personal misconduct unrelated to the business activities of the client or employer
- Non-compliance other than by the client or employer, or those charged with governance, management or other individuals working for or under the direction of the client or employer

PA required to address NOCLAR **only when, and if**, he encounters the same **in the course of providing a professional service**

Appropriate authority for the purpose of disclosure will depend on the nature of the matter. For example, the appropriate authority would be SEBI in the case of fraudulent financial reporting

# Independence Standards

- 2009 Code had Section 290 i.e. ***“Independence – Assurance Engagements”***
- 2019 Code (Volume – I) based on 2018 IESBA Code has Independence Standards as under :-
  - ***Part 4A : Independence for Audit and Review Engagements***
  - ***Part 4B : Independence for Assurance Engagements other than Audit and Review***
- Characterized as “Independence Standards”, as against “Section” earlier.
- Most bulky change as a number of similar provisions/compliances are common to both Parts 4A and 4B but given separately in the Code under both parts

## Feature - Breaches of the Code (Section 400.80 - 400.89) – New Provision

- 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

# Key Audit Partner

- Not mentioned in ICAI Code of Ethics, 2009
- Used in 2019 Code (Volume-I) . Defined as under:-
  - *“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. Depending upon the circumstances and the role of the individuals on the audit, “other audit partners” might include, for example, audit partners responsible for significant subsidiaries or divisions.”*



## Firm Rotation (Section 550)

2009 edition of Code of Ethics did not contain requirements relating to partner rotation. (No Firm rotation requirements exist in this code)

Companies Act, 2013 has stipulated Firm rotation

Under the revised code, partner rotation will co-exist along with Audit Firm rotation (wherever prescribed by a statute)

Volume-I incorporates Firm rotation requirements vide a separate section (550) to make the guidance comprehensive for members



Changes in Partner Rotation (Section R 540.5 – R 540.23)

2009	2019 (Volume-I)
7-year time-on	No change
2-years cooling-off	5-years cooling-off: EP 3-years cooling-off: EQCR 2-years cooling-off: all other KAPs



# PARTNER ROTATION (SECTION 540)

- **New incorporations in Volume-I of the Code**
- Under Companies Act, 2013, partner rotation is done on behest of Company only.
- In case of Companies, where members of Company prescribe a shorter time on period , such shorter period shall prevail
- Similarly, partner rotation requirements prescribed by certain regulators such as RBI, certain NBFCs, etc. shall prevail

# Management Responsibilities (Sections 607 – 608)

- Did not find mention in Code of Ethics, 2009. 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.*

# Non - Assurance Services (Sections 600 / 950)

- Prohibitions (in 2009 Code) on provision of certain types of Non assurance services to Audit clients continue in 2019 Code (**e.g. Internal audit, Accounting and Bookkeeping services, partial prohibitions in valuation services, IT Systems 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

## Taxation Services to the Audit Clients (Section 604)

**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

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**Code of Ethics, 2019 (Volume-I)**: -The provision have been made applicable w.e.f 1<sup>st</sup> October , 2022 vide Announcement dt. 29<sup>th</sup> September , 2022 with certain amendments.

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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 ...see next slide

# Taxation Services to the Audit Clients..... Section 604

**Tax Return preparation** – Usually no threat

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**Tax Calculations for the Purpose of Preparing Accounting Entries (that will subsequently be audited by the Firm) -**  
Creates a self-review threat

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**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; having an appropriate reviewer, not involved in providing the service, review the audit work, etc.

# Taxation Services to the Audit Clients ...Contd. (Section 604)

**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

# Safeguards

In the Code of Ethics, 2009, safeguards to be considered for threats other than “**clearly insignificant**” (defined as ‘**trivial or inconsequential**’)

In the revised 2019 Code, the application of safeguards required to eliminate threats or to reduce them to ‘**an acceptable level**’

- “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.



## New Introductions in 2019 Code

- Identified threats must be addressed in one of three ways:-
  - Eliminate circumstances creating the threats;
  - Apply safeguards; *or*
  - Decline or end the service
- New “step back” requirement for an overall conclusion ( R 120.11 : The PA shall form an overall conclusion about whether the actions that the accountant takes, or intends to take, to address the threats created will eliminate those threats or reduce them to an acceptable level)
- Emphasis that if threats cannot be addressed, must decline or end the engagement

## Safeguards

## Close and Immediate Family

In Part-A of 2009 Code, “close family” and “immediate family” were replaced with “relative” (as defined in Section 6 of Companies Act, 1956.)

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In the 2019 edition (Volume –I), for companies, “relative” of partner refers to definition given under Section 2(77) of the Companies Act, 2013.

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For clients other than Companies, “Immediate family” / “close family”, as appearing in IESBA Code is applicable.

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*Close family - A parent, child or sibling who is not an immediate family member.*

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*Immediate family - A spouse (or equivalent) or dependent.*

- 2019 edition contains a new term “Public Interest Entity” (PIE)
- 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.*

### **Code of Ethics, 2009**

- Offer of gifts/hospitality ordinarily gives rise to threats to fundamental principles
- Significance of such threats depend on the nature, value and intent behind the offer.
- 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
- If threats other than significant, must take safeguards
- Total prohibition in case of Assurance clients (except if inconsequential)

### **Code of Ethics, 2019 (Volume -I)**

- Inducements elaborated
- To first see whether prohibited by Laws and Regulations
- Offering also prohibited
- 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.
- Clarifications about appropriate boundaries for offering and accepting of inducements
- Extended to PAs in service also
- Total prohibition in case of Audit/Assurance clients to continue

# Documentation

2009 Code required Firms to document as to their conclusions regarding compliance with independence requirements (290.27)

In the 2019 Code, the 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.

# Fees – Relative Size (R 410.4)

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The provision has been made applicable w.e.f 1<sup>st</sup> October , 2022 vide Announcement dt. 29<sup>th</sup> September , 2022 with certain amendments.

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**For non Public Interest Entities (non-PIE)-** Disclosure required where for two consecutive years, the gross annual professional fees from an audit client represent more than 40% of the total fees of the firm.

**For public interest entities (PIE)**

Disclosure required where for two consecutive years, the gross annual professional fees from an audit client represent more than 20% of the total fees of the firm.

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There are certain exceptions , where this rule would not apply i.e. Where total Fees of Firm is less than Rs. 20 lacs p.a. , and in the case of audit of government Companies, public undertakings, nationalized banks, public financial institutions or where appointments of auditors are made by the Government or regulators.

## Criteria of Indebtedness (Section 511.3 A1)

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No concept of **materiality of Loans** and Guarantee in the IESBA Code of Ethics, 2005 and in ICAI Code of Ethics, 2009

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The IESBA Code of Ethics, 2018 introduces the concept of materiality of Loans and Guarantees. In determining whether such a loan or guarantee is material to an individual, the combined net worth of the individual and the individual's immediate family members may be taken into account.

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Concept adopted in Code of Ethics, 2019 (Volume – I)

# Changes in Professional Appointment (Section 320)

## New provisions in 2019 Code

- 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.
- Communication requirements in case of Audit and Non-Audit Assignments differentiated
- 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.



## Contingent Fees (Sections 330, 410.9, 905.6)

- Code of Ethics, 2009 (Paragraph 290.197) - fees based on percentage of profits or contingent upon the findings, or results of such work not allowed (as per Clause 10 of Part-I of First Schedule to CA Act) except as permitted under Regulation 192
- Code of Ethics, 2019 (Volume – I) mentions general description of Contingent fees and the general prohibition
- Regulation 192 reproduced – further , the activities where Council has permitted Contingent fees under 192 (h) i.e *“any other service or audit as may be decided by the Council” :-*
  - Charging of Fees by Members enrolled as Insolvency professional rendered either individually or as an entity under Insolvency and Bankruptcy Code, 2016 and rules made thereunder.
  - Fee for rendering Non-assurance services to non-audit clients

# Applicability of Provisions for Members in Service to Members in Practice (Sections R 120.4, 200.4, R 300.5)



No corresponding provisions in Code of Ethics, 2009



Revised 2019 Code contains clear guidance for PAs in practice that relevant provisions with regard to PAs in service in Part 2 are applicable to them when they perform professional activities pursuant to their relationship with the firm whether as contractors, employees or owners of the firm



Illustrations of situations in which provisions in Part 2 apply to PAs in practice. Would apply for example to an employee of a Firm , who is holding certificate of practice

# Preparation and Presentation of Information (Section 220)

## New provisions in 2019 Code

- More comprehensive provisions addressing PAs in service responsibilities when preparing or presenting information
- Prohibition on exercising discretion when preparing or presenting information with intent to mislead or inappropriately influence contractual or regulatory outcomes
- Enhanced guidance to assist PAs in disassociating from misleading information



## Five Most Important Substantive Changes Over 2009 Code



Changes due to CA (Amendment) Act, 2011, amendment in CA Regulations, 1988, changes in Council Guidelines, changes in Auditing and Accounting Standards , Companies Act, 2013 & changes due to Code of Ethics, 2019



Council Decisions and Clarifications given by ESB and other Committees (having ethical repercussions) since 2009



Changes in Advertisement Guidelines & Council General Guidelines



Changes in commentary under Clauses (6) and (7) of Part- I of First Schedule pertaining to Solicitation and Advertisement



Changes in commentary under Clause (8) of Part- I of First Schedule pertaining to communication

## Five Most Important Structural Changes Over 2009 Code

All paragraphs numbered

Titles of all provisions

New Appendices

All disciplinary cases removed – will form part of Volume-III

Alignment with Code of Ethics, 2019



# MCS - Administrative Services

## **New provision - No equivalent in 2009 Code**

- Appearing in Section 602 of Code of Ethics, 2019
- Refers to Routine or mechanical works like compliance /submitting Forms
- Differentiated from “Management Responsibilities” - while Management Responsibilities cannot be undertaken by the Auditor, Administrative Services can be undertaken by him
- No enabling provisions in the existing Code from the point of view of a member in practice.
- Incorporated in Management Consultancy & other services

A blue-toned background image featuring a financial chart with a line graph and a bar chart. The line graph shows a fluctuating trend with peaks and troughs. The bar chart consists of vertical bars of varying heights. Overlaid on the chart are several numerical values in a light blue font, including '18775', '18771.56 -4', '18765.39 -6', '18760.61 -4', '18754.73', '18752.00', '18747.50 -4', '18742.51 -4', and '18737.73 -4'.

# MCS - Insurance Financial Advisory Services

## 2009

- (xxvi) Insurance Financial Advisory Services under the Insurance Regulatory & Development Authority Act, 1999 , including Insurance Brokerage.

## New

- (xxvi) Insurance Financial Advisory Services under the Insurance Regulatory & Development Authority Act, 1999 including Insurance Brokerage **(Not including Insurance Agency)**



# MCS - Valuation

## **2009**

(xv) Valuation of shares and business and advice regarding amalgamation, merger and acquisition.

## **New**

(xv) Valuation of shares and business and advice regarding amalgamation, merger and acquisition. Acting as Registered valuer under the Companies Act, 2013 read with The Companies (Registered Valuers and Valuation) Rules, 2017.

