

CA Final

ADVANCED AUDITING

Assurance and Professional Ethics

AUDIT

CRUSH

**PROFESSIONAL ETHICS
AND LIABILITIES OF AUDITOR**

F.A.S.T
first attempt success tutorials

PROFESSIONAL ETHICS AND LIABILITIES OF AUDITOR

1. Significance of the COP – [Section 6](#)
 2. Cancellation and Restoration of COP [Regulation – 10 & 11](#)
 3. Members - deemed to be in Practice – [Section 2\(2\), Regulation 191 & Section 144 of CA13](#)
 4. Companies not to Engage in Accountancy - [Section 25 & 141\(2\)](#)
 5. Member in Practice Prohibited from using other Designation - [Section 7](#)
 6. Maintenance of Branch Offices – [Section 27](#)
 7. KYC Norms for CA in Practice
- #CA13 - Companies Act, 2013**

★★★★★
4

Chartered Accountants in Practice

1. Disabilities for the Purpose of Membership – [Section 8](#)
2. Types of Members of the Institute
3. Removal of Name - [Section 20](#)
4. Restoration of Membership - [Section 20 & Regulation 19](#)
5. Penalty for Falsely Claiming to be a Member etc. - [Section 24](#)

Membership of the Institute

★★★★★
3

- A. What is NOCLAR?
- B. Definition
- C. Exclusions
- D. Examples as per IESBA, of non-compliance
- E. Objectives
- F. Important facts
- G. Applicability of NOCLAR in India
- H. NOCLAR vs. SA 250
- I. Responding to NOCLAR
- J. Responsibility of Responding to NOCLAR & Documentation

Non-Compliance with Laws and Regulations (NOCLAR)

- | | |
|--------------------------|----------------------------------|
| B.1 Threats | B.2 Evaluation of Threats |
| 1. Self-interest Threats | |
| 2. Self-review Threats | |
| 3. Familiarity Threats | B.3 Addressing Threats |
| 4. Advocacy Threats | |
| 5. Intimidation Threats | B.4 Safeguards |

Threats, Evaluation of Threats & Safeguards

★★★★★
2.C

1. Integrity – [Subsection 111](#)
 2. Objectivity - [Subsection 112](#)
 3. Professional Competence and Due Care – [Subsection 113](#)
 4. Confidentiality - [Subsection 114](#)
 5. Professional Behaviour - [Subsection 115](#)
- Duty to comply fundamental principles

Fundamental Principles

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2.B

Overview of Code of Ethics

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2.A

1

START

AB AUDIT HOGA SABSE SCORING

FAST 19.1

CA
INDIA

PROFESSIONAL ETHICS AND LIABILITIES OF AUDITOR



Chartered Accountants in Practice

5

Disciplinary Procedure - Section 21

6

Schedules to the Act

7

The First Schedule

8

S.1

Types of Misconduct - Professional or Other Misconduct - Section 21 & 22

- (a) Professional Misconduct
- (b) Other Misconduct

- Clause 1:** Allows to Practice in Own Name
- Clause 2:** Sharing of Fees
- Clause 3:** Accepts Share in Fees
- Clause 4:** Partnership
- Clause 5:** Prohibition in Securing Work
- Clause 6:** Solicits Client or Work
- Clause 7:** Advertises Professional Attainments or Services

- Clause 8:** Communication with Previous Auditors
- Clause 9:** Checking Compliance with Section 139 & 140 Section 139 of Companies Act - Authority to Appoint the Auditor Section 140(4) of Companies Act - Appointment of auditor in place of retiring Auditor ESB - Unjustified Removal of Auditor
- Clause 10:** Contingent Fees Regulation 192 Restriction on fees

- Clause 11:** Engages in Other Business / Occupation Regulation 190A - Chartered Accountant in practice not to engage in any other business or occupation Appendix 9 under Regulation 190A - General and Specific Resolutions Regulation 191 - Part Time Employment CA in Practice may accept
- Clause 12:** Allows Other Person to Sign Reports

Part 1 - Professional Misconduct of Members in Practice

S.1A

- Clause 1:** Not Being a Fellow Acts as a Fellow
- Clause 2:** Does Not Supply Information Called By ICAI
- Clause 3:** Supplies Incorrect Information

Part 3 - Professional Misconduct in relation to members of the Institute generally

- Clause 1:** Sharing of Fees
- Clause 2:** Accepts Share in Fees

Part 2 - Professional Misconduct of Relation to Members in the Institute in Service

S.1B

Clause 1 & 2: Other Misconduct

Part 4 - Other Misconduct of all Members

S.1C

S.1D

PROFESSIONAL ETHICS AND LIABILITIES OF AUDITOR

Chapter I - Preliminary
Chapter II - Conduct of a Member being an Employee
Chapter V - Maintenance of Books
Chapter VI - Tax Audit Assignments
Chapter VII - Appointment of an Auditor in case of non-payment of undisputed fees
Chapter VIII - Company Audit Assignments
Chapter IX - Appointment as Statutory Auditor for Other Services

Chapter X - Auditor Indebtness
Chapter XI - Directions in case of Unjustified Removal of Auditors
Chapter XIII - Guidelines on Tenders Clarifications on the various issues-related to tender
Chapter XIV - UDIN Guidelines
Chapter XV - Guidelines for Networking
Chapter XVI - CA Logo
Chapter XVII - Corporate form of Practice
(Chapter III, IV & XII omitted)

- (a) Write up
- (b) Website of the CA Firms
- (c) Online Third Party Platforms
- (d) Publication in the Telephone or other Directories
- (e) Application based Service Provider Aggregators (SPAs)
- (f) Specialised Directories for limited circulation
- (g) Exemptions

Council Advertisement Guidelines, 2008

10
11
ESB Decisions

Recommended Self-Regulatory Measures

- (a) Branch Audits
- (b) Joint Audit
- (c) Ratio Between Qualified and Unqualified Staff
- (d) Disclosure of Interest by Auditors in other Firms
- (d) Recommended Minimum Scale of Fees

Council General Guidelines, 2008

Council Guidelines

- Clause 1:** contravenes provision of the act etc.
- Clause 2:** Confidentiality - CAIS
- Clause 3:** Supplies Incorrect info to ICAI, etc.
- Clause 4:** Defalcates or Embezzels Money

Part 2 - Professional Misconduct of all Members

Clause: Other Misconduct Part 3 - Other Misconduct of all Members

- Clause 1:** Confidentiality
Section 126 - Evidence Act, 1872
- Clause 2:** Certifies / Reports Without Examination
- Clause 3:** Certifies on Accuracy of Forecasts
- Clause 4:** Substantial Interest (S.I.)
Section 141(3)(b), (c) & (d) of CA13
- Clause 5:** Fails to Disclose a Material Fact Known to Him
- Clause 6:** Fails to Disclose Misstatement Know to Him
- Clause 7:** Due Diligence / Grossly Negilgent
- Clause 8:** Fails to Obtain Sufficient Info
- Clause 9:** Fails to Invite Attention to SAs
- Clause 10:** Fails to Keep Money of Client Separate in Bank

The Second Schedule

S.2

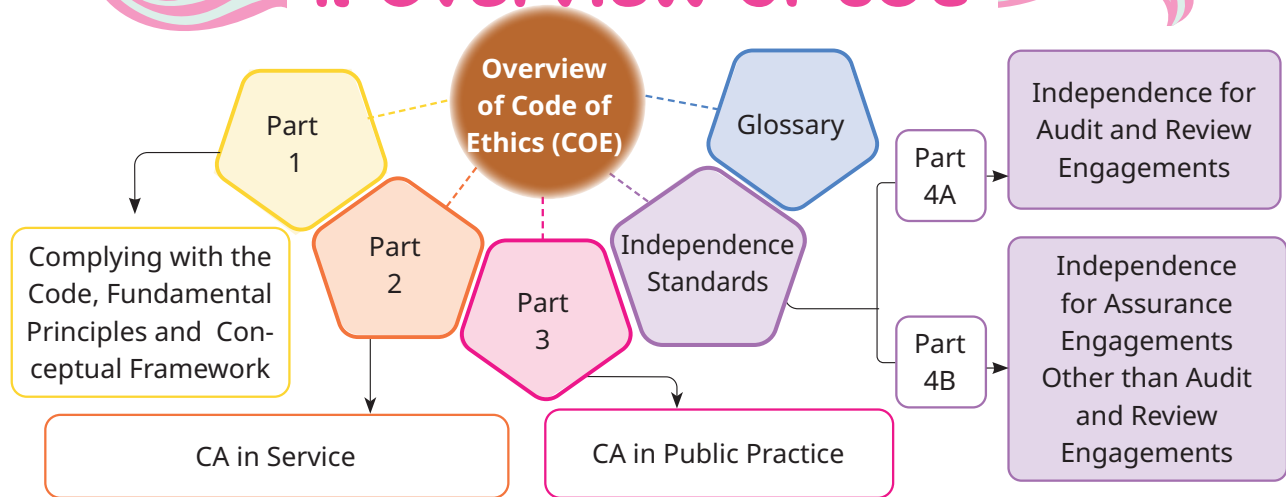
S.2A

Part 1 - Professional Misconduct in relation to CAs in Practice

AB AUDIT HOGA SABSE SCORING

CODE OF ETHICS

1. Overview of COE



Part 1 Complying with the Code, Fundamental Principles and Conceptual Framework

(Applies to all CA) (Section 100-199) Contains provisions relating to fundamental principles and complying with the code applicable to all CAs.

Part 2 - CA in Service (CAiS)

(Applies to CA in service while performing professional activities) (Section 200-299)

Applies to CAiS when performing professional activities and covers CAs employed / engaged in executive or non-executive capacity in commerce, industry, service, public sector, NPO sector, Education, Regulatory or professional bodies. Also applies to CAiS under a CA Firm.

Part 3 - CA in Public Practice

(Additionally for CA in practice when providing professional services) (Section 300-399)

Contains provisions on conflicts of interests, professional appointments, fees, gift inducements, custody of client assets, NoCLAR, etc.

Independence Standards (Parts 4A and 4B)

(For CA in public practice)

Part 4A Independence for Audit and Review Engagements (Section 400-899)

Part 4B Independence for Assurance Engagements Other than Audit and Review Engagements (Section 900-999)

Structure

Each section has following parts with mentioned purpose

Introduction (Section 100 - 199)

- (i) Sets out the subject matter addressed in the section and introduces the requirements and application material in the section
- (ii) Applies to all CA

Requirements

- (iii) Establish general and specific obligations to be complied with by the members
- (iv) Denoted with R, usually mandatory.

Application material

- (v) Provides context, explanations, suggestions or actions, illustrations and other guidance to assist in complying with the requirements.
- (vi) Must be considered to apply 'R' of the Code. Designated with A.

Practical examples

- (vii) Incorporated in the Code to illustrate different situations in which pressure might arise.



2A. Fundamental Principles of Ethics

1. Integrity :

CA to be straight forward and honest in both professional and business relationships.

→ Not knowingly be associated with reports, returns, communications or other information where accountant believes that the information:

- (i)▶ Contains a materially **false or misleading** statement;
- (ii)▶ Contains statements or information provided **negligently**; or
- (iii)▶ **Omits or obscures** required information

However, CA may provide a modified report in respect of such above mentioned matter.

→ When a CA becomes aware of above information the accountant shall take steps to be disassociated from that information.



2. Objectivity :

Not to compromise their professional or business judgment because of bias, conflict of interest or the undue influence of others.



3. Professional Competence and Due Care:

- (i) To maintain **professional knowledge and skill** at the level required to ensure that clients or employers receive competent professional service; and
- (ii) To act diligently in accordance with applicable **technical and professional standards**
- (iii) Serve with **professional competence** & exercise **sound judgment** in applying professional knowledge and skill.
- (iv) Develop continuing **awareness**
- (v) Continuing **professional development** to develop and maintain the capabilities to perform tasks.
- (vi) **Diligence** encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.
- (vii) Shall take reasonable steps to provide **subordinates** appropriate **training and supervision**.

Where appropriate, a CA shall make clients, employing organization, or other **users aware of the limitations** inherent in the services or activities.



4. Confidentiality :

To refrain from:

- 1. Disclosing outside **the firm** or employing organization confidential information without proper and specific authority or unless there is a legal or professional right or duty to disclose; and
- 2. Using confidential **information** acquired as a result of professional and business relationships to their **personal advantage** or the advantage of third parties

4-A. Confidentiality : Subsection 114

1. An accountant shall:

- Be alert to the possibility of **inadvertent disclosure**;
- Maintain confidentiality of information within the **firm or employing organization**;
- Maintain confidentiality of information disclosed by a **prospective client** or employing organization;
- **Not disclose** without proper and specific **authority**, unless there is a legal or professional duty or right to disclose;
- Not use confidential information acquired for the personal advantage of accountant or else;
- **Not use** or disclose any confidential information, **after that relationship has ended**; and
- Ensure that **personnel** under the accountant's control respect the duty of **confidentiality**.

2. Following are circumstances where CA might be required to disclose confidential information or when such disclosure might be appropriate:

- Disclosure is **required by law**,
- Disclosure is **permitted by law** and is authorized by the client or the employing organisation;
- There is a **professional duty** or right to disclose, when not prohibited by law:

- (i) To comply with the requirements of Peer Review or Quality Review
 - (ii) To respond to an inquiry or investigation by a professional or regulatory body;
 - (iii) To protect the professional interests of a CA in legal proceedings; or
 - (iv) To comply with technical and professional standards, including ethics requirements.
- 3. In deciding whether to disclose confidential information, CA should consider the following points:
 - (i) Whether the interests of any party, including third parties whose interests might be affected, could be harmed if the client or employing organization consents to the disclosure of information by the CA;
 - (ii) Whether all the relevant information is known and substantiated, to the extent it is practicable; and
 - (iii) The proposed type of communication, and to whom it is addressed;
 - (iv) Whether the parties to whom the communication is addressed are appropriate recipients.

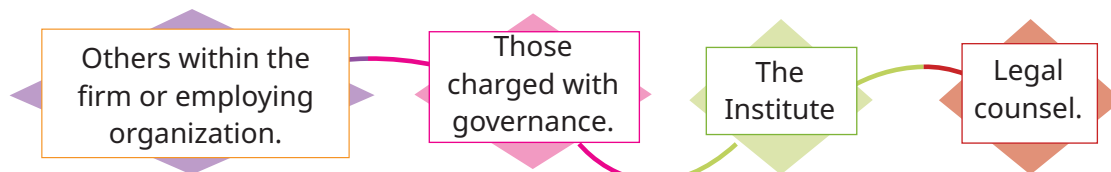


5. Professional Behaviour : Subsection 115

1. To comply with relevant laws and regulations and avoid any action that may bring credit to the profession
2. CA should be honest and truthful and should not:
 - (i) Make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; or
 - (ii) Make disparaging references or unsubstantiated comparisons to the work of others
 - (iii) Any violation of Advertisement Guidelines issued by the Council

Duty to comply with fundamental principles

1. A CA shall comply with each of the fundamental principles.
2. The fundamental principles of ethics establish the standard of behaviour expected of a CA.
3. The conceptual framework establishes the approach which an accountant is required to apply to assist in complying with those fundamental principles.
4. A CA might face a situation in which complying with one fundamental principle conflicts with complying with one or more other fundamental principles. In such a situation, the accountant might consider consulting, with:



5. However, such consultation does not relieve the accountant from the responsibility to exercise professional judgment to resolve the conflict or, if necessary, and unless prohibited by LorR, disassociate from the matter creating the conflict.
6. The CA is encouraged to document the substance of the issue, the details of any discussions, the decisions made and the rationale for those decisions

Legends

Professional Accountant - CA, Those Charged with Governance - TCWG, Law or Regulation - LorR

2B. Threats, Evaluation of Threats & Safeguards

Conceptual Framework specifies an approach for a CA to:

- (i) Identify threats to compliance with the fundamental principles;
- (ii) Evaluate the threats identified; and
- (iii) Address the threats

2B-1. Threats



1. Self-interest

I. Definition - The threat that a financial or other interest will inappropriately influence a CA's judgment or behaviour;

II. Examples

- (i) A CA having a direct financial interest in a client.
- (ii) A CA quoting a low fee to obtain a new engagement and the fee is so low that it might be difficult to perform the professional service in accordance with applicable technical and professional standards for that price.
- (iii) A CA having a close business relationship with a client.
- (iv) A CA having access to confidential information that might be used for personal gain.
- (v) A CA discovering a significant error when evaluating the results of a previous professional service performed by a member of the accountant's firm.

III. Examples of facts & circumstances

- (i) A CA holding a financial interest in, or receiving a loan or guarantee from, the employing organization.
- (ii) A CA participating in incentive compensation arrangements offered by the employing organization.
- (iii) A CA having access to corporate assets for personal use.
- (iv) A CA being offered a gift or special treatment from a supplier of the employing organization.



2. Self-review

I. Definition - The threat that a CA will not appropriately evaluate the results of a previous judgment made; or an activity performed by the accountant, or by another individual within the accountant's firm or employing organization, on which the accountant will rely when forming a judgment as part of performing a current activity;

II. Examples

- (i) A CA issuing an assurance report on the effectiveness of the operation of financial systems after implementing the systems.
- (ii) A CA having prepared the original data used to generate records that are the subject matter of the assurance engagement.

III. Examples of facts & circumstances

A CA determining the appropriate accounting treatment for a business combination after performing the feasibility study supporting the purchase decision.



3. Familiarity

I. Definition - the threat that due to a long or close relationship with a client, or employing organization, a CA will be too sympathetic to their interests or too accepting of their work; and

II. Examples

- (i) A CA having a close or immediate family member who is a director or officer of the client.
- (ii) A director or officer of the client, or an employee in a position to exert significant influence over the subject matter of the engagement, having recently served as the engagement partner.
- (iii) An audit team member having a long association with the audit client.

III. Examples of facts & circumstances

- (i) A CA being responsible for the financial reporting of the employing organization when an immediate or close family member employed by the organization makes decisions that affect the financial reporting of the organization.
- (ii) A CA having a long association with individuals influencing business decisions.