# Incorporation in Commentary to Section 7

**Addition of commentary on “Any other qualification which a member may possess”**

**Part of Decision of the Supreme Court in ICFAI vs ICAI in 2007 :-**

- *“The expression 'any other qualification that he may possess', therefore, must be read as qualification other than conferred upon the member by other Institutes of Accountancy. Such qualification of accountancy may be conferred even by other Institutes... Furthermore, a degree conferred by any university also is subject to an exemption from the rigour of the provisions of Section 7 of the Act. There cannot, therefore, be any doubt whatsoever that 'the other qualification' would mean a qualification other than granted by an Institute of Accountancy, subject of course to recognition thereof by the Institute.”*

# On Visiting Cards

## New Incorporations in the Revised Code

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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

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Permissible - “Insolvency Professional”, “Registered Valuer”

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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

### 2009 Code

#### *5.13 Procedure with regard to noting by the Institute of retirement of Partner(s) of a firm*

- 1. On receipt of a notice of retirement from partner(s) of a firm, a communication would be sent to the other partner(s) of the firm to confirm within a specified period about the retirement of the partner(s) who had sent the notice to the Institute.*
- 2. In case the other partner(s) do not confirm the retirement within the specified date or do not send the confirmation before the said date, the retirement of the partner(s) having sent the notice of the retirement from the firm would be noted in the records of the Institute.*
- 3. In case of intimation of existence of dispute between/among partners received from the firm/other partners a suitable note would be kept in the records of the Institute and retirement will not be noted and the fact shall be mentioned in the entry on record of firms and firm constitution certificate, etc.*
- 4. The fact that there was dispute among the partners of a firm would also be intimated to the C&AG/RBI while furnishing the particulars of the firm for empanelment of bank/C&AG audit.*

### Revised Code

The complete paragraph has been removed from Code of Ethics

# Commentary Under Clauses (3) and (4) – Part - I, First Schedule

## Referral fees amongst members

**2009** - Silent

**New** - Permitted under commentary to Clause (3)

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## MDPs

Despite Regulations 53 A(3) and 53B, MDPs not allowed till Regulators of other professions also allow , and ICAI issues modalities

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## No equivalent of Director Simplificitor in partnerships

A member in practice cannot become a partner/ designated partner (non-working and non-remuneration drawing) in an LLP not carrying out professional work.

# Guidance on Tenders

## 2009

It is not prohibited to respond to tenders of professional Assignments

## Revised code

- Guidance in view of 7.4.2016 Guideline on Tenders No. no 1-A(7)/03/2016 - a member of the Institute in practice shall not respond to any tender issued by an organization or user of professional services in areas of services which are exclusively reserved for chartered accountants, such as audit and attestation services. However, such restriction shall not be applicable where minimum fee of the assignment is prescribed in the tender document itself or where the areas are open to other professionals along with the Chartered Accountants.
- FAQs on tenders
- Exorbitant EMD – ESB may look in case to case basis

# Use of “CPA” on Visiting Cards

**Position in Code of Ethics, 2009 under commentary in clause (7) of Part-I of First Schedule to The Chartered Accountants Act, 1949**

The members are not permitted to use the initials ‘CPA’ (standing for Certified Public Accountant) on their visiting cards.

**Revised Code**

Mentioning qualifications of Accounting Institutes which have MRA/MOU with ICAI permitted.

### 2009

Silent

### Revised Code

- 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
- 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.



# Advertisement of Teaching/Coaching Activities

## **2009**

Teaching is other “occupation/business” in terms of Appendix (9) of CA Regulations, 1988. However, Code of Ethics is silent on advertisement of teaching/coaching activity

## **New**

Provisions of ICAI Announcement dt. 18.5.2017 of bar on Advertisement of Coaching /teaching activities incorporated

## **2009**

Code of Ethics silent on sharing of educational videos

## **New**

Educational videos may be uploaded by members; however, no reference should be made to the CA Firm wherein he may be a partner/proprietor.



# Size / Illumination of Sign Board

## 2009

- 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 shop-keepers would not be proper.

## Added in Revised Code:-

- .....while keeping in mind the appropriate visibility and illumination of the sign Board

# Internet Added to TV / Films Under Commentary to Clause (7)

## **Revised provision in the New Code (shown in underlined)**

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 specialised 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 and Logo

## **Provisions in the Revised Code**

### 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

# Modes of Communication

2009	Revised
Members should therefore 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, communication by a letter sent “Registered Acknowledgement due” or by hand against a written acknowledgement would in the normal course provide such evidence.	Members should therefore 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, (a) communication by a letter sent “Registered Acknowledgement due”, (b) by hand against a written acknowledgement, <b>(c) acknowledgement of the communication from retiring auditor’s via email address registered with the Institute or the last known official email address; and (d) through Unique Identification Number (UDIN) generated on UDIN portal (subject to separate guidelines to be issued by the Council in this regard)</b> would in the normal course provide such evidence.

# Duty on Previous Auditor in Case of Change of Auditorship

## 2009

No duty cast on Previous Auditor. The duty is cast only on Incoming auditor

## Revised

- Aligned with Code of Ethics, 2019 (Volume-II)
- 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.

## Addressing Peculiar Circumstances while Communicating

Factor	Code 2009	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

### **Position in the Revised Code**

- 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.
- Commentary under the Clause in Code of Ethics also aligned with Companies Act, 2013

\* Change in Clause (9) subject to legislative amendment by Parliament



# Definition of “Director Simplicitor” (Clause 11 of Part - I , First Schedule)

- **2009** – “Ordinary/simple Director”
- **Amended as follows in Revised Code:-** “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.

# HUF vis-à-vis Member in Practice

## **Position in the Revised Code**

- 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.

# Commentary on Confidentiality

## **Person competent to accord consent**

### **2009**

For the purpose of disclosure, appropriate authorities to give consent mentioned e.g. in the case of a sole proprietary concern, the consent may be given by the proprietor or his constituted attorney who is legally empowered to give such consent.

### **Revised**

The commentary modified so as to mention the appropriate authority as the one from whom to seek consent. E.g. in the above example, in case of a sole proprietary concern, the consent may be sought from the proprietor or his constituted attorney who is legally empowered to give such consent. (it would not be material as to which representative of the client actually accords such consent)

### **Position in the Revised Code**

- Modification in the situations of Conflict of Interest in accordance with Companies Act, 2013
- 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

Generally  
Accepted Audit  
Procedure  
(Commentary  
in Clause 9 of  
Part - I of  
Second  
Schedule)

Changes in the Revised Code

Requirement of Peer Review in case of Audit of Listed Companies

Mandatory FRN/ Membership No.

Requirement of UDIN w.e.f 1st July, 2019 on all Corporate/ Non- Corporate Audit, Attest and Assurance Functions.

# Advertisement Guidelines

## CHANGES IN THE REVISED CODE

ADVERTISEMENT GUIDELINES HAVE CONSOLIDATED RELATED PROVISIONS APPEARING AT DIFFERENT PLACES IN CODE OF ETHICS AS UNDER:-

WEBSITE GUIDELINES [APPEARING UNDER CLAUSE (6) ]

GUIDELINES ON TELEPHONE DIRECTORIES [APPEARING UNDER CLAUSE (6) ]

ONLINE CONSULTANCY ON THIRD PARTY PLATFORMS [APPEARING UNDER CLAUSE (6) ]

SPECIALIZED DIRECTORIES [APPEARING UNDER CLAUSE (7) ]

ADVERTISEMENT THROUGH PRESS RELEASE IN CERTAIN CIRCUMSTANCES [APPEARING UNDER CLAUSE (7) ]

### Changes in the Revised Code

- “Write-up” to include Social Networking Websites also
- Changes in permissible details in a write-up :-
  - a) “Web” replaced with “Website”
  - b) “Name ..... Chartered Accountant” to be replaced with “CA.....Name”
  - c) “Passport size” replaced with “Passport style” (photograph)
  - d) In case of individual members, allowing mentioning “Position held as Director or Managing Director in a Management Consultancy Company registered with the Institute”
  - e) In case of Firms, to also allow mentioning “Affiliation with a Network registered with the Institute”

## Advertisement Guidelines

2009	New
The write-up should not be false or misleading and bring the profession into disrepute.	It shall be honest and truthful.
The write-up should not claim superiority over any other Member(s)/Firm(s).	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 indecent, sensational or otherwise of such nature which may likely to bring the profession into disrepute.	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).	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.
The write-up should not contain any other representation(s) that may like to cause a person to misunderstand and/or to be deceived.	-----
The write-up should not violate the provisions of the 'Act', Rules made there under and 'The Chartered Accountants Regulations, 1988'.	It must not be violative of any provisions of Chartered Accountants Act, 1949, Chartered Accountants Regulations, 1988, or Code of Ethics.



## Advertisement Guidelines

2009	Revised
The write-up should not include the names of the clients (both past and present)	Covered at 4 in last slide
The write-up should not be of font size exceeding 14.	The write-up should not be of font size exceeding 14.
The write-up should not contain any information other than stated in Para 3 hereinabove.	----- (already covered in “write-up may include only the following information”)
The write-up should not contain any information about achievements/award or any other position held.	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 particulars of information required at para (ii) of 3(A) and para (ii) of 3(B) above is mandatory.	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.

### Changes in the Revised Code

- *Chapter III Appointment of a Member as Cost auditor*
  - Repealed as Section 148 of Companies Act, 2013 requires cost Accountants.

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- *Chapter IV -Opinion on financial statements when there is substantial*
  - 'relative' - Repealed

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- *Chapter VI Tax Audit assignments under Section 44 AB of the Income-tax Act, 1961*
  - Exempted Audits :- 44AD, 44ADA and 44AE and ~~44AF~~ (368th Council meeting in 2017)
  - Tax audit Limits increased from 45 to 60 (331st meeting held in Feb, 2014 )
  - “Financial year” changed to “assessment years” (Announcement dt. 2.7.2014)
  - One partner signing audits on behalf of other partners (2013 ICAI Announcement)

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- *Chapter XII – Minimum fees in respect of Audit*
  - Repealed by 306th Meeting held from 7th to 8th June, 2011

## Ceiling of Fees – Self Regulatory Measures

- Self Regulatory Measures recommended by Council has 40% limit on Fees from one or more clients under the same management. Exemptions from this chapter to :- (A) less than two lakhs annual fees ; (B) Audit of government companies; (C) public undertakings (D) Nationalized banks ( E) public financial institutions ; or (F) where appointments are made by Government
- In view of provisions of R410.4 of ICAI Code of Ethics, 2019 , Chapter 7.6 of **Self Regulatory Measures be repealed has therefore been repealed**

## Appendices to the Code

Appendix	2009	Revised
A	Recognised bodies under Section 7	List of Engagement and Quality Control Standards
B	Announcement regarding withdrawal of Appendix no. (6) of the Institute's publication viz. the Chartered Accountants Act, 1949	List of Accounting Standards effective as on April 01, 2019
C	Announcement regarding withdrawal of Appendix no. (5) of the Institute's publication viz. the Chartered Accountants Act, 1949	Disciplinary Flow Charts
D	Guidelines of the Council in the context of use of designation etc. and manner of Printing of Letterheads and visiting cards	Guidelines for Practice in Corporate Form of Practice
E	ESB Mission statement and Procedure for Removal of Unjustified Removal of auditors	Membership of Foreign bodies permitted under Clause (4)
F	Appendix (9) of CA Regulations, 1988	Guidelines of the Council in the context of use of designation etc. and manner of Printing of Letter-heads and visiting cards
G	-----	ESB Mission statement and Procedure for Removal of Unjustified Removal of auditors
H	-----	Appendix (9) of CA Regulations, 1988
I	-----	Notification on UDIN
J	-----	Notification on Tenders
K	-----	Revised Guidelines of Network
L	-----	CA Logo Guidelines

# ESB and Procedure of Unjustified Removal of Auditors

## Changes in the Revised Code

Mission Statement of ESB now referred to as “Purpose”

Purpose and Objective of ESB aligned as per IESBA

As per new TOR, ESB will review the TOR every two years.

Electronic filing of compliant of Unjustified removal of auditors allowed

Submission of Fees of Rs. 2360 permitted by NEFT/Axis easy pay link



# Highlights



All case laws appearing hitherto under commentary under Code of Ethics, 2009 shifted to “Case Laws Referencer”



This appears as separate Volume of Code of Ethics (Volume –III)



Incorporates relevant decided/published case laws of both the Schedules till 1<sup>st</sup> April, 2019.



Cases segregated issue wise in the Index.



All Case Laws have been numbered for easy reference

*“Ethics”* means moral principles for a person’s behaviour or conduct. *“Professional Ethics”* consist of personal, organizational and corporate standards of behaviour expected for professionals, consistent with morality governing public, different moral codes to different sections of society or professionals, building trust to vast variety of users, which imposes a public interest responsibility. Chartered Accountant, either in practice or in service, has to abide by these ethical behaviors, fundamental principles. Framework of professional ethics governs the expected behaviour and adherence to principles. Any deviation triggers disciplinary mechanism.

**Code of Ethics**—As old as human civilization. It is laws or rules of acceptable behaviour. The underlying principle is to uphold credibility of the profession. The main ingredient is independence.

**Our Institute’s Motto** – ‘Ya Esha Supteshu Jagrati’ is adopted from Kathopanishad and it denotes ‘eternal vigilance’ – awakening when the world is asleep. Code of Ethics seeks to protect the interests of the profession as a whole. It is a shield that enables us to command respectability.

# Introduction



To achieve the objectives, we have to observe prerequisites or fundamental principles. The fundamental principles are as below:

**Integrity** - Straightforward and honest in all professional and business relationships.

**Objectivity** - Not allow bias, conflict of interest or undue influence to override professional judgments.

**Professional Competence and Due Care** - Update professional knowledge and comply with technical and professional standards.

**Confidentiality** - Respect confidentiality of information acquired in professional and employment relationships and non-disclosure to third parties without specific authority or if required by law, and not use for personal advantage.

**Professional Behaviour** - Comply with laws and regulations and avoid action that discredits the profession.

# Fundamental Principles

## **Member in Practice is Prohibited from using a Designation Other Than Chartered Accountant**

The member are permitted to use the word 'CA' as prefix before their name.

U/s 7 of the CA Act, 1949 a member in practice cannot use any designation other than that of a Chartered Accountant, whether in addition thereto or in substitution therefor, Nevertheless he may use any other letters or description indicating membership of approved Accountancy Bodies or of other bodies if such use does not imply adoption of a designation or is not advertisement or publicity.

*“It is improper to state on professional documents that he is an Income-tax Consultant, Cost Accountant, Company Secretary, Cost Consultant or a Management Consultant”.*

*“Member are allowed to appear before the various authorities including Company Law Board, Income Tax Appellate Tribunal, Sales Tax Tribunal where the law has permitted the same, but cannot use the designation “Corporate Lawyer”.*

*Members are not permitted to use the initials ‘CPA’ (standing for Certified Public Accountant) on their visiting cards”.*

# Professional Designation

U/s. 22 of the CA Act, “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but may extend to conduct under any other circumstances u/s. 21(1) of the Act. Member is liable to disciplinary action u/s. 21 of CA Act, if found guilty of Professional or Other Misconduct.

**Professional Misconduct:** Professional misconduct has been defined in part I, II and III of the First Schedule; and part I and II of the Second Schedule. If the member is found guilty of any of the acts or omissions stated in any of the respective parts of the Schedule, he/she shall be deemed to be guilty of professional misconduct.

**Other Misconduct:** Other misconduct is defined in part IV of the First Schedule and part III of the Second Schedule. Council can inquire into any misconduct of a member even it does not arise out of his professional work. CA is expected to maintain the highest standards of integrity even in his personal affairs. Other misconduct would also relate to conviction by court for offence involving moral turpitude and also where he makes material misrepresentation. Using articled assistant for purposes other than professional practice, is also misconduct.

# Professional & Other Misconduct

Acts or omissions, which comprise professional misconduct u/s. 22 of CA Act are defined in two Schedules viz. the First Schedule and the Second Schedule. The First Schedule is divided into four parts, Part I deals with the misconduct of a member in practice. Part II deals with misconduct of members in services. Part III deals with the misconduct of members generally and Part IV deals with other misconduct of members generally.

The Second Schedule is divided into three parts. Part I deals with misconduct of a member in practice, Part II deals with misconduct of members generally and Part III deals with other misconduct of members generally.

Where the Director (Discipline) finds that member is guilty of misconduct as per First Schedule; he shall place the matter before the Board of Discipline. Where the Director (Discipline) finds that member is guilty of misconduct as per Second Schedule; he shall place the matter before the Disciplinary Committee.

## Schedules to the CA Act

**Clause (1) allows to practice only in own name as a CA unless associated with such person as partner or employee.**

It is intended to safeguard the public against unqualified accountant practicing, by impersonating a CA or misrepresenting himself to be a CA or under the cover of qualified accountants.

**Clause (2) allows to pay, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to such other persons, having the prescribed qualification, for the purpose of rendering such professional services.**

Council has prescribed [Regulation 53A(1) of the CA Regulations, 1988] the professional bodies. Council has also prescribed [Regulation 53A(3) of the CA Regulations, 1988] the persons qualified in India.

It is not the nomenclature to a transaction that is material but it is the substance of the transaction, which has to be looked into. (*D. S. Sadri vs B.M. Pithewala* - 14th & 17th September, 1974)

## Part 1 of First Schedule to the CA Act

**Clause (3) allows receipt of any part of the profits of the professional work of a person who is a member of such professional body or other person having qualifications, as is referred to in clause (2) of this part.** Just as a member cannot share his fees with a non-member, he is also not permitted to receive and share the fees of others except for sharing with Member of such professional body or other person having such qualification as may be prescribed (Regulation 53A of the Chartered Accountants Regulations, 1988) by the Council for the purpose of Clause (2), (3) and (5) of Part I of First Schedule. Such a restriction is necessary so that a Chartered Accountant who is often required to engage or to recommend for engagement by his clients, the services of the members of other professions, cannot share the fees received by other persons who are otherwise not permitted by the Council in terms of provision of this clause.

## Part 1 of First Schedule to the CA Act

**Clause (4) allows partnership with any person other than CA if such other person is member of other professional body or having prescribed qualification or otherwise eligible u/s. 4(1)(v) or whose qualifications are recognized by the Central Government or the Council for the purpose of permitting such partnerships. *The Council has prescribed Regulation 53A(3) (as discussed under clause (2) of this part) and Regulation 53B of the Chartered Accountants Regulations, 1988 for the persons qualified and the professional bodies.***

1. CA, partner in two business firms and MD in two Companies and was also holding CoP without obtaining permission of the Institute, was guilty of professional misconduct under Clauses (4) and (11).(*Harish kumar in re:- Pages 286 of Vol. VIII (2) of Disciplinary cases – Council's decision dated 1st to 3rd August, 2001*)

2. CA was a Taxation Advisor of a group of Companies. During an investigation of the group and also of the Chartered Accountant, the CA was found to be colluding with this group in evasion of tax, by signing two sets of financial statements of the same auditee, for the same financial year, but showing different figures of contract receipts, net profits and balance sheet. He was held to be grossly negligent in the conduct of his professional duties. under Clause (4) of Part I of First Schedule and under Clauses (5), (6) & (7) of Part I of Second Schedule.[*Assistant Director of Income Tax (investment), Calicut v. P Subramanian. Council Decision of 281st Meeting held in October, (2008)*].

# Part 1 of First Schedule to the CA Act

**Clause (5) does not allow securing professional business through a person, who is neither employee nor partner or by means which are not open to a Chartered Accountant, except any agreement permitted in terms of item clause (2), (3) and (4) of this part.**

“A man must stand erect, and not to be kept erect by others”, is a dictum by Marcus Aurelius which though applicable for a man in every walk of life is more so in the case of a professional life. He must seek work not through any agency, but by the respect, that he is able to command for his professional talent and skill and by the confidence he is able to inspire by his reputation. All forms of canvassing on that account are regarded unethical and are prohibited.

1. A Chartered Accountant wrote various letters to officers of different Army Canteens giving details about him and his experience, his partner & office and the norms for charging audit fees. He was held guilty for violation of Clauses (5) & (6). (Jethanand Sharda vs. Deepak Mehta – Council’s decision dated 1st to 4th July, 1998 – Page 61 of Volume VIII(2) of Disciplinary Cases).

## **Part 1 of First Schedule to the CA Act**



Clause (6) prohibits soliciting clients or professional work, 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. But, PCA is allowed to apply, request, invite or secure professional work from another PCA. A PCA can respond to tenders or enquiries issued by various users of professional services. But, a PCA *shall not respond to any tender for professional services in areas of services which are exclusively reserved for chartered accountants, such as audit and attestation services, except where minimum fee of the assignment is prescribed in the tender document itself or it is open to other professionals along with the CAs.* Such a restraint must be practiced so that members may maintain their independence of judgment and may be able to command the respect of their prospective clients. In the early years of their professional career, members may find this restraint inconvenient and irksome. A FAQ is how PCAs would be able to find professional work if they are not permitted to advertise or solicit work. But, professional work cannot be secured by advertisement, circulars or solicitation, but by gradually building confidence in his ability and integrity. Professional services are of personal and intimate nature and its value can be appraised only by personal contact and experience. Public advertisement may leave an impression that the professional person is over anxious to win confidence, which may have the opposite effect. Satisfaction of clients would be the best advertisement.

## Part 1 of First Schedule to the CA Act

**Advertisement and note in the press –**

Changes in partnerships or dissolution of a firm, or of any change in address of practice and telephone numbers may be advertised with limited to a bare statement of facts and appropriateness of the area of distribution of the newspaper or magazine and number of insertions. Classified advertisement in the journal/ newsletter of the Institute for sharing professional work on assignment basis or for seeking partnership or salaried employment can be given with accountant's name, address or telephone number, fax number, e-mail address.

**Application for empanelment for allotment of audit and other professional work –** Many Government departments, companies, courts, NGOs and banks etc. maintain panels of chartered accountants for allotment of audit and other professional work. Where PCA knows the existence of such a panel, he is free to write for empanelment. But, roving enquiries cannot be made to know from any organization about existence if any system of empanelment.

**Publication in the Telephone or other Directories published by Telephone Authorities or Private Bodies –** Generally, having entries made in a Telephone Directory either by making a special request or by means of an additional payment, is not proper. Restricted permissions have been given for entries under specified groups in telephone/trade directories brought out by government and non-government agencies. It has decided to permit such entries subject to certain restrictions.

# Part 1 of First Schedule to the CA Act

**Responding to Tenders, Advertisements and Circulars** – It is not prohibited to the members to respond to tenders and requests made by users of professional work.

**Publication of Books or Articles** – A PCA is not permitted to indicate in a book or an article, published by him, the association with any firm of Chartered Accountants.

**Issue of greeting cards or invitations** –Greeting cards or personal invitations not to indicate professional designation, status and qualification etc., except the designation “Chartered Accountant”, name of the firm, provided that such greeting cards or invitations etc. are sent only to clients, relatives and close friends of the PCA.

**Soliciting professional work by making roving inquiries** – PCA not to address letters or circulars to persons, who are likely to require services of a Chartered Accountant. It amounts to advertisement

**Seeking work from professional colleagues** – PCA not to issue advertisement or circular, seeking work from professional colleagues on any basis whatsoever except as provided above.

# Part 1 of First Schedule to the CA Act

**Scope of Representation which an auditor is entitled to make under Section 225(3) Companies Act, 1956 (now section 140(4)(iii) of the Companies Act, 2013)** – The right to make representation is not the opportunity to be abused to secure publicity, or does not tantamount directly or indirectly to canvassing or soliciting for his continuance as an auditor. The letter should merely set out in a dignified manner how he has been acting independently and conscientiously through the term of office and may indicate his willingness to continue as auditor if reappointed.

**Acceptance of original professional work by a member emanating from the client**

**Introduced to him by another member** – If any professional work of a client comes to him directly, it should be his duty to ask the client that he should come through the other PCA dealing generally with his original work.

**Giving public Interviews** – PCA should ensure that public interview should not result in publicity or highlighting the professional attainments of themselves or their firm.

**(k) Members and/or firms who publish advertisements under Box numbers** – PCA are prohibited from inserting advertisements for soliciting clients or professional work under box numbers in the newspapers.