2B-1. Threats



4. Advocacy

I. Definition - The threat that a CA will promote a client's or employing organization's position to the point that the accountant's objectivity is compromised;

II. Examples

- (i) A CA promoting the interests of, or shares in, a client.
- (ii) A CA acting as an advocate on behalf of a client in litigation or disputes with third parties.
- (iii) A CA lobbying in favor of legislation on behalf of a client.

III. Examples of facts & circumstances

A CA having the opportunity to manipulate information in a prospectus in order to obtain favorable financing.



5. Intimidation

I. Definition - the threat that a CA will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the accountant.

II. Examples

- (i) A CA being threatened with dismissal from a client engagement or the firm because of a disagreement about a professional matter.
- (ii) A CA feeling pressured to agree with the judgment of a client because the client has more expertise on the matter in question.
- (iii) A CA being informed that a planned promotion will not occur unless the accountant agrees with an inappropriate accounting treatment.
- (iv) A CA having accepted a significant gift from a client and being threatened that acceptance of this gift will be made public."

III. Examples of facts & circumstances

- (i) A CA or immediate or close family member facing the threat of dismissal or replacement over a disagreement about:
 - (1) The application of an accounting principle.
 - (2) The way in which financial information is to be reported.
- (ii) An individual attempting to influence the decision-making process of the CA, for example with regard to the awarding of contracts or the application of an accounting principle.



2B.2 Evaluation of Threats:

Policies and procedures might impact the evaluation of **whether a threat** to compliance with the fundamental principles **is at an acceptable level**.

- (i) **Acceptable level:** Third party test, party likely conclude that the accountant complies with the fundamental principles.
- (ii) **Reasonable and Informed Third Party:** Consideration by the CA about whether the same conclusions would likely be reached by another party.



2B-3. Addressing Threats

If the identified threats to compliance are **not at an acceptable level**, the accountant shall address the threats by eliminating them or reducing them to an acceptable level. The accountant shall do so by:

- (i) **Eliminating the circumstances**, including interests or relationships, that are creating the threats;
- (ii) **Applying safeguards**, if available and capable of being applied, to reduce threats to acceptable level; or
- (iii) **Declining or ending** the specific professional activity.

Actions to Eliminate Threats: A threat might be addressed by eliminating the circumstance creating the threat. However, there are some situations in which threats can only be addressed by declining or ending the specific professional activity.



2B-4. Safeguards

Safeguards are **actions** individually or in combination that the accountant takes **that effectively reduce threats to an acceptable level**.

Examples

- (i) Assigning **additional time and qualified personnel**, might address a self-interest threat.
- (ii) Having an **appropriate reviewer**, might address a self-review threat.
- (iii) **Using different partners** and engagement teams for the provision of non-assurance services
- (iv) Involving **another firm to perform or re-perform** might address self-interest, self-review, advocacy, familiarity or intimidation threats.
- (v) **Separating teams** might address a self-interest threat.

2C Non-Compliance with Laws and Regulations (NOCLAR)

A. What is NOCLAR?

| | | |
|--|----|---|
| In the course of providing a professional service to a client | Or | carrying out professional activities for an employer |
| a Professional accountant (member of ICAI) may come across | | |
| an instance of NOCLAR | Or | suspected NOCLAR |
| committed by | Or | about to be committed by |
| the client or the TCWG, management or employees of the client | Or | the employer, TCWG, management or employees of the employer. |

B. Definition of NOCLAR under the Code:

NOCLAR comprises acts of omission or commission, intentional or unintentional, which are contrary to the prevailing LorR committed by the following parties:

- (i) Client or employing organization (EO)
- (ii) TCWG of the client or EO
- (iii) Management of the client or EO, or
- (iv) Other individuals working for or under the direction of the client or EO.

C. Exclusions from NOCLAR

under the Code:

- (i) Personal misconduct unrelated to the business activities of the employing organisation, and
- (ii) Non-compliance by parties, other than those specified in the definition above

D. Examples as per IESBA, of non-compliance covered under NOCLAR: (FM-DP-BEST)

- (i) Fraud, corruption and bribery,
- (ii) Money laundering, terrorist financing and proceeds of crime,
- (iii) Data protection,
- (iv) Public health and safety,
- (v) Banking and other financial products and services,
- (vi) Environmental protection,
- (vii) Securities markets and trading,
- (viii) Tax and pension liabilities and payments.

E. Objectives of NOCLAR

- ▶ CA have a responsibility to act in the **public interest** and not turn a blind eye to instances of NOCLAR.
- ▶ They should **alert management / TCWG** on situations of identified/suspected non-compliance.

F. Important facts about NOCLAR:

1. No additional responsibility to check

Responsibilities under NOCLAR will be applicable when he is encounters or is made aware of, non-compliance or suspected non-compliance **in the course of providing a professional service to a client.** He is **not required to investigate, nor responsible for ensuring compete compliance.**

2. Expertise of Laws not Required

A professional accountant is expected to apply knowledge and expertise, and exercise professional judgment. However, he is not expected to have a level of knowledge of L&R greater than that which is required to undertake the engagement. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

3. Certain Matters Expressly out of Purview:

Clearly inconsequential matters, relating to personal misconduct.

4. Disclosure, which is Contrary to Law not Required:

Under Code, disclosure to an AA to be avoided if doing so would be contrary to LorR.

G. Applicability of NOCLAR in India

1. Section 260 - Responding to NOCLAR - Professional Accountants in service: Applicable to **Senior Professional Accountants** in service, being employees of **listed entities**.

Senior professional accountants in service are:

- (i) directors, officers or senior employees
- (ii) able to exert significant influence over, and
- (iii) make decisions regarding, the acquisition, deployment and control of the employing organization's

(iv) human, financial, technological, physical and intangible resources.

Senior professional accountants refer to key managerial personnel.

2. Section 360 - Responding to NOCLAR - Professional Accountants in public practice: Applicable to audit engagements (where auditor to report on T&F view of FS as per A-FRFW) of **entities**:

- (a) the shares of which are **listed** on recognized stock exchange(s) in India; **and**
- (b) have **net worth of 250 crores** or more.

H. NOCLAR vs. SA 250

| Basis | SA-250 | NOCLAR |
|--|---|--|
| (a) CAiS | SA 250 is applicable only on Audit, and not on other Assurance engagements. | NOCLAR is applicable on professional accountants in service, and in practice (it applies on Audit as well as other professional services) (For audit only applicable to Company Audit) |
| (b) Impact of non-compliance | SA 250 talks of auditor's responsibilities for laws having direct effect & other laws that do not have a direct effect on the determination of the amounts and disclosures in the FSs, but compliance with which may be fundamental to the operating aspects of the business. | NOCLAR, while being alike to SA 250 till this point, is further ahead of it in that it takes into account non-compliance that causes substantial harm resulting in serious consequences in financial or non-financial terms. |
| (c) Stakeholders | SA 250 does not define stakeholders. | NOCLAR is related to affect of non-compliance on investors, creditors, employees as also the general public |
| (d) Imminent Breach (Anticipated Breach) | This provision is not existent in SA 250 | As per NOCLAR, in exceptional circumstances, CA might become aware of an imminent breach of a law or regulation that would cause substantial harm to investors etc. Having first considered whether it would be appropriate to discuss the matter with MGT or TCWG & exercise professional judgment and determine whether to disclose the matter immediately to an AA in order to prevent or mitigate the consequences of such imminent breach. If disclosure is made, that disclosure is permitted. |

I. Responding to NOCLAR

Steps to be taken for responding:

1. Obtaining an understanding of the matter
2. Addressing the matter
3. Seeking Advice
4. Determining whether further action is needed
5. Determining whether to disclose the matter to an AA
6. Imminent Breach
7. Documentation

"AA" for the purpose of disclosure will depend on the nature of the matter. For example, the AA would be SEBI in the case of fraudulent financial reporting in case of listed entities.

J. Responsibility of Responding to NOCLAR

Code lays steps to follow while assessing the nature of matter and potential harm to the interests of the stakeholders like employing organisation, investors, creditors, employees or general public. CA to apply knowledge, expertise and professional judgement to determine the need, nature and extent of further action. It might require seeking advice on whether to disclose matter to AA.

1. Understanding of the Matter:

Obtain understanding of matter and determine:

- i. The nature and circumstances in which matter occurred or might occur,
- ii. The application of the relevant L&R to the circumstances, and
- iii. Assess potential consequences to stakeholders.

2. Addressing the matter

- Depending on matter take steps to investigate the matter internally.

3. Seeking Advice

- (i) Confidentiality: He/she might also consult confidentially with others within the EO, firm, network firms, ICAI, or a legal counsel.
- (ii) To further clarify understanding of the matter, discuss with appropriate level of management / TCWG or in case of CAiS immediate superior, unless they appear to be involved in the matter. Then, discuss it with the next higher level of authority. This will also prompt management to investigate further
- (iii) CAiP to communicate to management / TCWG for them to take timely action. Management / TCWG should inform appropriate authorities.
- (iv) In case of CAiS basis their response of superiors determine if further action is needed in the public interest.
- (v) Additionally, consider if there is a need to disclose the matter to internal auditor, or in case of CAiS to EO's external auditor.

4. & 5. Determining whether further action is needed & determining whether to disclose the matter to an AA Further action that the senior professional accountant might take includes:

- i. In case of group entities, informing the group engagement partner who needs to them inform other components if relevant or in case of CAiS to the management of the parent entity, if any.
- ii. Disclosing matter to AA as specified under respective law, or
- iii. Withdrawing or resigning from the engagement where permitted. However this is not a substitute for other actions to be taken under the Code.

Remember - It is the responsibility of EO's or client's management and TCWG to identify and address any instances of NOCLAR and ensure business activities are conducted as per L&R.

Confidentiality - ICAI has incorporated disclosures of NOCLAR under Clause (1) of Part-I to Second Schedule and Clause (2) of Part-II to the Second Schedule

6. Imminent Breach (Refer comparison with SA 250 above)

7. Documentation

A. Additional documents requirements (in addition to as required under SAs) as under:

1. How management / TCWG have responded to the matter.
2. Having regard to the reasonable and informed third party test
 - course of action considered,
 - judgments made and
 - decisions that were taken.
3. How the accountant is satisfied that the responsibility of public interest has been fulfilled.

B. Relevant documentation requirements under SAs for CAiP:

1. Prepare documentation sufficient to **enable an understanding of** significant matters arising during the audit, the conclusions reached, and significant professional judgments made in reaching those conclusions;
2. Document **discussions** of significant matters with management, TCWG, and others, including the nature of the significant matters discussed and when and with whom the discussions took place; and
3. Document **identified or suspected non-compliance**, and the results of discussion with management and, where applicable, TCWG and other parties outside the entity.

Content in red bracket is not in ICAI SM



3. MEMBERSHIP OF THE INSTITUTE

- ▶ On acceptance of application by the Council
- ▶ the applicant's name shall be entered in the Register and
- ▶ a certificate of membership in the appropriate Form shall be issued to the applicant.

Particulars of the Register: Section 19 provides to include following in the Register for every member-

| | |
|---|-----------------------------------|
| Full name, date of birth, domicile, residential and professional address; | |
| Date of entry of name in the Register; | Qualifications; |
| Whether the member holds a COP; and | Any other prescribed particulars. |



3.1 Disabilities for the Purpose of Membership – Section 8

Circumstances where person is **debarred from having his name entered** in Register of Members:

- (i) Not attained 21 years at the time of application; or
- (ii) Is of **unsound mind** and stands so adjudged by a competent court; or
- (iii) Is an **undischarged insolvent**; or
- (iv) Is being a **discharged insolvent**, or has not obtained from the court, a certificate stating that his insolvency was caused by **misfortune**, without any misconduct on his part; or
- (v) If he has been **convicted by a competent Court** whether within or without India,
 - of an offence involving **moral turpitude** and
 - punishable with imprisonment or
 - of an offence, not of a technical nature;
 - committed by him in his professional capacity;

- unless in respect of the offence committed he has either been granted a pardon or the CG has, by an order in writing, removed the disability; or

- (vi) If he has been removed from membership of the Institute on being found on inquiry to have been guilty of **professional or other misconduct**;

Suspension

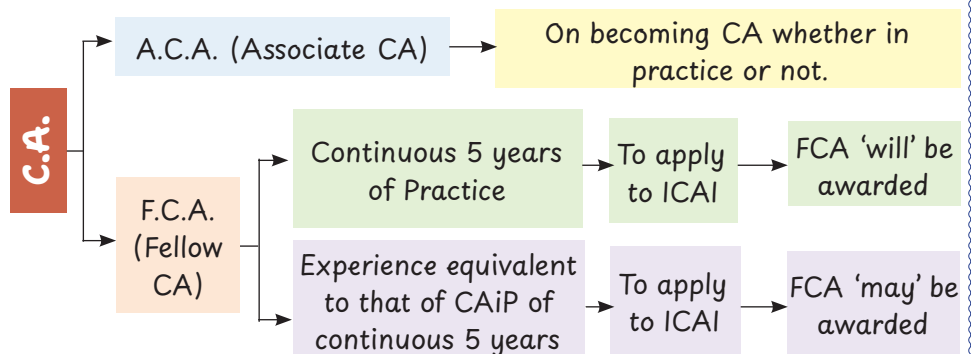
It may be noted that a person who has been removed from membership for a specified period, shall not be entitled to have his name entered in the Register until the expiry of such period.

Non-disclosure **FAKE**

In addition, failure on the part of a person to disclose the fact that he suffers from any one of the disabilities aforementioned would constitute professional misconduct. The name of the person, who is found to have been subject at any time to any of the disabilities aforementioned, can be removed from the Register of Members by the Council.

3.2 Types of Members of the Institute

Fellow 5 years of practice (confirmed) / 5 years of relevant experience (may be given on application) and Associate Members (if not Fellow)



3. MEMBERSHIP OF THE INSTITUTE



3.3 Removal of Name from the Register

- Section 20**
- i) Who is dead; or
 - ii) *Suo - moto* by member; or
 - iii) Who has not paid any prescribed fee, however will be restored on payment of arrears and making an application; or
 - iv) Disabilities mentioned in section 8, or who for any other reason has ceased to be entitled to have his name borne on the register.



3.4 Restoration of Membership

Section 20 & Regulation 19

Regulation 19 of the Chartered Accountants Regulations, 1988, states that the name of the member may be restored by the Council in the Register on an application.

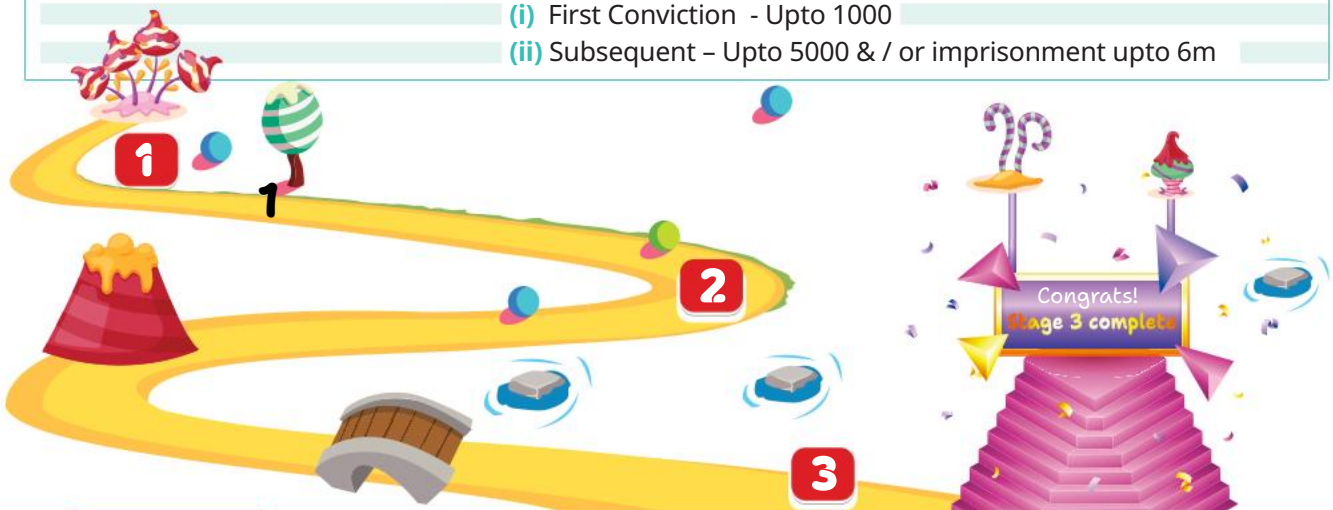
However, the effective date in case of restoration of cancelled membership, in different situations, shall be in the following manner:

| | |
|---|--|
| If in case of non-payment of fees application for restoration and requisite fees are made within the same year of removal | Restoration shall be with effect from the date on which it was removed from the Register. (Retrospective) |
| Removal of name under the orders of the Board of Discipline or the Disciplinary Committee or the Appellate Authority or the High Court | Restoration shall be in accordance with such orders. |
| In other cases | Restoration shall be with effect from the date on which the application and fee are received. (Prospective) |

3.5 Penalty for Falsely Claiming to be a Member etc.

Section 24 : Falsely Claiming to be CA / CAiP

- 1 Not being a member designates / represents as CA
- 2 Not being in Practice exhibits to be in Practice
- 3 Penalty -
 - (i) First Conviction - Upto 1000
 - (ii) Subsequent - Upto 5000 & / or imprisonment upto 6m



4. CAs IN PRACTICE

A practicing CA is a person who is a member of the Institute and is holding COP; and includes such members of the Institute who are deemed to be in Practice in accordance with the provisions of the CAs Act, 1949.

4.1 Significance of the Certificate of Practice (COP) – Section 6

No member is entitled to practise in India or elsewhere unless he has obtained a COP from the Council. Annual fees shall be payable on or before 01st April every year and COP may be cancelled by the Council under such circumstances as may be prescribed.

Ineligibility of member without COP

A member who is not in practice is precluded from accepting engagement to render services of any of the types normally prescribed for a CA, even though for doing so, he does not require special qualifications.

Why So? Council is of view that

- (i) Once the person concerned becomes a member of the Institute, he is bound by the provisions of the CAs Act and its Regulations. If and when he appears before the Income-tax Tribunal as an Income-tax representative after having become a member of the Institute, he could so appear only in his capacity as a CA and a member of the Institute.
- (ii) A member of the Institute can have no other capacity in which he can take up such practice, separable from his capacity to practice as a member of the Institute.

4.2 Cancellation and Restoration of COP

Cancellation - Regulation 10

COP shall be liable for cancellation, if:

- (i) name is removed from the Register; or
- (ii) Council is satisfied that such certificate was issued on the basis of incorrect, misleading or false information, or by mistake or inadvertence; or
- (iii) a member has ceased to practise; or
- (iv) a member has not paid annual fee for COP till 30th day of September of the relevant year.

Where a COP is cancelled, the holder shall surrender the same to the Secretary.

Restoration of COP - Regulation 11

- (i) On an application made in approved Form and on payment of prescribed fee,
- (ii) the Council may restore the COP retrospectively (with effect from the date on which it was cancelled),
- (iii) where the certificate has been cancelled due to non-payment of the annual fee for the COP and
- (iv) whose complete application with fee, is received by the Secretary before the expiry of the relevant year.

4.3 Members - deemed to be in Practice

Every member of the Institute is entitled to designate himself as a CA. There are two classes of members,

those who are in practice and

those who are otherwise occupied.

4.3 Members - Deemed to be in Practice

Deemed "to be in practice"

1. Definition - Section 2(2)

A member of the Institute shall be deemed "to be in practice" when:

(I) **individually or in partnership** with CAs in practice, or in partnership with members of such other recognised professions as may be prescribed;

(II) he, in **consideration** of remuneration received or to be received;

(i) engages himself in the practice of accountancy; or

(ii) offers to perform or performs service involving the auditing or verification of financial transactions, books, accounts or records, or the preparation, verification or certification of financial accounting and related statements or holds himself out to the public as an accountant; or

(iii) renders professional services or assistance in or about matters of principle or detail relating to accounting procedure or the recording, presentation or certification of financial facts or data; or

(iv) renders such other services as, in the opinion of the Council, are or may be rendered by a CA in practice

(Council has passed a resolution permitting a CA in practice to render entire range of "Management Consultancy and other Services").

Note: CAIs under a CAiP or Firm of CAiP -

A CA who is a salaried employee of a CA / firm shall, be deemed to be in practice for the limited purpose of the training of Articled Assistants.

2. Management Consultancy and other Services

Exclusions:

- (1) Statutory or periodical audit, tax (both direct taxes and indirect taxes)
- (2) Representation or advice concerning tax matters (except as covered in inclusions (i) to (iv) below
- (3) Acting as liquidator, trustee, executor, administrator, arbitrator or receiver,

Inclusions:

(i) Financial management planning and financial policy determination and its tax effects

(ii) Capital structure planning and advice regarding raising finance and its tax effects

(iii) Working capital management and its tax effects

(iv) Preparing project reports and feasibility studies and its tax effects

(v) Preparing cash budget, cash flow statements, profitability statements, statements of sources and application of funds etc.

(vi) Budgeting including capital budgets and revenue budgets.

(vii) Inventory management, material handling and storage.

(viii) Market research and demand studies.

(ix) Price-fixation and other management decision making.

(x) Management accounting systems, cost control and value analysis.

(xi) Control methods and management information and reporting.

(xii) **Personnel recruitment and selection.**

(xiii) Setting up executive incentive plans, wage incentive plans etc.

(xiv) Management and operational audits.

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

Acting as **Registered Valuer** under the CA13 read with The Companies (Registered Valuers and Valuation) Rules, 2017

(xvi) Business Policy, corporate planning, organisation development, growth and diversification.

(xvii) Organisation structure and behaviour, development of **human resources** including design and conduct of training programmes, work study, job-description, job evaluation and evaluation of workloads.

(xviii) **Systems analysis and design, and computer related services** including selection of

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4.3 Members - deemed to be in Practice

hardware and development of software in all areas of services which can otherwise be rendered by a CA in practice and also to carry out any other professional services relating to EDP.

(xix) Acting as advisor or consultant to an issue: Including such matters as:

- (a) Drafting of prospectus and memorandum containing salient features of prospectus. Drafting and filing of listing agreement and completing formalities with Stock Exchanges, Registrar of Companies and SEBI.
- (b) Preparation of publicity budget, advice regarding arrangements for selection of:
 - (i) ad-media, (ii) centres for holding conferences of brokers, investors, etc., (iii) bankers to issue, (iv) collection centres, (v) brokers to issue, (vi) underwriters and the underwriting arrangement, and distribution of publicity material, prospectus, etc. (relevant provisions of COE must be kept in mind).
- (c) Advice regarding selection of various agencies connected with issue, namely Registrars to Issue, printers and advertising agencies.
- (d) Advice on the post issue activities, e.g., follow up steps which include listing of instruments and dispatch of certificates and refunds, with the various agencies connected with the work.

Exclusions:

Following activities are not permitted:

- 1. **Broking,**
- 2. **Underwriting and**
- 3. **Portfolio management**

(xx) Investment counselling in respect of securities (relevant provisions of COE must be kept in mind)

(xxi) Acting as registrar to an issue and for transfer of shares/other securities (relevant provisions of COE must be kept in mind)

(xxii) Quality Audit.

(xxiii) Environment Audit.

(xxiv) Energy Audit.

(xxv) Acting as Recovery Consultant in the Banking Sector.

(xxvi) Insurance Financial Advisory Services under IRDA Act, 1999, including Insurance Brokerage.

(xxvii) Acting as Insolvency Professional in terms of Insolvency and Bankruptcy Code, 2016

(xxviii) Administrative Services:

Administrative services involve assisting clients with their **routine or mechanical tasks** within the normal course of operations. Such services require little to **no professional judgment and are clerical in nature.**

Examples of administrative services include:

- Word processing services.
- Preparing administrative or statutory forms for client
- Submitting such forms
- Monitoring statutory filing dates etc.
- Functions of a GST practitioner (as specified under CGST Rules, 2017):
 - (a) furnish the details of outward and inward supplies;
 - (b) furnish monthly, quarterly, annual or final return;
 - (c) make deposit for credit into the electronic cash ledger;
 - (d) file a claim for refund;
 - (e) file an application for amendment or cancellation of registration;
 - (f) furnish information for generation of e-way bill;
 - (g) furnish details of challan in form GST ITC-04;
 - (h) file an application for amendment or cancellation of enrollment under rule 58; and
 - (i) file an intimation to pay tax under the composition scheme or withdraw from the said scheme.

3. Deemed to be in Practice further includes:

As per Section 2(2)(iv) and Regulation 191 of CAs Regulations, 1988 a member shall be deemed to be in practice if he in his professional capacity and neither in his personal capacity nor in his capacity as an employee, acts as:

- (i) liquidator, trustee, executor, administrator, arbitrator, receiver,
- (ii) adviser or representative for costing, financial or taxation matters or
- (iii) takes up an appointment made by the CG or a SG or a court of law or any other legal authority or acts as a Secretary unless his employment is on a salary-cum-full-time basis.

4. Act of Setting Up a Practice:

It is necessary to note that a person is deemed to be in practice not only when he is actually engaged in the practice of accountancy but also when he offers to render accounting services whether or not he in fact does so.

5. Service with armed forces

Member is deemed to be in practice during the period he renders 'service with armed forces'

6. Section 144 of CA13:

1. Prohibits auditor of company from rendering certain services directly or indirectly to the company or its holding company or its subsidiary company:
 - (i) accounting and book-keeping services;
 - (ii) internal audit;
 - (iii) design and implementation of any financial information system;
 - (iv) actuarial services;
 - (v) investment advisory services;
 - (vi) investment banking services;
 - (vii) rendering of outsourced financial services;
 - (viii) management services; and
 - (ix) any other kind of services as may be prescribed.
2. Any other service to be provided only if approved by BOD or AC as applicable.

4.4 Companies not to Engage in Accountancy

A. Section 25

- (1) No company, whether incorporated in India or elsewhere, shall practise as CAs.

Here "company" shall include any LLP which has company as its partner

- (2) Every director, manager, secretary and any other officer thereof who is knowingly a party to such contravention shall be punishable with fine which may extend on first conviction to ₹ 1,000 and on any subsequent conviction to ₹ 5,000.

B. Section 141(2) of the CA13

Where a firm (including a LLP) is appointed as an auditor of a company, then, only the partners who are CAs shall be authorised to act and sign on behalf of the firm.

Therefore, it can be inferred that the LLP not having any company as its partner, can be engaged into practicing and thus take audit assignments.

4.5 Member in Practice Prohibited from using other Designation

- (i) **Prefix 'CA'** – Permitted for use for all members (in practice or not).

(ii) Designation – Section 7

(a) Member in practice:

Cannot use any designation or description other than that of a "chartered accountant".

(b) Member who is not in practice:

May use the designation "chartered accountant". If he does not use this designation he may use any other description.

It is improper for a CA to state on his professional documents that he is an Income-tax Consultant, Cost Accountant, Company Secretary, Cost Consultant, Corporate Lawyer or a Management Consultant.



Designation

(iii) Membership of Other Institute – Section 7

- a Member can add any other description or letters to his name, if entitled thereto, to indicate membership of such other Institute of accountancy, whether in India or elsewhere, or
- b any other qualification that he may possess;
- c as may be recognised in this behalf by the Council (Eg CFA, CPA qualification awarded to member cannot be mentioned unless Institute recognizes it).
- d Furthermore, a degree conferred by any university may also be mentioned

(iv) Firm using Chartered Accountants designation with firm name – Section 7

Permitted if all the partners are CAs and in practice

(v) Merchant Banker / Advisor to an issue

- a The members may apply for and obtain registration as category IV Merchant Banker (such categorisation no more exist in SEBI) under the SEBI rules and act as Advisor or Consultant to an issue.
- b In client companies' offer documents and advertisements regarding capital issue, name and address of the CA or firm of CAs acting as Advisor or Consultant to the Issue could be indicated under the caption "Advisor/Consultant to the Issue".
- c However, the name and address of such CA/ firm of CAs should not appear prominently.

(vi) Directors of Companies, Members of political parties, position in clubs, etc

Not permitted to mention these positions as these would be violative of the provisions of Section 7 of the Act. Hence a member must not use the designation such as 'Member of Parliament', 'Municipal Councilor' nor any other functionary in addition to that of CA.

(vii) Members who are also Cost Accountants

Though a member cannot designate himself as a Cost Accountant, he can use the letters A.C.M.A (Associate) or F.C.M.A (Fellow) after his name, when he is a member of that Institute.

Dual COP:

Members of the Institute in practice who are otherwise eligible may also practice as Company Secretaries and/or Cost Accountants. Such members shall, however, not use designation/s of the aforesaid Institute/s simultaneously with the designation "chartered accountants".
(Further refer Clause of Part I of First Schedule)

(viii) Membership of a Foreign Institute of Accountancy

Permitted to mention membership of a foreign Institute of Accountancy, which has been recognized by the Council through a Memorandum of Understanding (MoU) / Mutual Recognition Agreement (MRA) with the said Institute e.g. South African Institute of CAs (SAICA), Institute of Certified Public Accountants (CPA Ireland) and Institute of CAs in England and Wales (ICAEW).

(ix) ICAI Office Bearers

For members bearing ICAI office positions their professional stationary with ICAI office position shall be printed by ICAI. On completion of term, unused stationary to be returned to the Institute.

Visiting cards

Printed in their name with ICAI office position mentioned and address, contact details provided at the back of the card without firm name.

Letter Heads

Not printed in name of member except for President and Vice President of the Institute

(x) Exemption: Registered Valuer and Insolvency Professional

A member in practice or otherwise empanelled as Insolvency Professional or Registered Valuer can mention "Insolvency Professional" or "Registered Valuer" respectively on his visiting card and letter head.

4.6 Maintenance of Branch Offices (Section 27)

A. Requirement:

CA in practice or a Firm of CAs has **more than one office in India**, each one of such offices should be in the separate charge of a member of the Institute failing which will constitute professional misconduct.

B. Eligible in-charge of the Branch:

Should be a CA and associated with the CA or firm either as a **partner** or as a paid assistant in **whole time employment**.

C. When treated to be in-charge of the Branch?

Only if the member is actively associated with such office. Such association shall be deemed to exist if the member:

- resides** in the place where the office is situated for a period of not less than **182 days in a year**; or
- attends the said office for a period of not less than **182 days in a year**; or
- in such other circumstances as, in the opinion of the Executive Committee, establish such active association.

D. What is a Branch office?

When a CAiP or firm has more than one office where either name board of firm is affixed or it is mentioned as its branch / place of business in its professional stationary or website or elsewhere then such other office is regarded as a Branch office.

E. Office in same accommodation:

Member can be in-charge of two offices if they are located in one and the same Accommodation.

F. Name-Board at Residence:

Refer Clause 7-1-1 as well

Permitted to have name-board at residence provided it is a name-plate or a name-board of an individual member and not of the firm.

G. Conditional Exemption: Members practicing in hill areas:

The conditions are:

- Period:** Such members/firm be allowed to open temporary offices in a city in the plains for a limited period not exceeding 3 months in a year.

(2) **Correspondence:** The regular office need not be closed during this period and all correspondence can continue to be made at the regular office.

(3) **Board:** The name board of the firm in the temporary office should not be displayed at times other than the period such office is permitted to function as above.

(4) **POB:** The temporary office should not be mentioned in the letterheads, visiting cards or any other documents as a place of business of the member/firm.

(5) **Notice:** Before commencement of every winter it shall be obligatory on the member/firm to inform the Institute that he/it is opening the temporary office from a particular date and after the office is closed at the expiry of the period of permission, an intimation to that effect should also be sent to the office of the Institute **by registered post**.

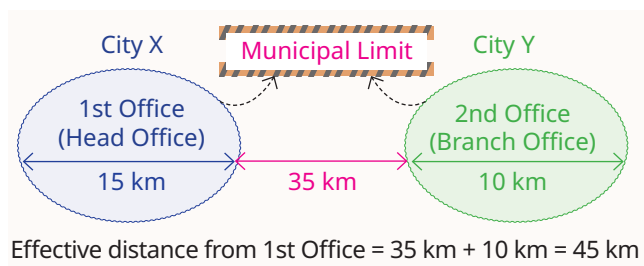
H. Second Office Exemption:

The exemption may be granted to a member or a firm of CAs in practice to have a second office without such second office being under the separate charge of a member of the Institute, provided-

- second office is located in the **same premises**, in which the first office is located or,
- second office is located in the **same city**, in which the first office is located or,



- the second office is located within a distance of **50 km** from the **municipal limits of a city**, in which the first office is located.



H. Second Office Exemption: (contd...)

A member having two offices of the type referred to above shall have to declare, which of the two offices is his main office, which would constitute his professional address.



SJ Tips

1 Office in sub-urb of a city, treated as separate city by ICAI in past exam questions.

2 If distance between;

City limits of HO to BO
not given

& HO to BO
is given,

Assume distance given from HO to BO = distance from city limits of HO to BO (& state this fact in the answer)

4.7 KYC Norms for CA in Practice

Financial services industry globally is required to obtain information of their clients and comply with Know Your Client Norms (KYC norms). Hence, ICAI issued KYC norms for members in practice, mandatory in nature and shall apply in all assignments pertaining to attestation functions.

The KYC Norms approved by the Council of ICAI are given below:

| ENTITY INFORMATION | |
|---|---|
| A. General Information | C. Regulatory Information |
| <ul style="list-style-type: none"> ▶ Name of the Entity ▶ Type of Entity ▶ Business Description | <ul style="list-style-type: none"> ▶ Company PAN No. ▶ Company Identification No. ▶ Director's Identification No. ▶ Director's Name & Addresses ▶ Names and address of companies in which above person in director |
| B. Corporate Structure | D. Engagement Information |
| <ul style="list-style-type: none"> ▶ Name of ultimate parent company ▶ Name of parent company ▶ Name of Affiliates | <ul style="list-style-type: none"> ▶ Type of Engagement |

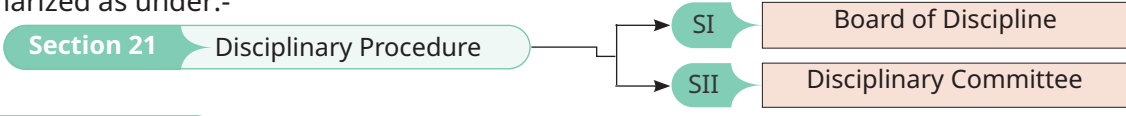
5. CAs IN SERVICES

Means a CA employed or engaged in an executive or non-executive capacity in areas such as commerce, industry, service, the public sector, education, the not-for-profit sector, regulatory bodies or professional bodies, or a professional accountant contracted by such entities.