# Part 1 of First Schedule to the CA Act

**Website** – The detailed guidelines of January, 2001 as amended in July, 2003, April, 2004, August, 2015 are as under:

No standard format of the Website prescribed to provide independence to the Members. No restriction on the colours to be used prescribed. Webpages can be in the trade name or individual name. Websites to be run on a “pull” model and not a “push” model of the technology to ensure that any person who wishes to locate the PCAs would only have access to the information and the information should be provided only on the basis of specific “pull” request. PCA to ensure that none of the information contained in the Website be circulated on their own or through E-mail except on a specific “pull” request. PCA not to issue any circular or any other advertisement or any other material etc. to solicit people to visit their Website. PCA can mention their Website address on their professional stationery. Following information are allowed to be displayed on the PCAs’ Websites: Member/Trade/Firm name, Year of establishment, Address (Head Office and Branches), Tel. No(s), Fax No(s), E-mail ID(s), Nature of services rendered (to be displayable only on specific “pull” request), Partners (Name, Year of qualification, Other Qualifications, Tel, Mobile, Email, Area of expertise), Employees (Professional, Others, Name, Designation, Area of Expertise)

# Part 1 of First Schedule to the CA Act

### **Website Guidelines Contd.....**

Job vacancies for the CA and articled clerks, No. of articled clerks, Nature of assignments handled,

Names of clients and fee charged not to be given, except when required by a regulator, whether or not constituted under a statute, in India or outside India, 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], stating that such 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],

Since Chartered Accountants in practice/firms of Chartered Accountants are not permitted to use logo with effect from 1st July, 1998, they cannot use logo on Website also.

Display of Passport size photograph is permitted.

Articles, professional information, professional updation and other matters of larger importance or of professional interest may be included

# **Part 1 of First Schedule to the CA Act**

## **Website Guidelines Contd.....**

The bulletin boards can be provided.

The chat rooms can be provided which permit chatting amongst members of the ICAI and between Firms and its clients. The confidentiality protocol would have to be observed.

The members/firms can provide on line advice to their clients who specifically request for the advice whether free of charge or on payment.

The listing on suitable search engine is permitted. However, the field of search should be restricted only to the field of “Chartered Accountants” or “CA” or “Indian CA”, “Indian CPA”, “Indian Chartered Accountant” or any permutation or combination related thereto.

Websites would be subjected to the guidelines contained herein and normally would not be vetted by ICAI, but ICAI would have right to vet any of the Websites and to directly delete certain portions and/or to issue specific directions and to take action can be taken in accordance with the Chartered Accountants Act, 1949 and the Regulations framed thereunder, in case there is any violation of the above guidelines.

Website should not be so designed as amounts to soliciting client or professional work or against the professional Code of Conduct and Ethics as well as the restrictions contained in the schedules to the Chartered Accountants Act, 1949 or against the guidelines or directions issued by ICAI from time to time.

Website to ensure adequate secrecy of the matters of the clients handled through Website.

# **Part 1 of First Schedule to the CA Act**

## **Website Guidelines Contd.....**

Listing is permitted in the data bases of CA Societies or CA listing by other bodies. Such listing would be permitted with or without payment. In case a Chartered Accountant or Chartered Accountants' Firm is a member of a professional body or association or Chamber of Commerce and they offer listing to the members or firm, the same would be permitted.

Website not contain Advertisement in the nature of banner or any other nature.

Website not to contain any information or material which is unbecoming of a Chartered Accountant.

Website may provide a link to the Website of ICAI, its Regional Councils and Branches and also the Website of Govt./Govt. Departments/Regulatory authorities/other Professional Bodies, such as, American Institute of Certified Public Accountants (AICPA), the Institute of Chartered Accountants of England & Wales (ICAEW) and The Canadian Institute of Chartered Accountants (CICA).

Website address can be different from the name of the firm. But it should not amount to soliciting clients or professional work or advertisement of professional attainments or services. Website address should be as near as possible to the individual/trade/firm name of PCA

Website updation date to be mentioned.

# **Part 1 of First Schedule to the CA Act**



### **Website Guidelines Contd.....**

Some non-Chartered Accountants' entities provide online advisory services through their own Websites providing advisory services on taxation and other areas where Chartered Accountants are rendering professional service. PCAs rendering services through their Websites would be permitted provided contact address or professional achievements or status of such PCA is not given, except making a statement that they are Chartered Accountants. **The name of Chartered Accountants' firm with suffix "Chartered Accountants" would not be permitted.**

### **Solicitation –**

PCA issued a letter of authority in favour of two other CAs to accept and carry out audits of Co-operative Societies on its behalf and the two CAs issued circulars of which PCA firm was not aware- Held, that the firm was not guilty of professional misconduct. [V.B. Kirtane (1958)] But the person, in whose favour the letter of authority was given in the above case, was held guilty. [MR Walke (1958)]

PCA sent printed circular to strangers offering his services in profit planning and profit improvement programmes. Held, guilty of professional misconduct to solicit clients and professional work. [B.S.N. Bhushan (1965)]

# **Part 1 of First Schedule to the CA Act**

### **Solicitation Contd.....**

PCA wrote several letters to Government departments requesting for allotment of audit work and to enroll his name-on panel of auditors. Held guilty of professional misconduct [Chief Auditor of Co-operative Societies, West Bengal vs. B.B. Mukherjee (1967)]

PCA sent letters to government department stating that no allotment of audit was made to him. Held he was guilty of professional misconduct under the clause. [D.N. Das Gupta, Chief auditor of Co-operative Societies, West Bengal vs. B.B. Mukherjee (1969)]

PCA approached the principal of a secondary school through a third person known to the principal for his appointment as auditor of that school. Before appointment, he communicated with pervious Auditor for no objection stating that he had been offered appointment as auditor of the school. Held guilty professional misconduct [M. L. Agarwal (1973)]

PCA issued circular letter regarding change of address of his firm to persons who were not in professional relationship with him and for having written to the shareholders thanking them for appointing him as auditor. Held guilty about publicity. [K.K. Mehta vs. M..K. Kaul (1975)]

PCA advertised with his photograph congratulating on the occasion of the opening ceremony of his office. Held guilty [G.P. Agrawal (1982)]

## **Part 1 of First Schedule to the CA Act**

## **Solicitation Contd.....**

PCA advertised in newspaper offering “services in matters of Accounts, Income Tax, Labour laws, Law matters and Management Services was found guilty under Clause (7). [Anil K. Garg (1987)]

PCA advertised in newspaper regarding inauguration of his professional office. Based on the nature of the advertisement, function organised on that occasion, persons invited, medium used, names of various concerns which had conveyed their good wishes, held guilty [Shashindra S. Ostwal (1988)]

PCA wrote a letter to a Company in standard format highlighting his expertise in sales tax matters and requested Rs.200 if his knowledge was worthwhile. Held guilty [K.A. Gupta (1989)]

PCA personally visited clients for securing appointment as auditors of the Institutions. Held guilty [J.S. Bhati Vs. M.L Aggarwal. (1991)]

PCA had addressed an undated but signed letter to a Bank requesting for empanelment with firm particulars and an MP also sent letter to the Bank recommending for immediate empanelment for Internal Audit/Inspection Audit/Management Audit, Expenditure Audit. Held guilty (1992)]

PCA sent letter to a non-member introducing himself as CA giving details of services rendered by him and the schedule of his fees for rendering various kinds of services. Held guilty [Vijay Kumar Goel (1994)]

PCA wrote letter to Co-operative Society that he had been authorised by the Registrar of Societies to conduct the statutory audit of the Societies and requested it to contact him. Held guilty [M. V. Lonkar (1996)]

# **Part 1 of First Schedule to the CA Act**

**Clause (7) prohibits advertisement of professional attainments or services, or use of any designation or expressions other than the 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 recognized by the Central Government or a title indicating membership of the Institute of Chartered Accountants or of any other institution that has been recognized by the Central Government or may be recognized by the Council.**

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

It is improper for a Chartered Accountant to state on his professional documents that he is an Income-tax Consultant or a Cost Consultant or a Management Consultant.

The date of setting up the practice by a member or the date of establishment of the firm on the letterheads and other professional documents, etc. should not be mentioned. However in the Website, the year of establishment can be given on the specific “pull” request.

A member must not use the designation such as ‘Member of Parliament’, Municipal Councilor or any other functionary in addition to that of Chartered Accountant.

# Part 1 of First Schedule to the CA Act

Members of the Institute in practice who are otherwise eligible may practice as advocates subject to the permission of the Bar Council but in such case, they should not use designation 'chartered accountant in respect of the matters involving the practice as an advocate. In respect of other matters they should use the designation 'chartered accountant' but they should not use the designation 'chartered accountant' and 'advocate' simultaneously. It is not proper for Chartered Accountant to use the designation "Chartered Accountant" except on professional documents, visiting cards, letterheads or sign boards and under the circumstances clarified under para (f) of Clause (6).

The name, description and address of member (or firm) may appear in any directory or list of members of a particular body in which the names are listed alphabetically. For a specialised directory or a publication such as a "Who's Who" (including those compiled on purely local basis), a member should use his discretion in supplying information, bearing in mind the nature and purpose of the publications. In addition to his name, description and address and those of his firm, a member may give where appropriate, directorship held and reasonable personal details and may state his outside interests. He should not, however, give the names of any of his clients or details of the service offered by his firm.

## Part 1 of First Schedule to the CA Act

Photographs and brief particulars of members in magazines can be published provided no payment is made for such publication and there is no advertisement of professional attainments. Photograph on visiting cards is not permissible.

Quick Response Code (QR Code) can be printed on the visiting Card, provided that the Code does not contain information that is not otherwise permissible to be printed on a visiting Card.

Name and address of PCA with the description Chartered Accountant(s), can be published in an advertisement appearing in the press in normal fonts in the certain circumstances, like for recruiting staff in the members' own office, on behalf of clients requiring staff or wishing to acquire or dispose of business or property, for the sale of a business or property by a member acting in a professional capacity as trustee, liquidator or receiver.

Advertisements should not contain Self glorification or promotional contents

Notice in the press relating to the success in an examination of an individual candidate, should not contain any element of undesirable publicity either in relation to the articled/audit clerk or an employee or the member or the firm with whom he has served.

In the examination success of local candidates. The rule aforementioned is not intended to indicate the need for restraint. The candidate's name and address, school and local background, examinations passed with details of any prize or place gained, the name of the principal, firm and town in which the principal practices may be published.

# Part 1 of First Schedule to the CA Act

**Clause (8) prohibits acceptance of a position as auditor previously held by another chartered accountant without first communicating with him in writing.**

Apart from professional courtesy, major reason for requiring a member to communicate with the existing accountant is that the member may have an opportunity to know the reasons for the change in order to be able to safeguard his own interest the legitimate interest of the public and the independence of the existing accountant.

It is important to remember that every client has an inherent right to choose his accountant also that he may, subject to compliance, with the statutory requirements in the case of limited companies, make a change whenever he chooses. The existence of a dispute as regards the fees not having been paid often may be the root cause of an auditor being changed, but this would not constitute valid professional reasons on account of which an audit should not be accepted by the member to whom it is offered.

The professional reasons for not accepting an audit could be non-compliance of the provisions of Sections 139, 140, 141 and 142 of the Companies Act, 2013] or non-payment of undisputed audit fees by auditees other than in case of sick units for carrying out the statutory audit under the Companies Act or various other statutes; and Issuance of a qualified report. In the first two cases, an auditor who accepts the audit would be guilty of professional misconduct.

## Part 1 of First Schedule to the CA Act

In the case of qualified report by previous auditor, however, the new auditor may accept the audit if he is satisfied that the attitude of the retiring auditor was not proper and justified. If, on the other hand, he feels that the retiring auditor has qualified the report for good and valid reasons, it would be a healthy practice not to accept the audit. However, before accepting the appointment he should ascertain full facts of the case. For nothing will bring the profession to disrepute so much as the knowledge amongst the public that if an auditor is found to be “inconvenient” by the client, he could readily be replaced by another who would not displease the client and this point cannot be too over-emphasized. The Council has taken the view that a mere posting of a letter “under certificate of posting” is not sufficient to establish communication with the retiring auditor unless there is some evidence to show that the letter has in fact reached the person communicated with. The requirement for communicating with the previous auditor being a chartered accountant in practice would apply to all types of audit viz., statutory audit, tax audit, internal audit, concurrent audit or any other kind of audit. Various doubts have been raised by the members about the terms “audit”, “previous auditor”, “Certificate” and “report”, normally while interpreting the aforesaid Clause (8). These terms need to be clarified.