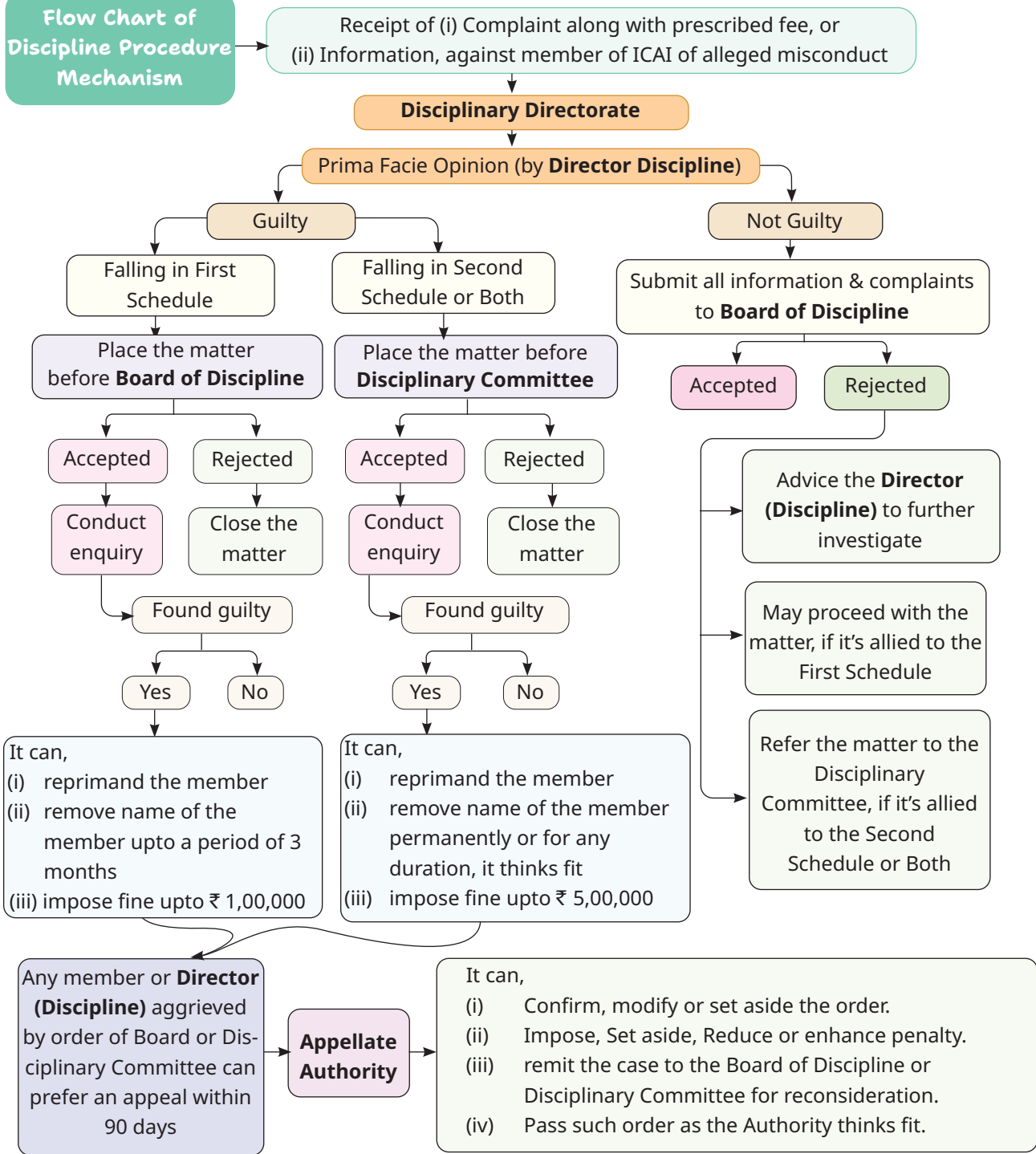


6. DISCIPLINARY PROCEDURE

Sections 21, 21A, 21B, 21C, 22-A and 22-G of the CAs Act read with the CAs (Procedure of Investigations of Professional and Other Misconduct of Cases) Rules, 2007 have laid down the following procedure in regard to the investigation of misconduct of members which has been summarized as under:-



Flow Chart of Discipline Procedure Mechanism



7. TYPES OF MISCONDUCT: PROFESSIONAL OR OTHER MISCONDUCT

A member is liable to disciplinary action under Section 21 of the CAs Act, if he is found guilty of any Professional or Other Misconduct.

7.1 Professional Misconduct (PM)

- 1 Defined First Schedule - Part I, II and III; and Second Schedule - Part I and II.
- 2 Applicable for members engaged in profession of accountancy whether in practice or in service
- 3 If member is found guilty of any of the acts or omissions stated in any of the above parts of the Schedule, he/she shall be deemed to be guilty of PM.

7.2 Other Misconduct

- 1 Defined First Schedule - Part IV; and Second Schedule - Part III.
- 2 Applicable for all members
- 3 These provisions empower the Council to inquire into any misconduct of a member even it does not arise out of his professional work.
- 4 This is because CA is expected to maintain the highest standards of integrity even in his personal affairs and any deviation from these standards, even in his non-professional work, would expose him to disciplinary action.
- 5 Other misconduct would also relate to conviction by a competent court for an offence involving moral turpitude punishable with transportation or imprisonment to an offence not of a technical nature committed by the member in his professional capacity. [See section 8(v) of the Act].



8. SCHEDULES TO THE ACT

| Schedule | Part | Applies to | Clauses |
|--|----------------|----------------|---------|
| Schedule I (Mild Misconduct) (Penalty – upto 1,00,000 or Max 3m suspension) | Part I | CA in Practice | 12 |
| | Part II | CA in Service | 2 |
| | Part III | All Members | 3 |
| | Part IV (OM*) | All Members | 2 |
| Schedule II (Serious Misconduct) (Penalty – upto 5,00,000 or cessation) | Part I | CA in Practice | 10 |
| | Part II | All Members | 4 |
| | Part III (OM*) | All Members | 1 |



SJ Tips

General Principles to Study Misconduct:

- ▶ Reference – Clause 'n' of Part 'x' of Schedule 'y' to CA Act, 1949
- ▶ Clause provide misconduct and not code of conducts
- ▶ Clause to be interpreted in letter as well as spirit
- ▶ In event of contravention of law and clauses, law shall prevail
- ▶ If misconduct covered under then disciplinary proceedings under clause with maximum penalty to be initiated multiple clauses

OM* | Other Misconduct, rest are Professional Misconduct

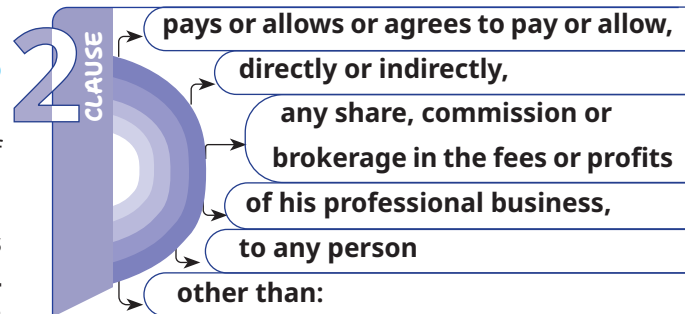
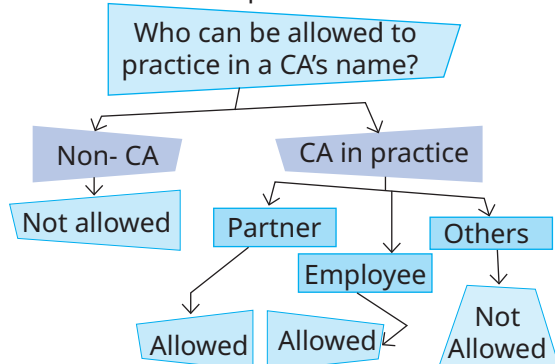
8.1. The First Schedule

PART - I Professional Misconduct in relation to CAs in Practice

A CA in practice is deemed to be guilty of professional misconduct if he:

CLAUSE allows any person to practice in his name as a CA unless such person is also a CA in practice and is in partnership with or employed by him.

Intention Safeguard public against unqualified accountant practicing under cover of qualified accountants. It ensures that work of accountant will be carried out by a CA who may be his partner or his employee and would work under his control and supervision.



- 1 a member of the Institute or
- 2 a partner or
- 3 a retired partner or
- 4 the legal representative of a deceased partner, or
- 5 a member of any other professional body or with such other persons having such qualification as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.”

Explanation In this item, “partner” includes a person residing outside India with whom a CA in practice has entered into partnership which is not in contravention of item (4) of this Part.

Clause 2 : Exception

| | |
|-------------------------------|---|
| Member | CA whether or not in practice |
| | Sharing with employee CA permitted |
| Partner | Whether CA or any other professional |
| Retired Partner | Whether or not he continues to be a member |
| LR of a deceased partner | Provided already mentioned in deed |
| Member of any prescribed body | As prescribed under Regulation 53A(3)/B professional body or qualifications |

Regulation 53A (1) permit sharing of fees with:

- Members of professional bodies, as under: -
- (a) The ICSI
 - (b) The ICWAI
 - (c) Bar Council
 - (d) The Indian Institute of Architects established under the Architects Act, 1972.
 - (e) The Institute of Actuaries of India established under the Actuaries Act, 2006.

Regulation 53A (3) permits sharing of fees with:

- (a) CS;
- (b) Cost Accountant;
- (c) Actuary;
- (d) Bachelor in Engineering*;
- (e) Bachelor in Technology*;
- (f) Bachelor in Architecture*;
- (g) Bachelor in Law*;
- (h) Master in Business Administration from* or AICTE approved institution

*law recognized university.

Note:

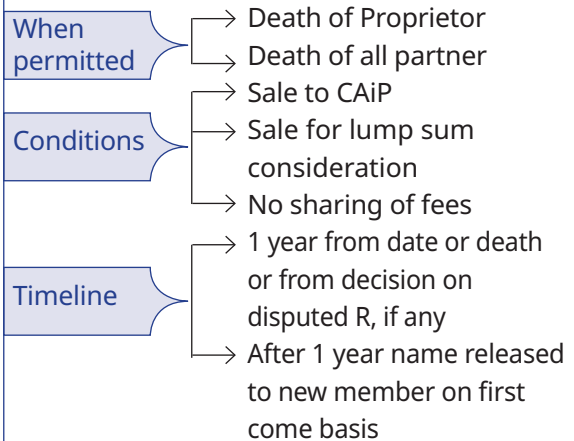
1. Sharing of Fees with Government for Administrative Expenses:

Where any part of audit fees, on account of any circular or order, is payable to the Government for recovering the administrative and other expenses incurred in the process, the Council decided that as such there is no bar in the Code of Ethics to accept such assignment wherein a percentage of professional fee is deducted by the Government to meet the administrative and other expenditure.

2. Sharing of Fees in name of office allowance to another person:

If that in substance CA shared his profits he is guilty of professional misconduct. 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.

3. Sale of Goodwill:



3 CLAUSE Accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute.

Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this part.

Diagnosis

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 persons specified in Regulation 53A

Referral fees amongst members:

It is not prohibited for a member in practice to charge Referral Fees, being the fees obtained by a member in practice from another member in practice in relation to referring a client to him.



SJ Tips

Sharing / accepting fees with foreign CA firms not permitted in Clause 2/3

4 **CLAUSE** enters into partnership, in or outside India, with any person other than

1. CA in practice or [redacted]
2. such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (v) of sub-section (1) of section 4 or [redacted]
3. whose qualifications are recognized by the Central Government or the Council for the purpose of permitting such partnerships.

Diagnosis:

- (1) "A man must stand erect, and not to be kept erect by others", Marcus Aurelius
- (2) One must seek work not through any agency, but by his professional talent, skill and reputation. All forms of canvassing on that account are regarded unethical and are prohibited. [redacted]
- (3) It may further be noted that the acts of partners and employees of the Firm towards securing professional work are subject to the provisions of Clauses (6) and (7) of Part-I of First Schedule of CAs Act, 1949. [redacted]

Exception Multi-disciplinary Partnership (MDP):

- 1 Council has prescribed Regulation 53B for entering into partnership that covers CS, Cost Accountant, Advocate, Engineer, Architect, and Actuary. (MBA and B.Tech not included).
- 2 ICAI has revised its Form 18 to permit such MDP and has also issued MDP guidelines and FAQs in this behalf.
- 3 However, to form MDPs the Regulators of other professionals to also permit partnership with CAs.
- 4 Currently CS, CMA, Architect, Engineers
Advocate & Actuary in practice are not permitted by their institute to partner

Diagnosis [redacted]

- 1 Prohibition on entering into partnership with non-CAs is confined to the practice of the profession of CAs.
- 2 partnership with foreign body professionals as in foreign CAs is also not permitted.

5 **CLAUSE** Secures either through the services of a person who is not an employee of such CA or who is not his partner or by means which are not open to a CA, any professional business.

Provided that nothing herein contained shall be construed as prohibiting any agreement permitted in terms of item (2), (3) and (4) of this part. [redacted]

6 **CLAUSE** Solicits clients or professional work; either directly or indirectly; by circular, advertisement, personal communication or interview or by any other means.

Provided that nothing herein contained shall be construed as preventing or prohibiting - [redacted]

- (i) Any CA from applying or requesting for or inviting or securing professional work from another CA in practice; or [redacted]
- (ii) A member from responding to tenders or enquiries issued by various users of professional services or organizations from time to time and securing professional work as a consequence.

Diagnosis: [redacted]

The members should not adopt methods to gain publicity and thereby solicit work. Such restraint in maintaining independence of judgment and to command respect of prospective clients. The services of a CA are of personal nature and its value can be appraised only by personal contact and experience. A public advertisement may indicate over anxiousness to win confidence, and hence have an opposite effect. It is the quality service, which attracts and retains the clients.

Some forms of soliciting work which the Council has prohibited are discussed below:

a. Advertisement and note in the press (Also refer Clause 7)

- i. Members should not advertise for soliciting work or advertise in a manner.
- ii. Not permitted circulating letters to a small field of possible clients.
- iii. Personal canvassing or canvassing for clients of previous employer through the help of the employees are also not permitted.

Exceptions: A member is permitted to:

1. Request professional work from another CA in practice.
2. Advertise changes in partnerships or dissolution of a firm, or of any change in address of practice and telephone numbers subject to following:
 - ⊙ Announcements limited to a bare statement of facts
 - ⊙ Appropriateness of the area of distribution of the newspaper or magazine and
 - ⊙ Number of insertions.
3. Issue a classified advertisement in the journal/ newsletter of the Institute intended to give information for sharing professional work on assignment basis or for seeking partnership or salaried employment of an accountancy nature, provided it only contains:
 - ⊙ CA's name, Address or telephone number, fax number, e-mail address and
 - ⊙ Address of Social Networking sites of members.
 - ⊙ Factual position of experience and area of specialization, relevant to seek response to the advertisement, are also permissible.

Seeking work from Professional Colleagues:

Prohibited by any means other than as provided above.

b. Application for empanelment for allotment of audit and other professional work

Government departments/companies, courts, co-operative societies, banks etc. prepare panels of CAs for allotment of audit and other professional work.

Permitted Where existence of such panel is known to the member, he is free to write to the concerned organization with a request to place his name on the panel. May quote fees on enquiries being received from such bodies maintaining panel.

Prohibited Roving enquiries to include name in such panel is permitted.

c. Responding to Tenders, Advertisements and Circulars: (Refer Chapter XIII of CGG, 2008)

CA can respond to tenders and requests made by users of professional work subject to following:

- a. Not respond to in areas of services exclusively reserved for CAs (statutorily), such as audit and attestation services, unless minimum fee* is prescribed in the tender document itself
- b. No restriction to respond if areas are open to other professionals along with the CAs.

*"Minimum fee" for this purpose should be such that it commensurate with size, value, volume, manpower requirement and nature of work. Accordingly, cost sheet be maintained by members responding to tenders having number of persons involved, hours to be spent, etc, so that Institute may call for perusal.

EMD/Security Deposit:

No restriction to pay such deposit if required, however, on having received complaint of exorbitant EMD/Deposit, Ethical Standards Board may look into the matter on case to case basis.

d. Publication of Books, Articles or Presentation:

(Applicable to CA is service under a CA Firm as well)

Permitted To use designation "Chartered Accountant" & Name of the firm.

Prohibited To mention professional attainment of CA or his firm

First Schedule - Part I

e. Educational Videos:

Permitted Videos of educational nature on internet may be uploaded by members

Prohibited Reference to his CAs Firm, Contact details or Website address.

f. Issue of Greeting Cards or Invitations:

Purpose for issuing such cards: Invitations for marriages and religious ceremonies, opening or inauguration of office of the members, change in office premises and change in telephone numbers, provided that such greeting cards or invitations etc. are sent only to clients, relatives and friends of the members concerned.

Permitted Information: Chartered Accountant designation, name of the firm

Prohibited Information: Other professional designation, status and qualifications etc.

g. Advertisement for Silver, Golden, Platinum or Centenary celebrations:

Permitted: Advertisement for Silver(25), Golden(50), Diamond(60 or 75), Platinum(70) or Centenary (100 years) celebrations of the CAs Firms may be published in newspaper or newsletter. (Years in bracket – Source Wikipedia, not in ICAI SM)

Prohibited: Not permitted to advertise any other the events organised by a Firm of CAs

h. Sponsoring Activities

Prohibited: Member or Firm not permitted to sponsor an event except:

(a) May sponsor an event conducted by a Programme Organizing Unit (PoU) of the ICAI, provided such event has the prior approval of Continuing Professional Education (CPE) Directorate of the ICAI.

(b) Members sponsoring activities relating to Corporate Social Responsibility may mention their individual name with the prefix "CA".

However, the mention of Firm name or CA Logo is not permitted.

i. Advertisement of Teaching/Coaching activities by members:

Members may engage in teaching/coaching activities – Subject to compliance with Regulation 190A (discussed in Clause 11).

Advertisements of coaching/teaching activities - May amount to solicitation and therefore violative of provisions of this Clause.

Abstain: From advertising their association with Coaching/teaching activities through hoardings, posters, banners and by any other means.

Sign Board - Members may put, outside their Coaching/ teaching premises, a sign board mentioning the name of Coaching/teaching Institute, contact details and subjects taught therein only. (Size and Type of signboard - Council Guidelines as applicable to Firms of CAs would apply).

j. Sharing Firm Profile with prospective Client:

Only permitted in response to client's specific query, and not.

k. Television or Movie Credits:

Permitted, provided exhibition of name is not made differently as compared to other entries in the credits.

l. Scope of representation u/s 140(4), CA13:

Prohibited: (1) Avoid abuse to secure needless publicity, direct or indirect canvassing or soliciting for his continuance as an auditor.

(2) cannot seek reappointment.

(3) Not pass disparaging references or derogatory comments against the entity.

(4) Should not indicate your contributions in improving ICs etc. of the company.

Permitted: To mention in a dignified manner how he has been acting independently and may, in addition, indicate if he so chooses, his willingness to continue as auditor if reappointed by the shareholders.

m. Acceptance of original professional work by a member emanating from the client introduced to him by another member:

Prohibited: To accept original professional work emanating from a client introduced to him by another member. If any professional work of such client comes to him directly, it should be his duty to ask the client that he should come through the other member dealing generally with his original work.

First Schedule - Part I

n. Giving Public Interviews:

Permitted: To give details about their themselves/ firms in public interviews / press / any forum.

Prohibited: Furnishing detail resulting in publicity / highlighting professional attainments.

Remember: Details be given only as a response to a specific question, and of factual nature only.

o. Members and/or firms who publish advertisements under Box numbers:

Prohibited from inserting advertisements for soliciting clients / work under box numbers.

p. Soliciting professional work by making roving enquiries:

Not permissible to address letters, emails or circulars specifically to potential customers of CA since it would tantamount to advertisement.

q. Seeking work from Professional Colleagues:

CA seeking work from professional colleagues on any basis whatsoever except as provided above in this clause would be in violation of this clause.

7 **CLAUSE** **advertises his professional attainments or services, or uses 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 CAs 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.

Designation and other details on visiting cards, letterheads, etc.

1. Designation - Refer Section 7

a. Practice as Advocate/Company Secretary/ Cost Management Accountant:

If permitted by the other Institute then use designation of CA and Advocate / Cost Management Accountant / Company Secretary but not simultaneously.

b. Full Time Practice - If permission granted to a CAiP to also hold COP of sister Institute(s)/Bar Council, such member treated in FT practice.

2. Date of setting-up practice or the date of establishment of firm:

Should not be mentioned on letter heads and other professional documents etc.

3. Chartered Accountant Designation with Firm Name - Permitted:

In professional documents, visiting cards, letter heads or sign boards and under the circumstances clarified under Clause (6). However, an individual member may use the prefix "CA" with his name.

4. Notice in the Press relating to the Success in an Examination:

Prohibited: Undesirable publicity either in relation to the article/employee/member/firm in service.

Permitted: Candidate's name and address, school and local background, examination 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.

5. Reports and Certificates:

Ensure extent & manner of publication of certificates are limited to what is necessary to serve its proper purpose. CA should use letterhead of their Firm for issuing reports and certificates.

6. Appearance of CAs on Electronic Media (including Internet):

Members may broadcast on TV, films and Internet, Radio or give lectures at forums

Permitted: 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.

First Schedule - Part I

Prohibited: Any exaggerated claim / comparison. What he may say or write must not be promotional but an objective view of the topic.

7. Appointments to positions of local or national importance -

Publicity is permitted in such case, with mention of membership but not firm name.

8. Members giving talks or lectures or attending conference

Permitted: May describe themselves as chartered accountants only when they are acting in their capacity as CAs.

Prohibited: Reference firm name.

9. Organising Training Courses, Seminars etc. for his staff:

A CAiP holding training courses, seminars etc. for his staff may invite staff of other CAs and clients. However, undue prominence should not be given to the name of the CA in any booklet or document issued in connection therewith.

10. Writing Articles or Letters to the Press:

Professional articles/letters to press by CA may contain their names and description chartered accountants.

11. Size of Sign Board:

- Size - Members to exercise own discretion while keeping in mind the appropriate visibility and illumination (limited to the sake of visibility).
- Use of glow signs or lights on large-sized boards as used by shop-keepers is not permissible.
- A member can have a name board at the place of his residence with the designation of a CA, provided it is a name plate or name board of an individual member and not of the firm.

12. Public Announcements with details of Directors:

Members should take steps to ensure such prospectus or public announcements or public communications do not advertise his professional attainments or directly/indirectly amount to solicitation of clients for professional work.

Permitted: The use of the expression 'Chartered Accountant' is permissible.

Particulars about directorships held by the member in other Companies can, be given

Prohibited: Descriptions about his expertise, specialisation and knowledge in any particular field or other appellations or adjectives are not published with his name.

Name of the firm of CAs in which the member is a partner, should not be given.

13. Use of Logo:

Prohibited:

- i. Council decided use of any logo/monogram of any kind/form/ style/design/colour etc. on any display material or media e.g. paper stationery, documents, visiting cards, magnetic devices, internet, sign board, by the CAiP or firm, is prohibited.
- ii. Name printed in a manner tantamounting to logo/monogram is also prohibited.

Separate Guidelines issued for:

◀ **Common CA Logo:** Refer Chapter XVI on Logo Guidelines

◀ **Network Firms and Networking Guidelines:** Council has permitted Network amongst the Firms registered with the Institute and it is discussed in Chapter XV of Council General Guidelines 2008.

◀ **Advertisement in print and electronic media -** Refer Council Advertisement Guidelines



SJ Tips

Visiting Cards

Permitted: CA Name, Designation, Firm Name, Contact, Web address

Prohibited: Photograph, soliciting visit to office, year of establishment, vision / mission statement

QR Code : Yes provided on scan information provided is only as permitted to be provided.

8
CLAUSE

accepts a position as auditor;
 → previously held by another chartered accountant;
 → without first communicating with him;
 → in writing.”

Diagnosis:

Making inquiry from retiring auditor is to primarily find out whether there are any professional or other reasons why proposed incoming auditor should not accept the appointment.

I The professional reasons for not accepting an audit would be:

- (a) Non-compliance of the provisions of Sections 139 and 140 of CA13 as mentioned in next clause 9-1-1; and
- (b) Non-payment of undisputed Audit Fees (fees as signed by auditor and auditee including other expenses – Chapter IV of CGG) of statutory audits under CA13 or other statues, other than in case of Sick Units(unit registered for >= 5years, which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth – Chapter IV of CGG); and
- (c) Issuance of a qualified report.

Impact if auditor accepts in above situation:

- (1) If auditor accepts in case (a) or (b) above – He would be guilty of PM.
- (2) If auditor accepts in case (c) above –

He may accept audit if satisfied that the attitude of retiring auditor was not proper and justified.

But if he feels that the retiring auditor had qualified the report for good and valid reasons, he should refuse to accept the audit.

There is no rule, preventing auditor from accepting the appointment in these circumstances.

However, he should ascertain the full facts of the case.

It will be dismaying if public finds that if an auditor is found to be “inconvenient” by the client, he could readily be replaced by another.

II Applicability of Clause 8

A. Communication required for all kinds of audit:

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, GST Audit, Internal Audit, Concurrent Audit or any other kind of audit.

B. Joint Auditor

It is necessary for the new auditor appointed to act jointly with the earlier auditor and to communicate with such earlier auditor.

C. Lack of time in acceptance of Government Audits:

The incoming auditor may give a conditional acceptance of the appointment and commence the work after he has sent due communication to previous auditor.

In his acceptance letter to client, clarify that his acceptance is subject to professional objections, if any, from the previous auditors and that he will decide about his final acceptance after taking into account the information received from the previous auditor.

D. Communication in case of Assignments done by other professionals:

In such case it would also be a healthy practice to communicate but not madatory.

E. Recommadatory in case of Special Audit under Income Tax Act, 1961:

It would be a healthy practice if a Tax Auditor appointed for conducting special audit under the Income Tax Act,1961 communicates with the member who has conducted the Statutory Audit.

III Procedure and Special Cases:

A. What should be the correct procedure to adopt when a prospective client tells you that he wants to change his auditor and wants you to take up his work?

1. Whether retiring auditor had been informed of the intention to change.

2. If yes, then send a communication to the retiring auditor.

3. If no, ask client to communicate.
- i If client refuses, inquire reasons for change and advisable to not accept audit if no valid reasons.
 - ii If he decides to accept the audit he should address a communication to the retiring auditor.
4. Where retiring auditor fails to respond to the communication of incoming auditor, the auditor appointed can act, after waiting for a reasonable time for a reply.

B. Mode Communication with retiring auditor:

Prohibited : Posting of a letter merely "under certificate of posting"

Permitted : 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, the following would in the normal course provide such evidence:-

- i Communication by a letter sent through "Registered Acknowledgement due", or
- ii By hand against a written acknowledgement, or
- iii Acknowledgement of the communication from retiring auditor's vide email address registered with the Institute or his last known official email address, or
- iv Unique Identification Number (UDIN) generated on UDIN portal (subject to separate guidelines to be issued by the Council in this regard)

C. Firm not found at the given Registered address:

Letter will be 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.

D. Premises found Locked:

The communication received back by the Incoming Auditor with "Office found Locked" written on the Acknowledgement Due deemed as having been delivered to the retiring auditor.

E. Where Previous Auditor is not available for accepting payment of undisputed audit fees

If not possible to transfer electronically, may advise client to purchase Demand Draft of the amount of undisputed Audit Fees payable of retiring auditor, verify the same and can then accept the audit. Incoming auditor to then ensure payment of undisputed Audit Fees of the retiring auditor at the earliest possibility.

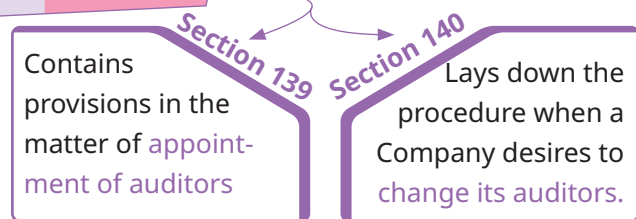
9 **CLAUSE** **accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 139 and 140 of the Companies Act, 2013 in respect of such appointment have been duly complied with"**

I. Diagnosis:

In order that the validity of the appointment of an auditor is not challenged at a later date, it has been made obligatory on Incoming Auditor to ascertain from the Company that appropriate procedure for appointment has been followed.

Clause applies on company auditor only and extends to check whether removal of auditor, where applicable, has been made appropriately as per provisions of applicable law.

II. Sections:



III. Responsibility of Incoming auditor:

1. He has to **ascertain, i.e. find out for certain**, whether the Company has complied with above provisions.
2. **Mere certificate from the management** that the provisions of the above sections have been complied with are not enough.
3. He is to **verify the relevant records** of the Company and ascertain compliance.
4. If **Company is not willing to allow** the incoming auditor to verify the relevant records the incoming auditor **should not accept** the audit assignment.

IV. Records to be verified:

1. First auditor

Appointed by BODs-

Verify whether the BoDs have passed the resolution for his appointment within **30days** of the date of registration of the Company.

Appointed in GM when BODs fail to appoint-

Verify proper notice convening the general meeting has been issued and whether resolution passed is valid.

2. Casual Vacancy

Other than resignation-

Verify if BoDs have powers to fill the casual vacancy and whether resolution filling the casual vacancy passed by them.

Due to resignation of the auditor -

Verify if proper resolution filling the vacancy has been passed at the **General Meeting** of the Company within 3m of BoD appointment.

3. Removal before expiry of term

See that **special resolution** has been passed at the General Meeting and previous approval of the **Central Government** has been obtained by the Company.

4. Non-reappointment of retiring auditor

Where the auditor other than the retiring auditor is proposed to be appointed, ascertain provisions of Sections 139 and 140 complied with.

Audit

Joint

Provisions equally apply where an auditor who was jointly holding office with another auditor or auditors and any one or more of such joint auditors has not been reappointed.

5. Verification of compliance with Section 140

Incoming auditor should verify the records in respect of the following matters-

- a. Whether a **member of the Company has given special notice** of the resolution as required under Section 140 (4) of the Companies Act, 2013.
- b. The **notice** shall be sent by members **to the company** not earlier than **3months** but at least **14days** before the date of the meeting at which

the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting. A true copy of this notice should be obtained by the incoming auditor.

- c. Whether this special notice has been **sent to all the members**, of the Company as required under Section 115 at least **7days** before the date of the General Meeting
- d. Whether this special notice has been **sent to the retiring auditor**
- e. Whether the **representation received** from the retiring auditor has been sent to the members of the Company.
- f. Whether the representation received has been considered at the general meeting and
- g. **Resolution** proposed by the special notice has been **properly passed** at the meeting.

V. Mode of sending the notice of the resolution to the members of the Company

Involves complying with Sections 139, 140 & 20, which is as under-

- A** A document may be served on a company or an officer thereof by
 - (i) sending it to the company or the officer
 - (ii) at the registered office of the company
 - (iii) by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed.
- B** Department of Company Affairs circular advises that the copy of the special notice should be sent to the retiring auditors by **Registered A/D post** so that a proof of delivery can be established.
- C** Accordingly, incoming auditor has to satisfy himself that the notice has been effectively served on the outgoing auditor:
 - (i) E.g. by seeing that the notice has been duly served through hand delivery or by Regd. Post with A.D.).
 - (ii) Production of a certificate of posting by the Company would not be adequate.

(iii) Acknowledgement received from the outgoing auditor would be one of the forms in which such satisfaction can be obtained.

D A copy of the relevant minutes of the general meeting where the above resolution is passed duly verified by the Chairman should also be obtained by the incoming auditor for his records.

The recommendations of the Board are forwarded to the Council for its consideration.

This Board is also charged with the responsibility of looking into the cases of removal and resignation of auditors and making an appropriate report to the Council.

VI. Adjournment of AGM

1. AGM is adjourned

Under Section 139(1) the retiring auditor holds office till the conclusion of every sixth annual general meeting. Therefore, when the annual general meeting is adjourned, the retiring auditor will continue to hold the office of auditor till the adjourned meeting is held. In case a new auditor is appointed at the original meeting (which is adjourned) such auditor can assume office only after the conclusion of such adjourned meeting.

2. Special Notice in adjourned AGM

If any AGM is adjourned without appointing an auditor, no special notice for removal or replacement of the retiring auditor received after the adjournment can be acted upon by the Company, since in terms of Section 115, special notice should be given at least 14 clear days before the meeting.

3. No auditor appointed

Where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company mentioned in Section 139(10).

VII. Ethical Standards Board - Unjustified Removal of Auditors

1. Functions

In order to examine various ethical issues and safeguard the independence of the Auditors, the Council has set up a Ethical Standards Board (ESB).

This Board examines various issues concerning professional ethics which are either raised by the members or are taken up based on their importance.

2. Guidelines for Unjustified Removal of auditors:

A. Resignation or Refusal for re-appointment

Auditor shall send a communication, in writing, to the BoDs of the Company giving reasons therefor and shall send a copy of such communication to the Institute.

It shall be obligatory on the incoming auditor, before accepting appointment, to obtain a copy of such communication from the BoDs and consider the same before accepting the appointment.

B. Non-reappointment

Where an auditor, though willing for re-appointment 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.

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.

C. Ethical Standards Board Review

ESB to review communications referred to in paras (A) and (B), may call for further information from the incoming auditor, the outgoing auditor and the Company and make a report to the Council in cases where it considers necessary.

The above procedure is also followed in the case of removal of auditors by the government and other statutory authorities.



Feedback for Audit Crush

10

CLAUSE

charges or offers to charge,
 accepts or offers to accept;
 in respect of any
 professional employment;
 fees which are based on;
 a percentage of profits or;
 which are contingent upon the findings,
 or results of such employment,
 except as permitted under any regulations
 made under this Act.

Diagnosis:

What distinguishes a profession from a business is that professional services are not rendered with the sole purpose of a profit motive. 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 and will affect integrity and independence. Therefore, members are prohibited from charging or accepting any remuneration based on a percentage of the profits or on the happening of a particular contingency.

Exception:

1. Fees should not be regarded as being contingent if **fixed by a court or other public authority**.
2. **Regulation 192** - Exempts members from operation of this clause in certain professional services:
 - (a) 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;
 - (b) 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;
 - (c) 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;
 - (d) in the case of certain **management consultancy services** as may be decided by the resolution of the Council from time to time, the fees may be based on percentage basis which may be contingent upon the findings, or results of such work;

- (e) in the case of **certain fund raising services**, the fees may be based on a percentage of the fund raised;
- (f) in the case of **debt recovery services**, the fees may be based on a percentage of the debt recovered;
- (g) in the case of services related to **cost optimisation**, the fees may be based on a percentage of the benefit derived; and
- (h) other service or audit as may be decided by the Council:

(i)
 Acting as
 Insolvency
 Professional;

(ii)
 Non- Assurance
 Services to Non-
 Audit Clients



If you think life of CA student is tough,
 try life of a CA drop-out.

11 CLAUSE

engages 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 (MD) or a whole time director (WTD) unless he or any of his partners is interested in such company as an auditor.

A. Diagnosis:

The objective is to restrain members from carrying on any other business in conjunction with the profession of accountancy is to:

1. avoid combining work with any business which is not in keeping with the dignity of the profession.
2. To prevent unfair advantage in his professional practice by having the ability to advertise the other businesses.
3. Council notified Regulations:

R. 190A. "A chartered accountant in practice not to engage in any other business or occupation other than the profession of accountancy except with the permission granted in accordance with a resolution of the Council".

R. 191. Part-time employment/engagement a CA may accept -

A CAiP may 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 CG or a SG or a court of law or any other legal authority or may act as a Secretary in his professional capacity, provided his employment is not on a salary-cum-full-time basis.

B. Appendix 9 C.A. Regulations, 1988

General and Specific Resolutions passed by the Council as included in Appendix 9 of C.A. Regulations, 1988 are as under:

I General Resolution

Permission granted generally – Cases like:

- (1) Employment under Chartered Accountants in practice or firms of such chartered accountants
- (2) Private tutorship.....
- (3) Authorship of books and articles.....
- (4) Holding of Life Insurance Agency License for the limited purpose of getting renewal commission.
- (5) Attending classes and appearing for any examination.....
- (6) Holding of public elective offices such as M.P., M.L.A. and M.L.C.
- (7) Honorary office leadership of charitable - educational or other non-commercial organisations.
- (8) Acting as Notary Public, Justice of the Peace, Special Executive Magistrate and the like.....
- (9) Part-time tutorship under the coaching organisation of the Institute.....
- (10) Valuation of papers, acting as paper-setter, head-examiner or a moderator, for any examination.
- (11) Editorship of professional journals like company Audit Journal.....
- (12) Acting as Surveyor and Loss Assessor under the Insurance Act, 1938 provided they are otherwise eligible.....
- (13) Acting as recovery consultant in the banking sector
- (14) Owning agricultural land and carrying out agricultural activity.....
- (15) Trading in equity or currency derivatives (and not commodity derivatives).....