## Part 1 of First Schedule to the CA Act



As per para 2 of SA 200 on “Basic Principles Governing an Audit”, an “audit” is the independent examination of financial information of any entity with a view to expressing an opinion thereon.

The term “previous auditor” means the immediately preceding auditor and where the previous auditor happens to be an auditor for a year other than the immediately preceding year.

As explained in para 2.2 of the Institute’s publication viz., ‘Guidance Note on Audit Report and Certificates for Special Purposes’, a “certificate” is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion. A “report”, on the other hand, a formal statement usually made after an enquiry, examination or review of specified matters under report and includes the reporting auditor’s opinion thereon.

Communication is mandatorily required for all types of audit/report if the previous auditor is a chartered accountant. For certification, it would be healthy practice to communicate. A Chartered Accountant commenced the work of audit on the very day he sent letter to the ‘previous auditor - Held, he was guilty of professional misconduct under the clause. The appointment could be accepted only when the outgoing auditor does not respond within a reasonable time. [S.N. Johri vs. N.K. Jain (1973)]

# Part 1 of First Schedule to the CA Act

PCA sent a registered letter to the previous auditor after the commencement of the audit. Held guilty [*Radhey Shyam vs. K.S. Dubey (1974)*]

PCA sent a communication to the previous auditor under certificate of posting without obtaining any acknowledgment thereof. Certificate of Posting of a letter could not in the circumstances be taken as positive evidence of its delivery to the addressee. [*M.L. Agarwal vs. J.S. Bhati (1975)*]

The provision of Clause (8) requiring a communication with the previous auditor is absolute and applicable even in respect of an appointment by the Government agencies and even if previous auditor was aware of the appointment. [*Rajeev Kumar vs. R.K. Agrawal (1988)*]

The requirements of Clause (8) of Part I of the First Schedule can be considered to have been complied with only if there is evidence that a communication to the previous auditor had been by R.P.A.D. and if there was positive evidence about delivery of the communication to the previous auditor. In the absence of both, the member should be found to have contravened this Clause. [*R.M. Singhai vs. R.V. Agarwal (1988)*]

PCA conducted tax audit of a firm without first communicating in writing with the Complainant, who was the previous tax auditor of the said firm. Held guilty [*V.A. Parikh vs. R.I. Galledar (1991)*]

## Part 1 of First Schedule to the CA Act

***Clause (9) prohibits acceptance of appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 of the Companies Act, 1956, in respect of such appointment have been duly complied with (now Section 139, 140 and 142 read with Section 141 of the Companies Act, 2013).***

The Companies Act, 2013 provides for the requirements which an auditor appointed in respect of a company should satisfy himself about, before he accepts the appointment. The relevant provisions are contained in Sections 139, 140, 141 and 142 of the said Act. Section 139 contains several provisions in the matter of appointment of auditors in different circumstances and situations; and Section 140 lays down the procedure which must be followed when a company desires to change its auditors, or when an auditor resigns from the company; whereas Section 141 provides the eligibility, qualifications and disqualifications of auditors; and Section 142 contains the provisions related to the remuneration of the auditor. In order that the validity of the appointment of an auditor is not challenged or objected to by shareholders or the retiring auditors at a later date, it has been made obligatory on the incoming auditor to ascertain from the company that the appropriate procedure in the matter of appointment has been faithfully followed.

## Part 1 of First Schedule to the CA Act

When the auditor appointed is the first auditor of the company.

When the auditor is appointed in place of an existing auditor who has resigned or has been removed or has ceased to hold office for any other reason.

When the auditor or auditors appointed by the company were holding this office jointly with others and one or more of such joint auditors are not reappointed.

When one or more of the auditors appointed by the company was/were not holding this office earlier. Under Clause (9) of Part I of the First Schedule to the Chartered Accountants Act, 1949, the incoming auditor has to ascertain whether the company has complied with the provisions of the above sections. The word “ascertain” means “to find out for certain”. This would mean that the incoming auditor should find out for certain as to whether the company has complied with the provisions of Sections 224, 224A and 225 of the Companies Act, 1956 (now Section 139, 140 and 142 read with Section 141 of the Companies Act, 2013). In this respect, it would not be sufficient for the incoming auditor to accept a certificate from the management of the company that the provisions of the above sections have been complied with. It is necessary for the incoming auditor to verify the relevant records of the company and ascertain as to whether the company has, in fact, complied with the provisions of the above Sections. If the company is not willing to allow the incoming auditor to verify the relevant records in order to enable him to ascertain as to whether the provisions of the above sections have been complied with, the incoming auditor should not accept the audit assignment.

## Part 1 of First Schedule to the CA Act

Copy of the relevant minutes of the general meeting where the above resolution is passed duly verified by the Chairman of the meeting should also be obtained by the incoming auditor. If the incoming auditor is satisfied that the company has complied with the provisions of Sections 224, 224A and 225 of the Companies Act, 1956 (now Section 139, 140 and 142 read with Section 141 of the Companies Act, 2013), he should first communicate with the outgoing auditor in writing as per Clause (8) before accepting the audit assignment.

Where an auditor resigns his appointment as an auditor of a Company or does not offer himself for reappointment as auditor of such company, he shall send a communication, in writing, to the Board of Directors of the Company giving reasons therefor if he considers that there are professional reasons and shall send a copy of such communication to the Institute.

Where an auditor, though willing for reappointment has not been reappointed, he shall file with the Institute a copy of the statement which he may have sent to the management of the company for circulation among the shareholders.

In both the cases, it shall be obligatory on the incoming auditor before accepting the appointment, to obtain a copy of such a communication from the company and consider it, before accepting the appointment.

# Part 1 of First Schedule to the CA Act

**Clause (10) prohibits charging or accepting professional employment fees, based on a percentage of profits or which are contingent upon the findings, or results of such employment, except as permitted under any regulations made under this Act.**

What distinguishes a profession from a business is that professional services are not rendered with the sole purpose of a profit motive. Personal gain is one but not the main or the only objective. Professional opinion, therefore frowns upon methods where payment is made to depend on the basis of results. It is obvious that a person who is to receive payment in direct proportion to the benefit received by his client, may be tempted to exaggerate the advantage of his service or may adopt means that are not ethical. It will have the effect of undermining his integrity and impairing his independence. PCAs are prohibited from charging or accepting any remuneration based on a percentage of the profits or on the happening of a particular contingency such as, the successful outcome of an appeal in revenue proceedings. Professional services should not be offered or rendered under an arrangement whereby no fee will be charged unless a specified finding or result is obtained or where the fee is otherwise contingent upon the findings or results of such services. However, fees should not be regarded as being, contingent if fixed by a court or other public authority. The Council of the Institute has however framed Regulation 192 which exempts members from the operation of this clause in certain professional services. The said Regulation 192 is reproduced -

## Part 1 of First Schedule to the CA Act

## **192. Restriction on fees -**

“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;

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 property valued;

in the case of certain management consultancy services, 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 optimisation, 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

# **Part 1 of First Schedule to the CA Act**

**Clause (11) prohibits engagement in any business or occupation other than the profession of chartered accountant 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 managing director or a whole time director) unless he or any of his partners is interested in such company as an auditor.**

This is a provision introduced to restrain a member in practice from engaging himself in any business or occupation other than that of chartered accountant except when permitted by the Council to be so engaged. The objective is to restrain members from carrying on any other business in conjunction with the profession of accountancy, which is not in keeping with the dignity of the profession. Another reason for the introduction of such prohibition is that a PCA, if permitted to enter into business, would be able to advertise for his other business and thereby secure an unfair advantage in his professional practice.

Regulation 191 allows a PCA, part-time employment to act as a liquidator, trustee, executor, administrator, arbitrator, receiver, adviser or representative for costing, financial or taxation matter, or may take up an appointment that may be made by the Government or court or any statutory authority or may act as Secretary in his professional capacity, provided his employment is not on a salary-cum-full-time basis.

## Part 1 of First Schedule to the CA Act



As per General and specific Resolutions passed by the Council under the power vested in it under Regulation 190A as included in Appendix 9 of C.A. Regulations, 1988,

**General Resolution:**

Employment under PCA, private tutorship, authorship of books and articles, holding of Life Insurance Agency License for getting renewal commission, attending classes and appearing for any examination, holding of public elective offices such as M.P., M.L.A. and M.L.C, honorary office leadership of charitable or educational or NGOs, acting as Notary Public, Justice of the Peace, Special Executive Magistrate and the like, part-time tutorship under the Institute, valuation of papers, acting as paper-setter, head-examiner or a moderator, editorship of professional journals, acting as Surveyor and Loss Assessor, ***acting as recovery consultant in banking sector***, owning agricultural land and carrying out agricultural activity.

**Specific Resolution –** After obtaining the specific and prior approval of the Council:

Employment in business concerns provided that the member and/or his relatives do not hold “substantial interest” in such concerns, employment in non-business concern, office of managing director or a whole-time director of a company, interest in family business concerns (including such interest devolving on the members as a result of inheritance / succession / partition of the family business) or concerns in which interest has been acquired as a result of relationships and in the management of which no active part is taken, interest in educational institution, lectureship for courses, tutorship under any educational institution, editorship of journals, any other business or occupation for which the Executive Committee grants permission.

# Part 1 of First Schedule to the CA Act

“relative” means the husband, wife, brother or sister or any lineal ascendant or descendant of that member; “substantial interest” in a concern means holding at least 20% of voting power at any time, during the relevant years, owned beneficially by PCA with relatives, partners and their relative or concern in which substantial interest is held.

Section 2(54) of the Companies Act, 2013 provides that a person is deemed to be MD/WT D if he manages substantially the whole of the affairs of the company. **PCA cannot be MD/WT D in which he, his partners and relatives hold substantial interest.**

Auditor of a Subsidiary Company can't be a Director of its Holding Company, as it will affect the independence of an auditor.

1. PCA in partnership with non-members, with 25% share with participation in business and to represent the firm before Govt. authorities etc., operating the Bank account of the firm, receiving moneys from the customers. Held guilty [*K.S. Dugar (1980)*]
2. PCA was looking after affairs of the company and owned 51% voting rights. Later on, he applied for permission to act as Executive Chairman. Held guilty [*M.K. Abrol and S.S. Bawa vs. V.P. Vijh (1988)*]
3. PCA worked as Assistant Manager (F & A). Held guilty [*Anil Kumar (1994)*]
4. PCA engaged in LIC agency held in other name. Held guilty [*CIT(Admn.) vs HM Giriya (1996)*]
5. PCA was involved in share transfer and broker's business. Held guilty.

## Part 1 of First Schedule to the CA Act

**Clause (12) prohibits a non-member or non-partner to do sign BS, PL, report or FS.**

Section 26 of the CA Act also stipulates the same. Report would cover that arising out of a professional assignment to express professional opinion. Audit queries, asking for information, issue of questionnaire, letter forwarding draft observations/ financial statements, initialling documents, correspondence, Note on physical verification and input the same in the system, acknowledgements, bills, money receipts, attending routine matters as per Section 288 of Income Tax Act, matter incidental to office administration and routine work are not covered by this Clause.

Signing documents pursuant to delegated of authority, is not a defence to him or to the firm in an enquiry relating to professional misconduct. PCA should disclose his name while appending his signature on the report or document. Where there is no such statutory requirement, the member may sign in the name of the firm.

## Part 1 of First Schedule to the CA Act

**PART II - Professional misconduct in relation to members of the Institute in service**  
**Clause (1) prohibits payment to any person any share in the emoluments of the employment.**

SCA cannot pay or agree to pay any share in the emoluments of the employment procuring or retaining the job. Sharing or commitments among relatives, dependents, friends etc. is excluded. , if there is no This clause warrants that job must be procured and retained with own professional capabilities and not by any financial deal impairing professional dignity.