II Specific Resolution If Q. Silent assume SP not taken & answer accordingly.

CAiP may engage in following business or occupations, after obtaining **specific and prior approval of the Council** in each case:

- (1) Full-time (FT) or part-time (PT) employment in business concerns provided that the member and/or his relatives do not hold "substantial interest" in such concerns.
- (2) FT or PT employment in non-business concern.
- (3) Office of MD or a whole-time director of a body corporate provided that the member and/or any of his relatives do not hold substantial interest in such concern. (Exception: Corporate form of practice. Refer CGG Chapter XVII).....
- (4) 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.

Note Content in green font is also included in notified services under section 2(2)(iv)

- (5) Interest in an educational institution.
- (6) PT or FT lectureship for courses other than those relating to the Institute's examinations conducted under the auspices of the Institute or the Regional councils or their branches.
- (7) PT or FT tutorship under any educational institution other than the coaching organization of the Institute.
- (8) Editorship of journals other than professional journals.
- (9) Any other business or occupation for which the Executive Committee considers that permission may be granted.

III Related Terms

- (1) "Relative" in relation to a member - Means husband, wife, brother or sister or any lineal ascendant or descendant of that member;
- (2) "Substantial interest" in a concern of a member-
 - (i) **in a case where the concern is a Company-**
If its shares (not being shares entitled to fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than 20% of voting power at any time, during the relevant years are owned beneficially by such member or by any one or more of the following persons:
 - (a) One or more relatives of the member;
 - (b) Any concerns in which any of persons referred to above has a substantial interest;
 - (ii) **in the case of any other concern -**
if such member or other persons referred to above are entitled in aggregate, at any time during the relevant years to not less than 20% of the profits of such concern.

C. Directorship:

1 MD/WTD (Exemption: MCS Co. of CAiP)

- (1) Member can accept the office only after obtaining, the specific and prior approval of the Council. Deemed to be a MD or a WTD if he is entrusted with whole or substantially the whole of the management of the affairs of the company.
- (2) Cannot accept if the member and/or his partners and relatives hold substantial interest in such a company.

2 Director Simplicator

"Director Simplicator" (Ordinary / Simple Director who is not a MD or WTD and is required only in the Board Meetings of the company and not paid any remuneration except for attending such meetings, known as non-executive Director)

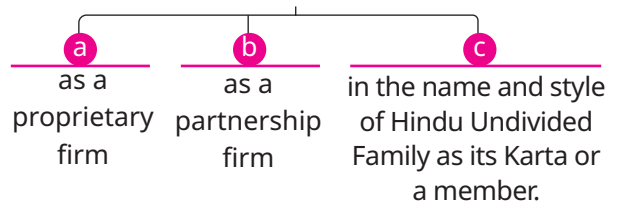
- (i) Irrespective of whether he and/or his relatives hold substantial interest in that Company
- (ii) he is permitted generally to accept such directorship
- (iii) unless he or any of his partners is interested as an auditor in
 - such Company or
 - its holding company as an auditor (ESB via a clarification, decided that the auditor of a Subsidiary Company can't be a Director of its Holding Company, as it will affect the independence of an auditor)

3 Promoter/Promoter Director

- (i) There is no bar for a member to be a promoter / signatory to the MOA or AOA of any company.
- (ii) There is also no bar for such a promoter / signatory to be a Director Simplicator of that company irrespective of object of the company include areas which fall within the scope of the profession of CAs.

D. HUF doing business of Member in practice

1. A member of the Institute can acquire interest in family business in any of the following manner:



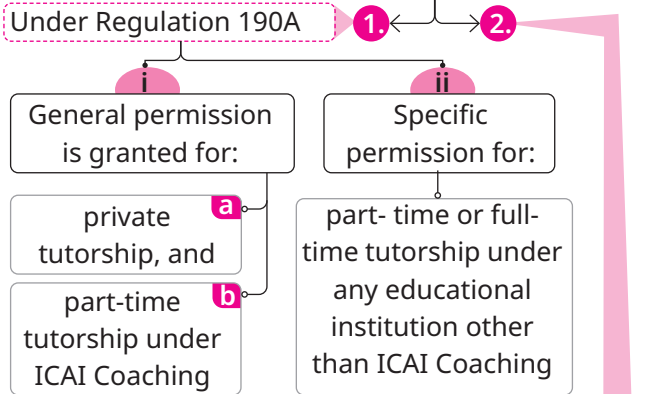
2. Members to provide evidence that

- a. interest in the family business concern devolved as a result of inheritance/succession/partition of the family business.
- b. he was not actively engaged in carrying on the said business and
- c. the family business concern in question was not created by himself.

Member to furnish a declaration in prescribed format and documents evidencing above to concerned Decentralized Office."

3. A member in practice 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.

E. Teaching Hours Restriction



Such general and specific permission granted is subject to the condition that the **direct teaching hours devoted to such activities** taken together should not exceed **25 hours a week in order** to be able to undertake attest functions. Else the member shall be deemed to be in part time practice.



SJ Tips

Part-time practice: A CA who holds CoP but is not allowed to undertake attestation functions & train articled clerks.

12

allows a person;

- not being a member of the institute in practice; or
- a member not being his partner;

to sign on his behalf or on behalf of his firm, any balance sheet, profit and loss account, report or financial statements.

A. Related Provisions and Terms:

1. **Section 26 of CA Act, 1949**
'No person other than a member of the Institute shall sign any document on behalf of a Chartered Accountant in practice or a firm of Chartered Accountants in his or its professional capacity'.

2. **Report**
For this clause may cover a wider range of documents submitted to the client(s) or an outsider on behalf of himself or on behalf of the firm. The subject matter of report should be the expression of a professional opinion whether, financial or non-financial.

3. **FS & Report**
The financial statements and the reports referred to in this clause means the FS and reports as ultimately finalized and submitted to the outside authorities.

B. Clause not applicable on signing of routine documents on which a professional opinion or authentication is not required and hence may be delegated:

- (i) Issue of **audit queries** during the course of audit.
- (ii) Asking for information or issue of **questionnaire**.
- (iii) Letter forwarding **draft observations/financial statements**.
- (iv) Initiating and stamping of **vouchers** and of schedules prepared for the purpose of audit.
- (v) Acknowledging and carrying on **routine correspondence** with clients.
- (vi) Issue of **memorandum of cash verification** and other **physical verification** or recording the results thereof in the books of the clients.
- (vii) Issuing **acknowledgements for records** produced.
- (viii) Raising of **bills** and issuing acknowledgements for money receipts.
- (ix) Attending to **routine matters in tax practice**, subject to provisions of Section 288 of the Income-tax Act, 1961.
- (x) Any other matter **incidental to the office administration** and routine work involved in practice of accountancy.

Note: Delegation of signing power of above routine matters will **still make auditor responsible for them**

- C. **Mode of Signing**
 - i. Council has decided while signing a report or, FS or other document CA is statutorily required to disclose his name, he should disclose
 - ii. Where there is no such statutory requirement, the member may sign in the name of the firm.
 - iii. SA 700 mandates mentioning of Membership No. and Firm Registration No.
 - iv. Members' attention is also drawn towards UDIN Guidelines of the Institute.

First Schedule - Part II & III

PART II Professional misconduct in relation to members of the Institute in service

A member of the Institute shall be deemed to be guilty of professional misconduct, if he **being an employee of any company, firm or person:**

1 **CLAUSE** pays or allows or agrees to pay directly or indirectly to any person any share in the emoluments of the employment undertaken by him.

Exclusion: Clause does not restricts such sharing or commitments among relatives, dependents, friends etc., if there is no relationship in procuring or retaining the job and payment is not a consideration for job procurement or retainership.

The clear verdict of this clause is that job must be procured and retained with own professional capabilities and not by any financial deal impairing professional dignity.

2 **CLAUSE** accepts or agrees to accept any part of fees, 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 a member is in employment, he 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.

Note for Clause 1&2, Part II:

A member in the foregoing circumstances would be guilty of misconduct regardless of the fact that he was in whole-time or part-time employment or that he was holding Certificate of Practice along with his employment.

PART III 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 -

1 **CLAUSE** not being a fellow of the Institute, acts as a fellow of the Institute.

2 **CLAUSE** 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.

Example 1:

CA not disclosed to the Institute at any time about his engagement as a proprietor of a non-CA's firm while holding COP and had not furnished particulars of his engagement as Director of a company despite various letters of the institute which remained unreplyed. Held that he was guilty under Clause (11) of Part I and Clauses (1) and (3) of Part III of the First Schedule.

Example 2:

Where a CA 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 Institute. Held that he was guilty under Clause (2) of Part III of the First Schedule.

3 **CLAUSE** while inviting professional work from another CA or while responding to tenders or enquiries or while advertising through a write up, or anything as provided for in items (6) and (7) of Part I of this Schedule, gives information knowing it to be false.

Example:

Like information provided in tenders, enquiries, response to advertisement, CV type write ups etc.

PART IV

Other 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 other misconduct, if he-

1
CLAUSE

is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding 6 months.

2
CLAUSE

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.



SJ Tips

Other misconduct covers unlawful acts like non-repayment of debt, not responding to legal bodies etc. and also acts which relate to professional work but not covered elsewhere like bribes to secure work, not returning client books, promoting client to manipulate FS etc.

Note: If imprisonment tenure exceeds 6m, this case will be covered in the Clause of Part III of Second Schedule.

8.1. The Second Schedule

Part I

Professional Misconduct in relation to Chartered Accountants in Practice

A CA in practice shall be deemed to be guilty of professional misconduct, if he-

1
CLAUSE

Discloses information acquired in the course of his professional engagement to any person other than his client so engaging him without the consent of his client or otherwise than as required by any law for the time being in force.

Important Notes:

1. Duty not to disclose continues **even after the completion** of assignment.
2. If disclosure is **required as a part of performance of professional duty**, the fact that such performance is required by the client would itself amount to the client consenting to such disclosure.
3. If disclosure is required in other cases, consent of the client should be given by **competent person** like in case of:
 - a. **Sole proprietary concern** - By the proprietor or his constituted attorney
 - b. **Partnership firm** - By any partner
 - c. **Company** - BODs unless a resolution in general meeting is required by the Act or MOA or AOA. Similarly, consent may be sought from MD if the powers of BODs are delegated to him.
4. **Access to working papers** - There is a difference between sharing of working papers and sharing of information. So far as the information is concerned, he can provide the same to the client or to a **Regulatory body, after obtaining the consent of the client**. An auditor is not required to provide

- a. the client or
- b. other auditors of the same enterprise or
- c. its related enterprise such as a parent or a subsidiary, access to his audit working papers.

5. Right to access others working papers -

Statutory auditor of company has to consider the report of the branch auditor and has a right to:

- a. seek clarifications and/or
- b. to visit the branch if he deems it necessary

- c. rely on the work of another auditor, without having any right of access to the audit working papers of the other auditor.

Here 'auditor' includes 'internal auditor'.

6. Discretion to provide access

Auditor may, at his discretion, in cases considered appropriate by him, make portions of or extracts from his working papers available to the client.

7. Disclosure required by law

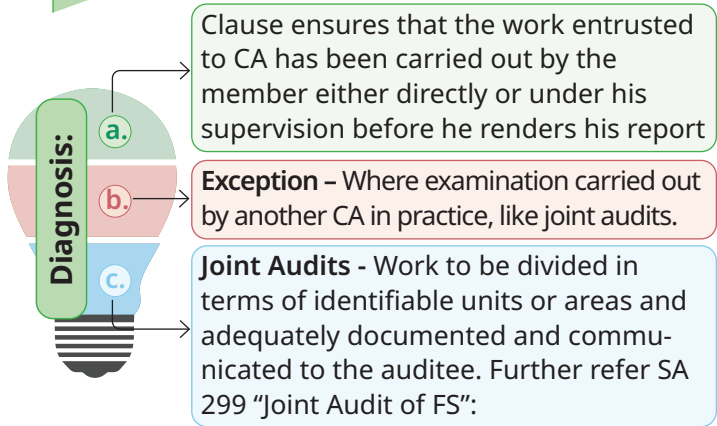
- a. If it is not legally permissible to claim privilege under the **Evidence Act, 1872 (Section 126)**, the disclosure made by a member, under any legal compulsion may not be considered as misconduct. Such matters involve niceties of law and expert legal advice may be sought prior to such disclosure.

- b. The only circumstance in which this duty of confidence may give rise to a difficulty is where the accountant has reason to believe that the client has been guilty of some unlawful act or default. This matter is of special significance in the case where the client is guilty of **tax evasion**.

c. Section 143(12) of CA13

if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately **report the matter to the Central Government within 60 days** of his knowledge and after following the prescribed procedure (Subject to amount involved or expected to be involved in individual instance of fraud being not less than Rs 1 crore).

2 **CLAUSE** Certifies or submits in his name or in the name of his firm, a report of an examination of FS unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another CA in practice.



4 **CLAUSE** Expresses his opinion on FS of any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest.

Terms used in the clause:

- i. "Substantial Interest" - See Clause 11 of Part I of First Schedule
- ii. "FS" used in this clause would:
 - Cover both reports and certificates given after examination or any attest function under any statutory enactment or for income-tax assessments.

However, it will not include statements that are not meant to be submitted to any outside authority.

IMP Notes:

1. Auditor should not express his opinion on FS of any business or enterprise wherein he has a substantial interest to assure the public as regards the faith and confidences that could be reposed on the independent opinion expressed by the auditors.
2. Council is of the view that CA should interpret requirements of this clause more strictly than what law requires to avoid any compromise to independence or conflict of interest and duty.
3. **Clause applies to all types of attest functions** e.g., Tax Audit, GST Audit, Concurrent Audit of Banks, Concurrent Audit of Borrowers of Financial institutions, Audit of non-corporate borrowers of Banks and Financial Institutions, Audit of Stock Exchange, Brokers, etc.
4. Following situations in **opinion of Council create substantial interest** and hence should not be undertaken by a member:
 - i. **Liquidator** should not accept assignment of preparation of Statement of Accounts to be filed u/s 348(1) of CA13

3 **CLAUSE** Permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in manner which may lead to the belief that he vouches for the accuracy of the forecast.

IMP Notes: (Refer SAE 3400 also)

1. CA can participate in the preparation of profit or financial forecasts and can review them, provided he indicates clearly in his report the:
 - a. sources of information,
 - b. the basis of forecasts and
 - c. also the major assumptions made in arriving at the forecasts and so long as he does not vouch for the accuracy of the forecasts.
2. **Projections** - Same opinion apply to projections made on the basis of hypothetical assumptions about future events which are not necessarily expected to take place.
3. **Guidance Note on Reports in Company Prospectuses** - Note provides guidance on compliance with the provisions of CA13 and SEBI Regulations relating to the reports required to be issued by CAs in prospectus.

Second Schedule - Part I

- ii. CA in practice as well as in employment – Not to certify FS of concern in which he is employed, or concern under same management. This restriction would not however apply where the certification is permitted by any law.
- iii. Audit of college, if he is working as a part-time lecturer in it.
- iv. Audit of a Trust where his partner is either an employee or a trustee. (Refer ESB decision)
- v. Where member, his firm or his partner or his relative has substantial interest in the business or enterprise (not being a company).

- a. Concern of which a member is either an owner or a partner
- b. Concern where partner or relative of a member has substantial interest
- c. Where member is holding a position in the Company as Director, officer or employee
- d. Clause 11, Part1, First Schedule – Prohibits member who is Director Simplicitor in Company or Parent company, from auditing accounts of the Company.
- e. Section 141(3)(b)&(c) of CA13 specifically prohibits a member from auditing the accounts of a Company in which:

| | | |
|---|--|--|
| he is an officer or employee of the Company, or | in the employment of an officer or employee of the Company | the partner of such member is an officer or employee of the Company. |
|---|--|--|

(Irrespective of the question of substantial interest).

- f. Section 141(3)(d)(i) of CA13 disqualifies a person from being auditor of a Company, if he or his partner or relative holds:
- | | |
|---|--|
| Any security or interest in the Company / subsidiary / holding / associate company / fellow subsidiary. | Except his relative may hold securities upto face value of 100,000/- in the company. |
|---|--|
- g. Section 141 (3) (f) of CA13 disqualifies a person from being auditor of a Company where the relative of the member is a:

- director or
- employed as KMP

h. Assignment of certification, wherein the client is relative (as defined in AS18) of the member.

- 5. Independence is also required in discharge of his duties as a tax consultant or as a financial adviser else his statements would not be relied upon as correct by the authorities.
- 6. Members not to write Books of Account for auditee clients: The Council has clarified that the members are not permitted to write the books of account of their auditee clients.
- 7. Internal auditor not to be the Tax auditor / GST auditor / Statutory auditor simultaneously
- 8. Cooling off period after completion of tenure as Director: A member shall not accept the assignment of audit of a Company for a period of 2 years from the date of completion of his tenure as Director, or resignation as Director of the said Company.
- 9. Members to satisfy whether appointment is:
 - i. as per the statute - appointment is in accordance with the statute governing the entity.
 - ii. to be authorised by regulatory authorities Eg. co-operative societies, trusts etc. – Body has authorized appointment or MaC for such appointment
 - iii. By an entity managed by MaC or Board of Trustees or Board of Governors - His appointment is duly made by a resolution passed of such MaC or Board
 - iv. In case of partnership or sole proprietary concerns - Ensure letter of appointment/ engagement is given by the firm/sole proprietor before he accepts
- 10. Section 288 of Income-tax Act, 1961 describe disqualifications for the purpose of Tax Audit.

5 **CLAUSE** fails to disclose a material fact known to him which is not disclosed in a FS, but disclosure of which is necessary in making such FS where he is concerned with that FS in a professional capacity.

Legend - MaC: Management Committee

6 CLAUSE

Fails to report a material misstatement known to him to appear in a FS with which he is concerned in a professional capacity.

Important Points for Clause 5 and 6:

▶ Materiality of the matter, as provided in SA 320 is considered before holding CA guilty under this clause.

▶ "FSs" as discussed in Clause 12-1-1

▶ **Submitting Incorrect Information as Authorised Representative under Tax Laws:**

Here CA submits the statements before the taxation authorities based on data provided by the management and hence clause 5 and 6 will not be attracted. In such assignments CA provides data based on data provided to him and has no responsibility to check the authenticity of the data and thus would not be held liable for professional misconduct.



SJ Tips for Clause 5 and 6:

▶ Failure to disclose material fact in the auditor's report would attract clause 5 and failure to report a misstatement in the report would attract clause 6. Hence usually clause 5 is referred when there is an omission of material fact. However in several questions both clauses are referred to in the answer

▶ **Clause 5 & 6 - Knows does not mentions:** Auditor is aware of error/fraud and still does not discloses/reports

▶ **Clause 2,7,8 - Fails to detect:** Auditor is unaware of misstatements due to his inadequate checking and hence fails to detect a misstatement.

7 CLAUSE

does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.

Important Points:

▶ **Applicability:** Clause gets attracted whenever it is necessary to judge whether the accountant has honestly and reasonably discharged his duties.

▶ **Negligence:** Covers wide field from fraud to collateral minor negligence.

Courts view on auditor's duty -

It is the duty of an auditor to perform with reasonable skill, care and caution. What is reasonable skill, care and caution must depend on the particular circumstances of each case. An auditor is not bound to be a detective, i.e. to approach his work with suspicion that there is something wrong. He is a watchdog but not a bloodhound. If there is anything suspicious he should probe it to the bottom; but otherwise he is only bound to be reasonably cautious and careful.

▶ **Example -** Where a CA had not completed his work relating to the audit of the accounts a company and had not submitted his audit report in due time he was guilty of professional misconduct under Clause (7).



SJ Tip

▶ Clause referred not just for audit assignments but for any professional duty that a CAiP has performed carelessly.

▶ In certain answers Clause 2, 7 and 8 are referred to jointly

8 CLAUSE

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.

Important Points:

• CA must determine the extent of information, to be obtained before expressing an opinion and should not express an opinion before obtaining the required data and information.

• Clause expects from auditor to express disclaimer due to inadequacy of information or data making him unable to express a categorical opinion.

• Hence, auditor's opinion should be as per SA 705.

Applicability on Certification:

A Case Study: Certificate is a written confirmation of the accuracy of the facts stated therein and does not involve any estimate or opinion. A CA is required to clearly state his limitations/assumptions in his certificates alongwith the basis/papers relied upon by him. If CA fails to

Second Schedule - Part I

do so he will be guilty for grossly negligence and failure to obtain sufficient information while issuing the certificates. Thus, guilty under clause (7) and (8).



SJ Tip

Usually question specifying "opinion" given by auditor is incorrect, will be answered with reference to Clause 8. Clause 2 and 7 may also be relevant.

9 CLAUSE

Fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances.

Diagnosis:

Clause applicable when RELEVANT SA not observed by auditor and such fact is not reported in the report

Note:

Since SAs compliance is mandatory for auditor, any non-compliance to attract this clause. Further CA 2013 S. 143 (9) & (10) also requires auditor to comply with SAs

Certain generally accepted procedures for audit include:

- i Generally Accepted Audit Procedure (GAAP):** What constitutes "generally accepted audit procedure" would depend upon the facts and circumstances of each case for eg. SA's
- ii Audit of Listed Companies:** Shall be done by only those auditors who have:
 - subjected themselves to the Peer Review process of the Institute, and
 - hold a valid certificate issued by the Peer Review Board of the ICAI
- iii FRN and Membership No.:** The members are required to mention in all reports issued pursuant to any attestation engagements, including certificates.
- iv Unique Document Identification Number (UDIN):** The members may note that UDIN is mandatory from 1st July, 2019 on all Corporate/ Non-Corporate Audit, Attest and Assurance Functions. (Also refer Council General Guidelines, 2008)

- v Standards on Auditing(SA):** Formulated in the context of an audit of FSs by an independent auditor
- vi Statements on Auditing:** Issued with a view to securing compliance by professional accountants on matters which are critical to discharge - hence mandatory.
- vii General Clarifications:** Issued with a view to clarify any issues.
- viii Guidance Notes:** Issued to assist professional accountants in implementing the Eng. Standards and the SQC issued by the AASB.
- ix Technical Guides, Practice Manuals, Studies and Other Papers Published by AASB**
- x Special procedure:** Two instances of an audit requiring a special procedure are given below:-
 - a Certifying figures of circulation of Newspapers etc.:** Audit Bureau of Circulations (ABC) Ltd. Members are normally supplied by the Rules and Regulations from ABC under which the certification of circulation is to be carried out.
 - b Verification on behalf of Banks:** Members are required to be very familiar with the special procedure required in these matters and act accordingly.

10 CLAUSE

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.

1. CA to deposit client's money in a **separate banking account**, and
2. To **utilize** such funds only in accordance with **client's instructions** or for purposes intended by the client.
3. Council suggestions to overcome practical difficulties:
 - (i) Fees received in advance against services to be rendered** - Does not fall under this Clause.

Second Schedule - Part I & II

- (ii) **Moneys received for expenses to be incurred** - For example, payment of prescribed statutory fees, purchase of stamp paper etc., which are intended to be spent within a reasonably short time (depends of facts) need not be put in a separate bank account.
- (iii) **Moneys received for expenses to be incurred beyond a reasonably short time** - Should be put in a separate bank account immediately.
- (iv) **Moneys received by a CA on behalf** - For example as trustee, executor liquidator, etc. must be put in a separate bank account immediately.

Part 2 A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he -

contravenes any of the provisions of this Act or the regulations made there under or any guidelines issued by the Council.

- Every member to act within the framework of the CAs Act and the Regulations and Guidelines made by Council thereunder. Any violation would amount to misconduct under this Clause.
- Commonly contravened Regulations:

- Regulation 43 → Engagement of Articled Assistant
- Regulation 46 → Registration of Articled Assistant
- Regulation 47 → Premium from Articled Assistant (No Loan from Articles)
- Regulation 48 → Stipend to Articled Assistant
- Regulation 56 → Termination or assignment of Articles
- Regulation 65 → Articled Assistant not to engage in any other occupation
- Regulation 67 → Complaint against the employer (from Articled Assistant)
- Regulation 68 to 80 → Audit Assistant
- Regulation 190 → Register of offices and firms
- Regulation 190-A → CAs not to engage in any other business or occupation
- Regulation 191 → Part time employment's a CA may accept
- Regulation 192 → Restriction on fees



SJ Tips

A non-compliance of a Regulation Say R. 191 will attract Clause 11-1-1 and is also mentioned under this clause, which clause to be referred to...?

Usually a specific clause will prevail over generic clause hence Clause 11-1-1 would be more appropriate. In exam if time permits both clauses may be mentioned.

- **Example** - CA signed a report without UDIN, misconduct under which Clause? If audit report, then Clause 9-1-2 else 1-2-2.

2 CLAUSE

being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment except as and when required by any law for the time being in force or except as permitted by the employer.

- Similar to Clause 1-1-2 but for CAiS

3 CLAUSE

includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false.

If information submitted to the Institute, Council etc.:

- **Knowing it to be false**- Guilty of misconduct under this clause.
- **Unknowingly or fails to submit**- Guilty under Clause 2-3-1



SJ Tips

False information while applying to tenders, empanelment, would attract Clause 3-3-1 but if false information submitted in Multi-purpose Empanelment Form then Clause 3-2-2 attracted as the same is submitted to ICAI.

4 **CLAUSE** Defalcates or embezzles money received in his professional capacity. Defalcation and embezzlement of moneys received in professional capacity amounts to fraud (Covered in SA-240) and such member will be deemed to be guilty of professional misconduct under this clause.

Part 3 A member of the Institute, whether in practice or not, 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 6 months.

Imprisonment awarded for a term exceeding 6m in any civil/criminal matter treated as a major offence under 'other misconduct' is included in this Schedule.

9. COUNCIL GUIDELINES

Council General Guidelines, 2008

(issued under Clause (1) of Part-II of Second Schedule to The CAs Act, 1949):

Chapter I Name & Applicability

Guidelines issued by the Council called as the 'Council General Guidelines, 2008'.
Applicable to all the Members whether in practice or not.



SJ Tips

Guideline prescribes code of conduct and not misconduct.

Chapter II Conduct of a Member being an employee

CA who is an **employee shall exercise due diligence and shall not be grossly negligent in the conduct of his duties.**

Chapter III

This Chapter is omitted.

Chapter IV

This Chapter is omitted.

Chapter V Maintenance of books of account

CAiP or Firm, shall keep in **respect of professional practice**, proper books of account including-

(i) a Cash Book;

(ii) a Ledger.



SJ Tips

This is irrespective of CA's income being within the tax exemption limit or income being less than the limits prescribed u/s 44AA of the Income Tax Act, 1961.

Chapter VI Tax Audit assignments under Section 44 AB of the Income-tax Act, 1961

- a. **Limit per CAiP** = 60 audits for each financial year
- b. **Limit per CA Firm** = Number of CAiP partners* x 60 audits for each financial year
- c. If CA is a **partner in multiple firms** his limit across all firms for this clause will be 60 in aggregate.
- d. In computing the "specified number of tax audit assignments" **each year's audit** would be taken as a separate assignment.
- e. Audits **u/s 44AD, 44ADA1 and 44AE of the Act** shall not be considered in limit of 60.
- f. The audit of the **head office and branch offices** of a concern shall be regarded as one tax audit assignment.
- g. The audit of **one or more branches** of the same concern by one CA in practice shall be construed as only one tax audit assignment.
- h. A CA being a **part time practicing partner** of a firm shall not be entitled to accept any tax audit assignments of the firm.
- i. A CA in practice shall **maintain a record** of the tax audit assignments accepted by him in each assessment year in the format as may be prescribed by the Council.
- j. **Record to be maintained** for each CAiP FY wise with details of : Assessee Name, AY, Date of Appointment and Acceptance, Name of Firm for whose behalf audit accepted, Date of communication with previous auditor

k. Limit is for acceptance of audit and not for signing of auditor's report

For sake of illustration: A CA firm with 3 CAiP partners may accept 180 audits u/s 44AB of the Act and all 180 audits may be signed by single partner subject to SQC 1.

⊗ A CA in practice in full-time or part time employment elsewhere, shall have no eligibility to accept any audits.

⊗ Record – CA Firm CAiP shall maintain a record of audit assignments accepted in the prescribed format [Name of company, CIN, Date of appointment & acceptance]

Chapter VII Appointment of an Auditor in case of non-payment of undisputed fees (Refer Clause 8-1-1)

a. Statutory auditor (audit under Companies Act or other Statute) shall not accept the audit where **undisputed audit fee of another CA** for carrying out the statutory audit has not been paid.

b. **Exception** - In case of **sick unit**, the above prohibition shall not apply.

c. **Undisputed Audit Fees** - Provision for audit fee in accounts signed by both auditee and auditor along with other expenses.

d. **Sick unit** - Unit registered for **not less than 5 years**, which has at the end of **any financial year** accumulated losses = or > its entire net worth.

Chapter VIII Specified number of audit assignments (Company Audit)

⊗ CAiP shall not hold **at any time** appointment of more than **30 companies'** audit assignments u/s 141 of the CA13.

⊗ Companies to **include private and public companies** but will **not include One Person Companies and Dormant Companies**.

⊗ For CA Firm limit will be for **every partner** of the firm (similar way as discussed in Chapter VI).

⊗ **Joint Audit** – Considered as one audit for each join auditor

⊗ Audit of **head office and branch offices** - Regarded as one audit assignment.

⊗ Audit of **one or more branches** of the same Company by one CAiP or CA firm - Construed as one audit assignment only.

⊗ Number of partners of a firm **on the date of acceptance of audit assignment** shall be taken into account.

Chapter IX Appointment as Statutory auditor

1. CAiP shall not accept the appointment as statutory auditor of:

Public Sector Undertaking(s)

Government Company(ies)

Listed Company(ies) and

other Public Company(ies) having turn-over of ₹ 50 crores or more in a year

where it accepts any **other work/service/ assignment** (other work) in regard to the same entity and **remuneration in total exceeds the fee payable for carrying out the statutory audit of the same entity**. Here the other work accepted by statutory auditor and its associate concern both shall be included.

Note: If more stringent conditions are prescribed by authorities, those shall apply. (Eg. Section 144 CA13)

2. **Related Definition:**

⊗ **Other work** shall include Management Consultancy and all other professional services permitted by the Council pursuant to Section 2(2) (iv) of the CAs Act, 1949 but **shall not include:-**

a) audit under any other statute;

b) certification work required to be done by the statutory auditors; and

c) any representation before an authority;

⊗ **"Associate concern"** means any corporate body or partnership firm which renders the Management Consultancy and all other professional services permitted by the Council wherein the **proprietor and/or partner(s)** of the statutory auditor firm **and/or their "relative(s)"** is/are **Director/s or partner/s** and/or jointly or severally hold **"substantial interest"** in the said corporate body or partnership

Council General Guidelines

- “Relative” and “Substantial interest” shall have the same meaning as discussed in Clause 4-1-2.

SJ Tips

ICAI module has a question on company auditor offered MCS assignment. In my opinion it should be answered with reference to provisions of Section 144 which prohibit acceptance of such assignment and not based on above Chapter limits, as given in ICAI answer.

Chapter X Appointment of an auditor when he is indebted to a concern

- CAiP or partner of CA firm or CA firm or Relative of such CAiP or partner;
- 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 indebtedness of third person to the concern,
- for limits fixed in the statute and in other cases for **amount exceeding ₹ 100,000/-**.

SJ Tips

For company audit the limits are fixed under Section 141(3)(d)(ii) and (iii) of CA13, and for Tax Audit limits are prescribed u/s 288 of Income Tax Act, 1961.

Audit Fees received on **progressive basis** is not indebtedness as per Research Committee of ICAI

Audit Fees received in **advance** is regarded as indebtedness

Indebtedness includes debt which is **not yet due** for payment.

ICAI clarified that in case of **credit card indebtedness** would be considered after expiry of the due date under the payment cycle of credit card.

Chapter XI Directions in case of unjustified removal of auditors (Refer Clause 8-1-1)

CAiP being the incoming auditor, to follow Council / Committees directions of not to accept the appointment as auditor in case of unjustified removal of the earlier auditor.

Chapter XIII

Guidelines on Tenders (Discussed in Clause 6-1-1)

Chapter XIV Unique Document Identification Number (UDIN) Guidelines (Refer Clause 9-1-2)

To curb the malpractice of false certification/ attestation by the unauthorized persons & bogus certificates Institute implemented the concept to generate UDIN mandatorily for all kinds of:

- Certificates** - w.e.f. 1st February, 2019;
- GST and Tax Audit Reports** - w.e.f. 1st April, 2019; and
- Other attest function** - w.e.f. 1st July, 2019.

Chapter XV Guidelines for Networking

A MEANING OF NETWORK & NETWORK FIRM

➔ **Network** : A larger structure:

- That is aimed at **co-operation**; and
- That is **clearly aimed at**:

profit or cost sharing or shares common ownership, control or management, common quality control policies & procedures, common business strategy, the use of a common brand name, or a significant part of professional resources.

➔ **Network Firm** : Means a **firm or entity** that belongs to a network.

B CONCEPT OF NETWORK

(1) **Facts and circumstances** : Whether these larger structures create a network? It depends on particular facts and circumstances and not on whether the firms and entities are legally separate and distinct.

CGG: Networking Guidelines

(2) Judgment : Whether a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that the entities are associated in such a way that a network exists.

(3) Profit or cost sharing : Where the larger structure is aimed at co-operation and it is clearly aimed at profit or cost sharing among the entities within the structure, it is deemed to be a network.

Costs not itself create a network:

- (i) Immaterial costs
- (ii) Cost related to the development of audit methodologies, manuals, or training courses

(4) Share common ownership, control or management (OCM) : Where the larger structure is aimed at cooperation and the entities within the structure share common OCM, it is deemed to be a network. This could be achieved by contract or other means.

(5) Common quality control policies and procedures:

Those designed, implemented and monitored across the larger structure.

(6) Common business strategy : It involves an agreement by the entities to achieve common strategic objectives.

(7) Common brand name :

It includes common initials or a common name.

Note:-

It may give the appearance that it belongs to a network if it makes reference in its stationery or promotional materials to being a member of an association of firms.

Accordingly, if care is not taken in how a firm describes such memberships, a perception may be created that the firm belongs to a network.

(8) Share a significant part of professional resources:

Professional resources include:

- i. Common Information systems
- ii. Partners and staff;
- iii. Technical departments
- iv. Audit methodology or audit manuals; and
- v. Training courses and facilities.

C FORMS OF THE NETWORK

1 Mutual entity

- ↳ Which will act as a facilitator for the constituents of the Network.
- ↳ Network itself will not carry out any professional practice.

2 Condition : Max. Partners - 20

2 Partnership firm

3 Limited Liability Partnership

- ↳ Subject to the provision of CA Act and Rules and such other laws as may be applicable.

4

- ↳ Subject to the guidelines prescribed by Institute for:
 - (i) Corporate form of practice and
 - (ii) Formation of management consultancy services company.

4 Company

5 Other entities

- ↳ Sole Practitioner/ proprietor, partnership or any such entity as may be permitted by the Act.



SJ's note:

- (i) A firm is allowed to join only one network.
- (ii) Firms having common partners shall join only one Network.

D APPROVAL OF NAME OF NETWORK AMONGST FIRMS REGISTERED WITH INSTITUTE:

(1) Approval of name :

- (i) Network may have distinct name - which should be approved by Institute (ICAI)
- (ii) To distinguish from firms "& Affiliates" word shall be used
- (iii) "&Company, & Associates" - word shall not be used

Examples of names of Network - if network is a:

- ↳ **Mutual Entity or Partnership Firm:** AB & Affiliates
- ↳ **LLP:** AB Affiliates LLP
- ↳ **Limited Company:** AB Affiliates P. Ltd/Limited

(2) Application :

Prescribed format of application- **Form-A**

(3) Approval/Rejection :

- ↳ Institute shall approve/reject application and
- ↳ Intimate the same to network within **30 days** (from receipt of form) on address mentioned in **Form A**

(4) Withdrawal of name :

- (i) **Regulation 190** applies on name of network
- (ii) ICAI may withdraw name at any time-if found undesirable
- (iii) Provisions of Companies Act 2013 applicable in spirit

(5) Entitlement to practice :

- (i) Mere approval of name - not entitle to carry on practice in its own name

E REGISTRATION OF NETWORK WITH ENTITIES IN INDIA

(1) Reservation of name :

- (i) After approval of name - Institute reserves such name for **3 months** from the date of approval.