**Clause (2) prohibits acceptance of any part of fees, profits or gains from others by way of commission or gratification.**

This clause restricts to accept or agrees to accept any part of fee, profits or gains from a lawyer, a chartered accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification. The objective is that when SCA must maintain high level of ethics and should not accept any other amount from anyone for which he is not entitled from employer under contractual agreement of service.

## Part II of First Schedule to the CA Act

**PART III - Professional misconduct in relation to members of the Institute generally**

**Clause (1) not being a fellow of the Institute, acts as a fellow of the Institute.**

**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 (11) of Part I and Clauses (1) and (3) of Part III PCA had not disclosed to the ICAI about his engagement as a proprietor of a non-CA firm and had not furnished particulars of his engagement as Director of a company despite various letters of the institute which remained unreplied. Held guilty [*P.S. Rao (1992)*]

Where a Chartered Accountant had continued to train an articled clerk though his name was removed from the membership of the Institute and he had failed to send any reply to the Institute asking him to send his explanation as to how he was training as his articled clerk when he was not a member of the Institute. Held that he was guilty under Clause (2) of Part III of the First Schedule. [*S.M. Vohra (1992)*]

**Clause (3) prohibits knowingly giving false information 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**

## Part III of First Schedule to the CA Act

#### **PART IV- Other misconduct in relation to members of the Institute generally**

A member shall be deemed to be guilty of other misconduct, if he -

**Clause (1) is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months.**

**Clause (2) 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.**

These Clauses (1) & (2) are self explanatory and any of the member of the Institute is found guilty by any civil or criminal court and prosecuted for an imprisonment in an offence involving moral turpitude or his acts bring disrepute to the profession or the Institute, irrespective of the fact whether such acts are related to profession or not, such member will be deemed to be guilty of other misconduct in Part IV of First Schedule.

The important point to note is that if imprisonment tenure exceeds six months, this case will be covered in the Clause of Part III of Second Schedule.

## **Part IV of First Schedule to the CA Act**

**Clause (1) prohibits disclosure of 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.**

PCA has access to highly confidential information and for maintaining the dignity and he should use it only to facilitate the performance of his professional duties. The duty not to disclose continues even after the completion of his assignment.

Disclosure, required by the terms of the engagement, would itself amount to the client consenting to such disclosure. Submitting information to, say, exchange control authorities, cannot be considered to have made disclosure without the aforesaid consent.

An auditor is not required to provide access to his audit working papers. Main auditor does not have right of access to the audit working papers of the branch auditors. PCA can rely on the work of another auditor including internal auditor, without having any right of access to the audit working papers.

Auditor may, at his discretion, make extracts from his working papers available to the client. If under any legal compulsion and if it is not legally permissible to claim privilege under the Evidence Act, 1872 (Section 126), the disclosure of such information may not be considered as misconduct. However, such matters involve niceties of law and expert legal advice may be sought prior to, such disclosure.

## Part I of Second Schedule to the CA Act

The circumstance in which the PCA finds the client guilty of fraud, section 143(12) of the Companies Act, 2013 is attracted requiring disclosure to Central Govt within 60 days and also to Audit Committee, When PCA is not directly involved in tax frauds committed by his client but he discovers such fraud in the course of his professional work, no duty is cast on him, whether by Section 44 of CrPC, or otherwise, to inform the Income tax Authorities. Under Section 126 of the Evidence Act, a barrister, attorney, pleader or *Vakil* is barred from disclosing except with the express consent of his client, any communication made to him in the course of and for the purpose of his employment or to state the contents or conditions of any document with which he has become acquainted in such course. Proceedings before the Income tax authorities are judicial proceedings and the restrictions imposed by Section 126 apply as between the client and PCA. Section 126 shall protect from non-disclosure and not from disclosure.

However, it is not the duty of PCA to shield a client from the consequences of his tax frauds; on the contrary it is guiding principle of professional conduct to discourage tax evasion. There may be intentional suppressions or misstatement by the client in his tax returns. If the fraud relates to past year(s) for which the client was not represented by PCA, the client should be advised to make a disclosure. PCA may but not obliged, however, continue to act for the client in respect of current matters. Past fraud does not affect the current tax matters, but PCA should be extra careful that past is not reflected in current matters.

## Part I of Second Schedule to the CA Act



If the fraud relates to accounts etc., examined by PCA, on the basis of which the tax assessment in the past has been made, or is currently to be made, the client should be advised to make a complete disclosure. If the client should refuse, he should be informed that the member would be entitled to dissociate himself from the case, and that, further, he would inform the authorities that the accounts prepared by him and/or reported upon by him are unreliable, on account of certain information since obtained. He should then make such a report to the authorities. But the information subsequently obtained should not be communicated to the authorities, unless the client consents in writing.

If there is any possibility that the collection of tax would be prejudiced, on account of the client disposing of his property or removing his person from the jurisdiction of the Income-tax authorities the postponement of disclosure would be improper.

If the suppression etc. relates to accounts or current returns, the member should advise the client to make full disclosure in the accounts and/or return, and should the client refuse, he should make full reservation in his report, and should not associate himself with the return.

If the employment of the member is dispensed, before accounts, audit report or the return, no further duty regarding disclosure etc. rests on the member.

## Part I of Second Schedule to the CA Act

The suppression may relate to accounts, which are not prepared and/or reported upon by the member, e.g. personal income, from investments other than business investments etc. The client may refuse full disclosure in the tax return but still wish that the member should continue to prepare and/ or report on his business accounts, though this is quite unlikely in practice. If so requested, the member may continue to do so, but is under no obligation so to do.

It should be impressed on the client that:

While disclosure may entail only monetary penalties, nondisclosure and subsequent discovery thereof may entail imprisonment and fine, in addition to penalties.

Any intimation by the member to the Income tax authorities that the member dissociates himself from the case is certain to start investigation by them in the whole matter.

The Income-tax authorities may summon the member for the purpose of examining him on oath, under Section 131(1) of the Income tax Act. The immunity from disclosure afforded by Section 126 of the Evidence Act, is a matter for expert legal advice.

## Part I of Second Schedule to the CA Act

**Clause (2) prohibits PCA to certify or submit report of an examination of financial statements unless the examination of such statements and the related records has been made by him, his partner or employee or another PCA.**

Two or more PCAs can accept joint assignment or enables a member also to carry out the examination of financial statements. Where the joint auditors are appointed, the work is normally divided among themselves in terms of identifiable units or areas, or with reference to the items of liabilities, or income or expenditure or to the period of time etc. Such division should be adequately documented and communicated to the auditee.

Where a joint auditor comes across matters requiring discussion with or application of judgement by the joint auditors, he must communicate to the other joint auditors before submission of the report. Each joint auditor is responsible only for the work allocated to him, whether or not he has prepared a separate report on the work performed by him.

All the joint auditors are jointly and severally responsible in respect of the audit work which is not divided among the joint auditors and in respect of decisions taken by all the joint auditors concerning the nature, timing or extent of the audit procedures to be performed by any of the joint auditors.

## Part I of Second Schedule to the CA Act

All the joint auditors are responsible only in respect of the appropriateness of the decisions concerning the nature, timing or extent of the audit procedures agreed upon among them for proper execution by the joint auditor concerned and in respect of matters which are brought to the notice of the joint auditors by any one of them and on which there is an agreement among the joint auditors;

For examining that the financial statements of the entity comply with the disclosure requirements of the relevant statute; and for ensuring that the audit report complies with the requirements of the relevant statute, each joint auditor should decide for himself the appropriateness of using test checks or sampling, the nature, timing and extent of audit procedures to be applied in relation to the work allotted to him.

Obtaining and evaluating the information and explanations from the management is the joint responsibility of the joint auditors unless they agree upon a specific pattern of distribution of this responsibility. In case of distribution of the responsibility, the liability of the joint auditors is limited to the area allotted to that auditor.

## Part I of Second Schedule to the CA Act

**Clause (3) prohibits PCA's involvement in the estimate of earnings contingent upon future transactions in manner which may lead to the belief that he vouches for the accuracy of the forecast**

PCA can participate in the preparation of profit or financial forecasts and can review them, provided he indicates clearly in his report the sources of information, the basis of forecasts and also the major assumptions made in arriving at the forecasts and so long as he does not vouch for the accuracy of the forecasts.

## Part I of Second Schedule to the CA Act

**Clause (4) prohibits PCA to express his opinion on financial statements of any business or enterprise in which he, his firm, or partner in his firm has a substantial interest.**

Chapter IV of Council Guidelines No. 1-CA(7)/02/2008 dated 8th August, 2008 stated that PCA shall not express his opinion on financial statements of business or enterprise in which one or more persons, who are his “relatives” as per AS-18 have substantial interest.

Tax Audit, Concurrent Audit of Banks, Concurrent Audit, Audit of non-corporate borrowers, audit of stock exchange, brokers etc. are also covered.

The independence of mind is a fundamental concept of audit and/or expression of opinion on the financial statements in any form and nothing can substitute for the essential and fundamental requirements of independence.

Section 141 of the Companies Act, 2013 specifically prohibits an officer or employee from auditing the accounts of a company. The same underlying principle of independence of mind is equally applicable in the context of tax audit etc.

The Council has clarified that the members are not permitted to write books of account of their auditee clients. Statutory auditor of a company cannot also be its internal auditor, as it compromise independent and objective report.

PCA should satisfy himself that his appointment is in accordance with the statute governing the entity.

# Part I of Second Schedule to the CA Act

**Clause (5) penalizes PCA for failure to disclose a material fact, known to him, but not disclosed in financial statement, disclosure of which is necessary in making such financial statement not misleading.**

Materiality of non-disclosure has to be established. SA 320 states, “Materiality in Planning and Performing an Audit”. Materiality should be judged in relation to both the balance sheet and the profit and loss account. “Financial statements” would cover both reports and certificate. Intra-Entity communication, reports etc. are not covered.

PCA failed to report about the non- creation of a sinking fund as required by Debenture Trust Deed and did not specify that the amounts shown as sinking fund, were borrowed from the MD of the company. PCA did not verify disclosure of the charge over a security, nature and mode of valuation of the sinking fund investment Held guilty [*Davar & Sons Ltd. vs M.S. Krishnaswamy (1952)*] PCA failed to examine how debts became bad and were written off- Held guilty [*A. Doraiswami/ Naidu-vs. P.M. Raghavendra Rao (1965)*]

PCA did not disclose the fact that a large amount of loan have been given out of the funds of an EPF to the Employer Company contravening the Rules of the PF and to report on the default in clearing the cheques received in re-payment of the loan. Held guilty by SC that it was no defence for PCA to say that he had disclosed the irregularities to the company as it was his duty to have made a disclosure thereof to the beneficiaries of the Provident Fund in the statement of accounts signed by him [*Kishori Lal Dutta vs-P.K. Mukherjee (1968)*]

## Part I of Second Schedule to the CA Act

**Clause (6) penalizes PCA for failure to report a material misstatement, known to him, to appear in a financial statement.**

Materiality has to be established. It is similar to Clause (5), in this connection.

PCA was aware of underprovision of depreciation, but did not report. Held guilty.

PCA prepared a balance sheet. Subsequently prepared statement of affairs ignoring the balance sheet already prepared. He disclosed lower opening stock and lower capital of the proprietor. Subsequently, he prepared a fresh balance sheet and profit and loss account tallying with statement of affairs prepared by him without reference to account books. Held guilty [*Attorney General of Kenya-vs-V.B. Joshi (1968)*]

## Part I of Second Schedule to the CA Act



**Clause (7) penalizes PCA for not exercising due diligence, or being grossly negligent in the conduct of his professional duties.**

Simply worded, but most vital clause which gets attracted always whenever question of guilty arises. Negligence covers fraud to collateral minor negligence. PCA has to perform that skill, care and caution which a reasonably competent, careful, and cautious auditor would use. What is reasonable skill, care and caution must depend on the particular circumstances of each case. Auditor is not bound to be detective, but must approach his work with skepticism, i.e., suspicion or with a foregone conclusion that there is something wrong. He is watchdog but not a bloodhound, but must bark when need arises and just not watch. Circumstances arousing suspicion, should be probed to the hilt. He only bound to be reasonably cautious and careful. Professional misconduct is a term of fairly wide import, but generally speaking, it implies fairly serious cases of misconduct of gross negligence. Negligence, per se, would not amount to gross negligence in the case of minor errors and lapses, which do not constitute professional misconduct and which, therefore, don't require a reference to the Disciplinary Committee.

PCA failed to indicate mode of valuation of investments in shares and did not draw attention to the inclusion of uniforms in the depreciation- Held guilty [*M.C. Poddar vs-P.S. Sodhbans* - page 259 of Vol. I of the Disciplinary Cases and page 554 of March 1954 issue of the Institute's Journal-Judgement delivered on 1st April, 1954].

## Part I of Second Schedule to the CA Act

PCA certified circulation of newspaper based on the statistic record but stated that he had given it after examination of the books of account, but did not verify that the statistics record did not tally with books of account and also ignored the return of copies unsold. Held guilty [*V.K. Madhava Rao (1956)*]

PCA issued certificate under the Insurance Act, 1938, which was not correct, because of non-disclosure of loans granted on policies which had already lapsed for non-payment of premium and also claims in respect of two policies, already matured, but not included in estimated liability of outstanding claims- Held guilty [*Controller of Insurance vs H. C. Das (1957)*]

PCA was appointed as branch auditor. He did not report that some entries in the bank pass book had not been passed through the cash book of the branch. Held guilty [*The Fairdeal Corporation Ltd. Bombay vs K. Gopalakrishna (1957)*]

PCA issued certificate in respect of the turnover of betel nuts, to enable the Auditee to obtain import license, but there was no turnover of betel nut in the books and documents. Held guilty [*Sunder Lal Fatehpuria in Re: page 591 of Vol. III of the Disciplinary Cases and page 224 of January, 1959 issue of the Institute's Journal- Judgement delivered on 14th November, 1958*]

PCA failed to check the bank balances with the pass books and failed to obtain certificates of balances from the bankers. Held guilty [*Co. Law Administration-vs-D.B. Kulkarni (1960)*]

# Part I of Second Schedule to the CA Act

*PCA was negligent in not reporting to disclose the total indebtedness of the directors in the balance sheet and to report on the numerous alterations and fictitious entries in the books of accounts of the bank. Held guilty [Superintendent of Police Madras vs M. Rajamany (1961)]*  
Where a Chartered Accountant had placed implicit reliance on his paid assistant who took absolutely no step whatsoever to check the cash balances facilitating and resulting, in serious defalcations. Held he was guilty under Clauses (5), (7) (8) and (9). *[D. C. Sopariwala (1968)]*

PCA failed to report inclusion of 3 invoices related to Associates in the turnover of export of onions. Held guilty *[The Chief Controller of Exports vs-G.P. Acharya (1962)]*

PCA signed the accounts stating that to be subject to separate notes. Held guilty stating that, though not suffering from bad or vicious intention, was still an act of gross negligence. *[Hitkarini Mahavidyalaya, Jabalpur vs P.C, Madan (1963)]*

PCA did not examine the pass book and verified the cash balance. Held guilty *[Director of Accounts, Gujarat State, Ahmedabad vs K.D. Patel (1968)]*

PCA did not complete audit and submit report in due time to enable the company to comply with the statutory requirement. Held guilty *[Qaroon Trading & Finance Pvt. Ltd.- vs Luxmi Narain Saxena and Jitendera Mohan Chadha (1969)]*

# Part I of Second Schedule to the CA Act

PCA did not check cash memos and did not verify the alterations in the trial balance with the original books and also did not check journal entries and the final figures of the balance sheet with the general ledger. Held guilty [*Messrs. O. M. Agency Private Ltd. & Messers. Oriental Mercantile Distributors Private Ltd. Surendra Sastry (1971)*]

PCA failed to report wrong and misleading entries. Rs.7,000 for reserve fund did not find a place at all in the original statement. Held guilty [*B.L. Shoulder vs-M.K. Deb (1976)*]

PCA adopted arbitrary valuation of closing stock without verification. He accepted the capitalization of revenue expenditure Held guilty [*B. Shantharam Rao (1977)*]

PCA accepted write off Rs.21500 against loss of Rs.1.84 lakhs on sale of investments. Value of investment was inflated. Held guilty [*B.S. Waierker (1957)*]

PCA issued two different certificates of circulation of a daily for the same period showing different figures. Held guilty [*Registrar of Newspapers for India vs P.K. Mukherji (1971)*]

PCA failed to detect a fraud committed by the accountant of a canteen, which could have been detected if he had checked the castings of the cash books and also checked the 'contra' entries of the bank and cash columns of the cash books. Held guilty [*Air Commodore Dilbagh Singh vs C.G .Apte (1976)*]

PCA failed to refer in the "Income Certificates" prescribed by the ABC to the report which he had separately submitted to the newspaper, which, in turn, was not sent by the newspaper to the Bureau. Held guilty [*Audit Bureau of Circulations Ltd., vs A.D. Shinde (1968)*]

# Part I of Second Schedule to the CA Act

**Clause (8): penalizes if PCA 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.**

PCA must determine the extent of information, which, should be obtained by him before he expresses an opinion on the financial statements submitted to him for report and obtain the same. The latter part of the clause enjoins that where due to inadequacy of information or data the report has to be circumscribed to an extent that it would cease to be of any expression of a categorical opinion, the auditor should clearly express his disclaimer in no uncertain terms.

PCA, without examination of stock register and other records, issued a wrong consumption certificate on the basis of which licence of higher value, for which the unit was not entitled, was issued by Controller of Imports & Exports. He was so restricted to examine that he could not obtain the information necessary to warrant the expression of an opinion regarding consumption of raw material and components. Held guilty [*T.S. Vaidyanatha Iyer (1977)*]

PCA relying on the work of the internal auditor of a company qualified his report that the books of account and the supporting vouchers had been examined by the internal auditor of the company, the Council taking the view that the qualification amounted to an exception sufficiently material to negate the expression of an opinion. Held guilty [*J.C. Chandhok (1964)*]

## Part I of Second Schedule to the CA Act

PCA issued a certificate of circulation of a periodical without verifying elementary details of how the circulation of a periodical was being maintained, by not verifying financial records, bank statements or bank pass books, evidence of actual payment of printers bills and not ascertaining how many copies were sold and paid for. Held guilty [*Registrar of Newspapers for India vs K. Rajinder Singh (1971)*]

**Clause (9) penalizes if PCA fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances.**

Audit should be performed in accordance with “generally accepted procedure of audit applicable to the circumstances” and if for any reason the auditor has not been able to perform the audit in accordance with such procedure, his report should draw attention to the material departures from such procedures, pronouncements, SAs and Guidance Notes issued by ICAI and ISA’s issued by the International Auditing Practices Committee of IFAC. The failure to perform a statutory duty in the manner required is not excused merely by giving a qualification or reservation in auditor’s report. He has to indicate clearly the reasons why he was unable to perform the audit in accordance with generally accepted procedures and standards.

PCA did not conduct sample checking of the bank accounts and did not carry out vouching. Held guilty [*M.R. Ramanathan vs A. Uthathirai Rao (1968)*]

# Part I of Second Schedule to the CA Act

PCA failed to verify the actual disbursement of the amount by examining the various items of purchases and insisting for the bills. Held guilty [*Punjab State Govt. vs K.N. Chandla (1972)*] PCA did not check bank column totals, had not verified the contra-entries in bank statements, had not checked totals of all accounts, had resorted to test check without there being system of internal check, had not seen the pay-in-slips, had not checked the bank reconciliation statements. Held guilty [*Air Commodore Dilbagh Singh vs E.S. Venkataraman (1976)*]

**Clause (10) penalizes PCA if he 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.**

Money held in trust belonging to his client are to be kept deposited in a separate banking account, and to be utilized only for the purposes intended by the client.

Advance received by PCA against services to be rendered, are not required to be kept in trust. Moneys received for expenses to be incurred within a reasonably short time need not be put in a separate bank account.

Moneys received for expenses, not intended to be spent within a reasonably short time, should be put in a separate bank account immediately. Moneys received, as trustee, executor liquidator, etc. must be put in a separate bank account immediately.

# Part I of Second Schedule to the CA Act

PCA failed to account satisfactorily for the various amounts entrusted to him by the client and for failure to keep them in a separate bank account. A refund voucher issued in the name of the client by the Income Tax Department was credited by him to his account in the bank. (N.S. Chenoy v.s. K.V. Subba Rao - page 958 of Vol. IV of the Disciplinary Cases and pages 207-214 of October, 1973, issue of the Institute's Journal - Judgement delivered on 6th April, 1973)

## **PART II - Professional misconduct in relation to members of the Institute generally**

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he -

**Clause (1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council.**

This clause is very important. It requires a member of ICAI to act within the framework of the CA Act and CA Regulations. Any violation would amount to misconduct.

PCA certified in Form K-2 that an audit clerk was in service with him. It transpired that he was also, employed elsewhere with another employer between 11 A.M. and 5 P.M. and attended the office of the Chartered Accountant thereafter until 8 P.M. PCA suspended the audit clerk when the Institute brought this fact to the notice of PCA. Held guilty [*J.K. Ghosh in (1953)*]

# Part II of Second Schedule to the CA



PCA agreed to admit an articled clerk in future vacancy and received the premium for the purpose and made him believe, when he executed the deed of articles. The audit clerk came to know from the Institute that the deed of articles was not registered as that was forwarded with a request for entertaining an extra articled clerk. Held guilty for contravening Reg 58. [*A.K. Basu v.s. P.K. Mukherjee (1956)*]

PCA represented that he had vacancy for a articled clerk, but, in fact, there was no vacancy. A formal deed was executed and the premium was paid. PCA cancelled the articles of the third articled clerk for irregular attendance without reference to the Institute. Held guilty for violation of Reg 58 [*J.K. Ghosh (1955)*]

PCA (i) issued false certificates to two articled clerks stating that he had refunded the entire premium, while a part of it was claimed as a set off against food and halting allowances given to them while they were working in out-stations, (ii) violated Regulation 62 by not refunding the premium within the time specified in the Regulation, and (iii) the refund of premium in instalments in one case was not as specified in the certificate. Held guilty of dishonest behaviour both as regards his clients and articled clerks. [*M.N. Bhargava (1958)*]

PCA signed the Articles of Agreement, failed to forward the same as required by Regulation 64. He also failed to respond to repeated enquiries from the articled clerk, He similarly signed Article of Agreement with 2 more articled clerks. He took up a fourth articled clerk without being entitled to do so. Held guilty for breach of Regulation 46. [*Mohan Sehwanji vs. Sunderlal Fatehpuria (1968)*]

## Part II of Second Schedule to the CA Act

PCA issued certificate of consumption on a date, when he had not even applied for a certificate of practice to the Institute. [*N.K. Ray Chowdhery in (1973)*]

PCA issued confidential and private circular to clients, describing himself as “Chartered Accountant” and also “Investment Consultant Public Accountant”. Held guilty [*B. M. Lala (1976)*]

PCA took loan from a firm in which the articled clerk and his father were both Interested. CA Regulations, 1988 prohibit ‘taking of loan or deposit etc. from the articled clerk. Held guilty [*M.K. Tripathi (1979)*]

PCA did not pay stipend to his articled clerk violating Reg 48 of the CA Regulations 1988, while to another articled clerk, he was paying every month. Held guilty [*Radhey Mohan (1979)*]

PCA failed to make the payments of stipend to them every month in accordance with Reg 48. Held guilty [*R.C. Gupta (1980)*]

PCA took Rs. 2000/- by way of security from the complainant’s father as a consideration for taking him as an articled clerk. Held guilty [*Virender Kumar v.s. K.B. Madan (1980)*]

PCA did not pay stipend to the articled clerk per month in violation of Reg 32B of the CA Regulations, 1964. Held guilty [*V.K. Mittal (1980)*]

PCA did not pay stipend to the articled clerk violating Reg 32B of the CA Regulations, 1964. Article Clerk was asked to work in excess of the prescribed working hours in violation of Reg 45 of the CA Regulations, 1964. Held guilty [*U.V. Benadikar vs. N.G. Kulkarni (2004)*]

## Part II of Second Schedule to the CA Act

**Clause (2) prohibits a member to disclose 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.**

An employee has access to a confidential information. For maintaining the status and dignity of the profession in general, he should be used only to facilitate the performance of duties

**Clause (3) prohibits a member to knowingly include any false 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.**

**Clause (4) prohibits a member to Defalcate or embezzle money received in his professional capacity.**

Defalcation and embezzlement of moneys received in professional capacity amounts to fraud (Covered in SA-240)

**Part III - Other misconduct in relation to members of the Institute generally**

**A member of the Institute shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.**

Imprisonment awarded for a term exceeding six months in any civil/criminal matter treated as a major offence under 'other misconduct' is included in this Schedule.

# Part III of Second Schedule to the CA Act

## **Chapter I Preliminary**

### **Short title, commencement, etc.**

Guidelines are applicable to all the Members wherever the context so requires.

## **Chapter II**

### **Conduct of a Member being an employee**

To exercise due diligence and shall not be grossly negligent in the conduct of his duties.

## **Chapter III**

### **Appointment of a Member as Cost auditor**

Member shall not accept his appointment as Cost Auditor while he is an auditor or officer or employee or partner, of any employee or officer of the Company or engaged with the Statutory Auditor, as their partner or employee or is indebted to the Co. for more than Rs.1000 or has given any guarantee or provided any security in connection with the indebtedness of any third person to the Company for an amount exceeding Rs.1000  
OR

After his appointment as Cost Auditor, he becomes subject to any of the above disabilities and continues to function as a cost auditor thereafter.

PCA shall not accept the appointment as auditor of a Company, while he is an employee of the cost auditor of the Company

# **Council General Guidelines, 2008**

## **Chapter IV**

### **Opinion on financial statements when there is substantial interest**

A member of the Institute shall not express his opinion on financial statements of any business or enterprise in which one or more persons who are his “relatives” within the meaning of AS18, jointly hold a substantial interest in the said business or enterprise

## **Chapter V Maintenance of books of account**

PCA shall maintain and keep proper books of account including Cash Book, Ledger.

## **Chapter VI**

### **Tax Audit assignments under Section 44 AB of the Income-tax Act, 1961**

PCA shall not accept, in a financial year, more than the “specified number of tax audit assignments” under Section 44AB of the Income-tax Act, 1961.

For a partnership PCA, the “specified number of tax audit assignments” shall be construed as the specified number of tax audit assignments for every partner of the firm.

For an individual, who is partner in multiple PCA, the number of tax audit assignments, which may be taken for all the firms together in relation to such partner shall not exceed the “specified number of tax audit assignments” in the aggregate.

For an individual PCA, who is also partner in another PCA, the total number of such assignments which may be accepted by him shall not exceed the “specified number of tax audit assignments” in the aggregate.

# **Council General Guidelines, 2008**

**Explanation:**

“the specified number of tax audit assignments” means –

in the case of individual PCA, 60 tax audit assignments, in a financial year, whether in respect of corporate or non-corporate assesses.

in the case of PCA firm, 60 tax audit assignments per partner in the firm, in a financial year, whether in respect of corporate or non-corporate assesses

In computing the “specified number of tax audit assignments” each year’s audit would be taken as a separate assignment.

In computing the “specified number of tax audit assignments”, the number of such assignments, which he or any partner of his firm has accepted whether singly or in combination with any other PCA or PCA firm, shall be taken into account.

The audit of the head office and branch offices of a concern shall be regarded as one tax audit assignment. The audit of one or more branches of the same concern by one PCA shall be construed as only one tax audit assignment.

PTPCA partner of a firm shall not be taken into account for the purpose of reckoning the tax audit assignments of the firm.

PCA shall maintain a record of the tax audit assignments accepted by him in each financial year in the format as may be prescribed by the Council.

# Council General Guidelines, 2008

## **Chapter VII**

### **Appointment of an Auditor in case of non-payment of undisputed fees**

PCA shall not accept the appointment as auditor of an entity in case the undisputed audit fee of another PCA for carrying out the statutory audit has not been paid, except in the case of sick unit, having negative networth. Provision for audit fee in accounts signed by both - the auditee and the auditor shall be considered as “undisputed” audit fee.

## **Chapter VIII**

### **Specified number of audit assignments**

PCA shall not hold at any time appointment of more than the “specified number of audit assignments” of Companies under Section 139, 143(8) and 141(3)(g) of the Cos. Act, 2013. For PCA, the “specified number of audit assignments” shall be construed as the specific number of audit assignments for every partner of the firm, on the date of acceptance of audit assignment.

In case of a partner, being partner in another PCA, or in his individual capacity, aggregate number of audit assignments in relation to such partner shall not exceed the “specified number of audit assignments”.

Audit of the head office and one or more branch offices shall be regarded as one audit assignment.

# **Council General Guidelines, 2008**

PCA in employment elsewhere or PTPCA, shall not be counted for the purpose of determination of “specified number of audit of Companies” by firms of Chartered Accountants.

PCA shall maintain a record of the audit assignments accepted in the prescribed format

### **Chapter IX Appointment as Statutory auditor**

PCA shall not accept the appointment as statutory auditor of PSU/ Govt. Co./ Listed Cos. and other Public Cos. having turnover of Rs.50 crores or more in a year where he accepts any other work(s) or assignment(s) or service(s) on a remuneration exceeding fee payable for statutory audit and vice versa

Fees for other work(s) or service(s) or assignment(s) payable to the statutory auditors and their associate concern(s) put together. The term “other work(s)” or “service(s)” or “assignment(s)” shall include Management Consultancy and all other professional services permitted by the Council pursuant to Section 2(2)(iv) of the CA Act, 1949 but shall not include audit under any other statute, certification, and representation before an authority;

“Associate concern” entity which renders the Management Consultancy and all other professional services permitted by the Council wherein the PCA partners or their relatives are interested as partners etc.

# **Council General Guidelines, 2008**



“Relative” and “substantial interest” are defined in Appendix (9) to the CA Regulations, 1988. In regard to taking up other work(s) or service(s) or assignment(s) of the undertaking/ company referred to above, it shall be open to such associate concern or corporate body to render such work(s) or service(s) or assignment(s) so long as aggregate remuneration for such other work(s) or service(s) or assignment(s) payable to the statutory auditor/s together with fees payable to its associate concern(s) or corporate body(ies) do/does not exceed the aggregate of fee payable for carrying out the statutory audit.

## **Chapter X**

### **Appointment of an auditor when he is indebted to a concern**

PCA shall not accept appointment as auditor of a concern while indebted to the concern or given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding Rs.10,000/-

## **Chapter XI**

### **Directions in case of unjustified removal of auditors**

PCA shall follow the direction given, by the Council or an appropriate Committee or on behalf of any of them, to him being the incoming auditor(s) not to accept the appointment as auditor(s), in the case of unjustified removal of the earlier auditor(s).

# **Council General Guidelines, 2008**

## **Recommended Self-Regulatory Measures**

To ensure a healthy growth of the profession and an equitable flow of professional work among the members.

**Branch Audits** - The branch audits of a company should not be conducted by its statutory auditors consisting of 10 or more members, but should be conducted by the local firms of auditors consisting of less than 10 members.

**Joint Audit** - In the case of large companies the practice of associating a practicing firm with less than five members as Joint auditors should be encouraged. Where a client desires to appoint such a firm as joint auditor, the senior firm should not object to the same.

**Ratio Between Qualified and Unqualified Staff:** In the Council's view, a practicing firm of Chartered Accountants engaged in audit work should have at least one member for every five non-qualified members of the staff, excluding articled and audit clerks, typists, peons and other persons not engaged directly in such professional work.

**Disclosure of Interest by Auditors in other Firms** - The Council has decided that as a good and healthy practice, auditors should make a disclosure of the payments received by them for other services through the medium of a different firm or firms in which the said auditor may be either a partner or proprietor.

# **Recommended Self Regulatory Measures**

## **Chapter V – Misconduct**

21. Disciplinary Directorate

21A. Board of Discipline

21B. Disciplinary Committee

21C. Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court

21D. Transitional provisions

22. Professional or other misconduct defined

22A. Constitution of Appellate Authority

22B. Term of office of Chairperson and members of Authority

22C. Allowances and conditions of service of Chairperson and Members of Authority 22D.

Procedure to be regulated by Authority

22E. Officers and other staff of Authority

22F. Resignation and removal of Chairperson and Members

22G. Appeal to Authority

## **Chapter VII - Penalties**

24. Penalty for falsely claiming to be a member etc.

24A. Penalty for using name of the Council, awarding degree of Chartered Accountancy etc.

25. Companies not to engage in accountancy

26. Unqualified persons not to sign documents

27. Maintenance of branch offices

28. Sanction to prosecute

# **Disciplinary Provisions of CA Act, 1949**

## **Section 21. Disciplinary Directorate –**

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.

On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a prima facie opinion on the occurrence of the alleged misconduct. Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or, as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.

# **Disciplinary Provisions of CA Act, 1949**

### **Section 21A. Board of Discipline –**

The Council shall constitute a Board of Discipline consisting of -  
a person with experience in law and having knowledge of disciplinary matters and the profession, to be its presiding officer; two members, one of whom shall be a member of the Council elected by the Council and the other member shall be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy; the Director (Discipline) shall function as the Secretary of the Board. The Board of Discipline shall follow summary disposal procedure in dealing with all cases before it.

Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:

reprimand the member; remove the name of the member from the Register up to a period of three months; impose such fine as it may think fit, which may extend to rupees one lakh.

The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no prima facie case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

# **Disciplinary Provisions of CA Act, 1949**

## **Section 21B. Disciplinary Committee –**

The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy.

Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.

The Disciplinary Committee, while considering the cases placed before it shall follow such procedure as may be specified.

Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely: reprimand the member; remove the name of the member from the Register permanently or for such period, as it thinks fit; impose such fine as it may think fit, which may extend to rupees five lakh.

The allowances payable to the members nominated by the Central Government shall be such as may be specified.

# **Disciplinary Provisions of CA Act, 1949**

**Section 21C. Authority, Disciplinary Committee, Board of Discipline and Director (Discipline) to have powers of civil court** – For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:  
summoning and enforcing the attendance of any person and examining him on oath;  
the discovery and production of any document; and receiving evidence on affidavit.

*Explanation:* for the purposes of sections 21, 21A, 21B, 21C and 22, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

**Section 22. Professional or other misconduct defined** – 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.

# Disciplinary Provisions of CA Act, 1949

### **Section 22A. Constitution of Appellate Authority –**

Appellate Authority consisting of -

a person who is or has been a judge of a High Court, to be its Chairperson;  
two members to be appointed from amongst the persons who have been members of the Council for at least one full term and who are not sitting members of the Council;  
two members to be nominated by the Central Government from amongst persons having knowledge and practical experience in the field of law, economics, business, finance or accountancy.

The Chairperson and other members shall be part-time members.

### **Section 22D. Procedure to be regulated by Authority –**

The office of the Authority shall be at Delhi.

The Authority shall regulate its own procedure.

All orders and decisions of the Authority shall be authenticated by an officer duly authorised by the Chairperson in this behalf.

### **Section 22G. Appeal to Authority –**

Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days of the date on which the order is communicated to him, prefer an appeal to the Authority.

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Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority, if so authorised by the Council, within ninety days.

Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (3) of section 21A and sub-section (3) of section 21B and may -

confirm, modify or set aside the order;

impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;

remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or

pass such other order as the Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.

# Disciplinary Provisions of CA Act, 1949