(2) Registration :

- (i) The Network shall get itself registered with the Institute
- (ii) By applying in **Form B** within the period of **3 months**
- (iii) It is mandatory in nature.

(3) Cancellation :

- (i) On the expiry of the said period.

(4) Deemed network :

- (i) If different Indian firms are networked with a common Multinational Accounting Firm, they shall be considered as a part of a network.

F LISTING OF NETWORK WITH ENTITIES OUTSIDE INDIA

(1) Filing of declaration with Institute

- (i) By authorized representative (s) of the
- (ii) Indian Member firm (s)
- (iii) Member constituting the Network
- (iv) In **Form 'D'** within **30 days** from the **date of arrangement**.

(2) Can join only one network

- (i) Entities as permitted by the Act
Eg. Proprietary, partnership firms, LLP etc.
- (ii) Provided they can join only one network; and
- (iii) Firms having common partners shall join only one such network.

G CHANGE IN CONSTITUTION OF REGISTERED NETWORK

- On account of any entry into or exit from the Network
- Communicate the same to institute In **Form 'C'** within **30 days** from the **date of change**.

H ETHICAL COMPLIANCE : Applicable ethical requirements prescribed by ICAI:

(1) Independence : If one firm of the network is the statutory auditor of an entity:

- (i) then associates or the said firm directly/indirectly
- (ii) shall not accept the **internal audit** or **book-keeping** or such **other professional assignments** which are prohibited for the statutory auditor firm.

(2) Guidelines of ceiling on Non-audit fees :-

- (i) Network firm who is doing statutory audit :- Same as mentioned chapter IX of CGG.
- (ii) For other firms of the same Network collectively:- **3 times** of the fee payable

(3) In case of Rotation of firms :

- Prescribed by regulatory authority:
- (i) No member of network can accept appointment in place of retiring auditor of network

(4) Advertisement by network :

- (i) May advertise as permitted by ICAI guidelines
- (ii) May use "Network Firms" on their professional stationary

(5) Compliance of Ethical Standard :

- (i) As prescribed by Council from time to time

I CONSENT OF CLIENT

Effect of registration of network with Institute:

- deemed to be a public notice of the network; and therefore consent of client will be deemed to be obtained.

J FRAMEWORK OF INTERNAL BYELAWS OF NETWORK:

(1) Appointment of a Managing Committee-

- (i) from among the managing partners
- (ii) terms and conditions to be determined, alongwith
- (iii) minimum and maximum number of members

Council General Guidelines

- (2) Administration of the network
- (3) Contribution of membership fees to meet the cost of the administration
- (4) Identification of responsible partner of firm
- (5) Dispute settlement process
- (6) Development of training materials
- (7) Issue of news letters
- (8) Development and maintenance of data base
- (9) Appointment of a technical director
- (10) Library etc.

Note :- These clauses are illustrative.

K REPEAL AND SAVING:

The erstwhile "Rules/Guidelines of Network" issued by the Institute stands repealed from the date of commencement of these Guidelines.

Chapter XVI - CA Logo Guidelines (Refer Clause 6-1-1)



1. **CA in Blue** - the corporate colour denotes creativity, innovativeness, knowledge, integrity, trust, truth, stability and depth.
2. **Upside down tick mark** - Typically used by CAs, symbolizes the wisdom and value of the professional.
3. **Green colour in the tick mark** - Signifies growth, prosperity, harmony and freshness.
4. Members are encouraged to use the logo as it is refraining from;
 - a) Changing design, colours or the white background;
 - b) Rotating or tilting the logo.

Chapter XVII - Guidelines for Corporate Form of Practice

1. The Council decided to **allow members** in practice to hold the office of **MD, WTD or Manager** of a body corporate within the meaning of the Companies Act provided that the body corporate is engaged **exclusively in rendering Management Consultancy and Other Services** permitted by the Council in pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949 and complies with the conditions(s) as specified by the Council from time to time in this regard.

2. The members can **retain full time COP**.
3. There will be **no restriction** on the quantum of the **equity holding** of the members, either
4. Such members shall be regarded as being in full-time practice and therefore **can continue** to do **attest function**
5. The **name** of the Management Consultancy Company is required to be **approved** by the Institute and such **Company** has to **be registered with the Institute**.

6. Ethical Compliance:

- (i) Once the Company is Registered with Institute it has to comply with the following:
 - (a) If the individual practitioner/ sole-proprietorship firm/partnership firm is the **statutory auditor** of an entity then the Management Consultancy Company **should not accept the internal audit or book-keeping** or such other professional assignments, which are prohibited for the statutory auditor firm.
 - (b) The Guideline in respect of **Ceiling on Non-audit fees is applicable in relation to a Management Consultancy Company (Chapter IX- CGG)**
 - (c) **The Management Consultancy Company shall comply with clauses (6) & (7) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 and other directives issued by the Institute.**

- (ii) The Management Consultancy Company shall **give an undertaking that it shall comply with clauses (6) & (7) of Part-I of the First Schedule** and such other directives as may be issued by the Institute from time to time.

7. Object of Management Consultancy Company:

- (a) engage itself **only in Management Consultancy & Other Services**.
- (b) shall **give an undertaking that** it shall render only Management Consultancy & Other Services

COUNCIL ADVERTISEMENT GUIDELINES, 2008:

A.

Council Guidelines for Advertisement in Print or Electronic Media (Write up)

Guidelines

For Advertisement For the Members in Practice (for Print or Electronic media)

The write-up may include **only the following information:**

(Now definiton includes social networking websites also)

For Members:

Name, Membership No., Age, Date of becoming ACA, Date of becoming FCA, Date which COP held, Recognised qualifications, Languages known, Telephone/Mobile/Fax No., Professional / Address Web, E-mail, CA logo, **Passport Style Photograph**, Services provided Names and details of the employees and their particulars on the lines allowed for a member as stated a. CA's b. Other professional c. Articles/Audit Assistants, d. Other Employees.

Position held as Director of MD in a MCS Co. registered with the ICAI.

For Firms:

Name of the Firm, Firm Registration No., Year of Establishment Professional Address, Working hours, Telephone No. (s) / Mobile No. / Fax No., Web Address, E-mail, No. of partners, CA logo, **Passport Style Photograph**, Services Provided, Name of the proprietor /partners and their particulars on the lines allowed for a member as stated above, Names and details of the employees and their particulars on the lines allowed for a member as stated

- a. CAs
- b. Other Professionals
- c. Articles / Audit Assistants
- d. Other Employees.

Affiliation with a Network registered with the ICAI

Other Conditions:

The write-up shall comply with the following conditions: -

- It shall be **honest and truthful**.
 - There shall be **no exaggerated claims** for the services offered
 - It must **not make any disparaging references** or unsubstantiated comparisons to the work of others.
 - It should not be of a nature that may bring the profession into **disrepute**.
 - It should **not contain testimonials** or endorsements concerning Member(s)/names of clients/ fees charged.
 - It should **not contain** any info. about **achievements /awards (except CG or SG or Reg. bodies)** or any other position /accreditation/ granted by any organisation.
 - **Monogram** of any kind or use of any kind of catch words is **not permissible**.
 - The **Membership No./FRN** is mandatory to be mentioned.
 - It should not be of **font size exceeding 14**.
 - It must **not be violative** of any provisions of CAs Act, 1949,CA Reg's, 1988, CoE, 2020 or any Guideline of the Council
- The ICAI may issue a reasoned directive for removal or withdrawal of the whole write-up or of any part(s) thereof

B.

Council Guidelines on Website of the CA Firms (Website of the CA Firms)

Website

Council General Guidelines for permitting to post their particulars at website

Permitted features:

- Free to create website
- Any format / color
- Can mention website address on professional stationery
- **Pull mode not in push mode**

Prohibited information:

(They can't provide on website)

- Name of clients and fee charged permissible only where it is required by a regulator and only till such period as required
- Logo (other than that prescribed by ICAI)
- No photograph (other than passport style photo of member)
- No advertisement

Permitted information within CA's Website

- Name of member / firm
- Member's / firms address / telephone no. / fax / e-mail id
- Partner's name and their qualifications, year of qualification, home address, telephone number, email id. (i.e. Bio-data of Partner)
- Employee's names and their qualifications
- Job vacancies including article ship
- Passport - style - photograph of members
- Reference about ICAI/govt. related website
- Articles etc. of professional interest such as budget highlights but not to have non-professional related information like Health Tips.
- Bulletin Board
- Chat rooms between client & CA or among CA's. However confidentiality should be maintained.
- Date upto which website is updated.
- Common logo prescribed by ICAI
- Not to have any information contradicting with ICAI, or any information that is unbecoming a CA
- Year of Establishment
- Educational videos on topics of professional relevance are permissible
- The Firm can provide link of its page on Social Networking site. But can not solicit people to visit or like

Within website specific pull request for

- ☞ Nature of service rendered
- ☞ Nature of assignment handled
- ☞ Area of experience and qualifications of partners
- ☞ Area of experience and qualifications of employees
- ☞ No. of articled trainee

Address of website

- Website address should be in the name of CA/ CA firm
- It may be different from firm / CA name but should be as near as possible to their name.
- Address should not be such as results in soliciting the client
- Website address may be given on stationery without on solicitation for clients to visit website

Search Engine

- Listing of CA's website on search engine is allowed.
- ▶ But it should be on criteria such as CA, Indian CPA or any related field

Hyper Links

- In CA's website, link/reference of only ICAI related or govt. related website is allowed. No other link is permitted.
- No advertisements are permitted in CA's / Firm's website
- Links of other professional body websites are permitted

Intimation - ICAI

- Presently CA is not separately required to inform website address to ICAI. While submitting annual membership form website address is to be provided



SJ Tips

- No reference of firm name permitted
- Educational videos permitted (without firm name but can use CA as a prefix)
- Value adding content to help the profession grow is also permitted (can use CA prefix)

Personal account in SNW:

- Designation / Prefix - Using CA or Chartered Accountant with name on personal SNW - Exercise discretion, maintain dignity. Do not post derogatory or with negative portrayal of the profession.

Professional's or Firm's Account in Social Networking Websites (SNW)

| Social Networking Websites | CA FIRM | CAiP* | Name and Content permitted |
|---|---------|-------|---|
| Whether can have account / page on SNW like Facebook, LinkedIn etc? | Y | Y | Name permitted. Other content as per Advertisement Guidelines, 2008 |
| Whether can give link of his website or webpage in the SNW? | Y | Y | |
| Whether can give link of his SNW on his website? | N | NA | As per Website Guidelines |

*representing himself as a proprietor or partner of a firm

C.

Online Third Party Platforms

Permitted

- CAs or CAs' firms can only provide consultancy and advisory through such websites.
- Websites can make a statement that they are chartered accountants.

Prohibited

- Contact address of the CA concerned is not provided
- Website to not contain any material advertising professional achievements or status of such CA The name of CAs' firm with suffix "Chartered Accountants" would not be permitted.

D.

Publication of Name or Firm Name by CAs in the Telephone or other Directories

- Permitted** to have entries (in printed and electronic form) either by making a special request or an **additional payment**.
- The entry should not appear in any other **section/category** except that of 'Chartered Accountants'.
- Member/firm should belong to the **town/city** for which directory is being published.
- The **order of the** entries should not be in any manner other than **alphabetical**.
- The entry should **not be made in a differential or prominent manner** giving impression of publicity/advertisement.
- Entries should **not be restricted** and should be open to all CAs/firms of city.
- The members can also include their names in **trade/ social directories**.

E.

Application based Service Provider Aggregators (SPAs)

It is **not permissible** for members to list themselves with online Application based service provider Aggregators, **wherein other categories** like businessmen, technicians, maintenance workers, event organizers etc. **are also listed**.

F.

Specialised Directories for limited circulation

- Directory of a Particular Body:
 - Name, description address of member/firm **may appear** in any directory or list of members of a particular body if names are listed alphabetically.
- Specialised directory such as a "Who's Who":
 - **Use discretion** in supplying information, bearing in mind the nature and purpose of publications.
 - **May give** name, description, address, and directorships held, reasonable personal details and his outside interests but not client names.

G.

Exemptions for advertisements

Publication of the name and address of a member or firm, with description Chartered Accountant, in the press may be given provided that the advertisement is not displayed more prominently than usual. This includes advertisements:

- For **recruiting staff*** in the member's own office.
- On behalf of clients** requiring staff or wishing to acquire or dispose of business or property.
- For **sale of a business or property by a member acting as trustee, liquidator or receiver**.

*Avoid the expression as "a well-known firm", promotional element, nor should there be any suggestion that the services offered by the CA / firm are superior to others.

10 RECOMMENDED SELF-REGULATORY MEASURES

Few important recommendations are:

10.1 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.

This not applicable:

- (i) where the accounting records of the branches are maintained at the head office of the respective companies, and
- (ii) where significant operations of an undertaking or a company are carried out at its branch office.

10.2 Joint Audit

In the case of large companies, the practice of associating a practicing firm with less than 5 members as joint auditors should be encouraged.

10.3 Ratio Between Qualified and Unqualified Staff

At least 1 member for every 5 non-qualified members of the staff, excluding articled and audit assistants, typists, peons and other persons not engaged directly in such professional work.

10.4 Disclosure of Interest by Auditors in other Firms

Auditors should make disclosure of 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.

10.5 Recommended Minimum Scale of Fees

The recommended scale of Fees is to be charged as per the work performed for various professional assignments and is recommended separately for Class-A, B and C cities.

10.5.1 Fees - Relative Size:

Differentiated disclosure requirements for non-public interest entities and public interest entities are following:

1. For non-Public Interest Entities (PIE)

Disclosure is required where for 2 consecutive years:

Gross annual professional fees from an audit client represent > **40% of the total fees** of the firm.

2. For public interest entities-

Disclosure is required where for 2 consecutive years:

Gross annual professional fees from an audit client represent > **20% of the total fees** of the firm.

Exemption:

1. Firms where total fees received by firm does **not exceed 20 lacs of rupees.**

2. Audit of government companies, public undertakings, nationalised banks, public financial institutions, regulators or where appointments of auditors are made by the Government.



11. ETHICAL STANDARDS BOARD RECENT DECISIONS

Clause 2(2)

1. A Chartered Accountant in practice can act as mediator in Court, since acting as a “mediator” would be deemed to be covered within the meaning of “arbitrator”; which is inter-alia permitted to members in practice as per Regulation 191 of the Chartered Accountants Regulations, 1988.
2. It is permissible for a member in practice to be a settlor of a trust.
3. A Chartered accountant in service may appear as tax representative before tax authorities on behalf of his employer, but not on behalf of other employees of the employer.
4. A Chartered Accountant in service is allowed to take e-return registration if it does not conflict with employment obligation. However, he cannot certify the return.
5. It is permissible for members in practice to engage in the services assessment/performance audit of the centres of skill development council of Government of India as these are permissible under Management Consultancy and other services issued under section 2(2)(iv) of Chartered Accountants Act, 1949.
6. Members in practice are allowed to take license/registration of investment advisors from SEBI. However, members are not allowed to engage in services of broking, underwriting, portfolio management and cannot take agency of mutual funds etc. The statutory auditor cannot provide investment counselling services to the audit clients as the same is not permissible in terms of the provisions of Companies Act, 2013.
7. It is permissible for a member in practice to accept the assignment of Mystery Audit.
8. **Due diligence services** - May be provided by the Members/Firms. Performing due diligence examining of financial records and involves identifying whether the conditions of a company are consistent with what has been presented about it before acquiring a controlling stake in the company.

Clause 2-1-1

9. It is permissible for two or more Chartered Accountants in practice collectively to have joint training session for their clients on GST, and share the fees collected from the clients thereof.

Clause 6-1-1

10. It is not permissible for a member to use WhatsApp to send messages to make people aware about his practice, and mention the services provided therein.
11. It is permitted for a member in practice to mention position as promoter/director on the portal of a Company. However, the member cannot mention his professional attainments and the name of the firm with which he is associated. There should be no violation of clause (6) and Clause (7) of Part-I of First Schedule to the Chartered Accountants Act, 1949 in doing so.
12. A firm is not permitted to publish its vision or mission statement on letter head, visiting card or stationery etc. as it would lead to solicitation. The vision and mission statement may be printed on the firm profile and may be provided in response to a specific request.
13. A chartered accountant in practice can provide services through kiosk only if the services provided are professional activities of a practicing chartered accountant, permitted under the Act.

Clause 10-1-1

14. **Contingent Fees - Utilisation Certificate - Permissible**

It is permissible for members in practice to charge fees on a percentage of utilization amount of an educational Institute for certifying the amount (utilization) spent by an educational Institute out of grant.

15. A Chartered Accountant in practice may be an equity research adviser, but he cannot publish retail report, as it would amount to other business or occupation.

16. A Chartered Accountant in practice may engage himself as Registration Authority (RA) for obtaining digital signatures for clients.

17. A chartered accountant in practice cannot become Financial Advisors and receive fees/ commission from Financial Institutions such as Mutual Funds, Insurance Companies, NBFCs etc.

18. It is not permissible for CA in practice to take agencies of UTI, GIC or NSDL.

19. A member in practice cannot hold Customs Brokers Licence under section 146 of the Customs Act, 1962 read with Customs Brokers Licensing Regulations, 2013 in terms of the provisions of Code of Ethics.

20. The Ethical Standards Board while noting that there is requirement for a Director u/s 149(3) of the Companies Act, 2013 to reside in India for a minimum period of 182 days in the previous calendar year, decided that such a Director would be within the scope of Director Simplificator (which is generally permitted as per ICAI norms), if he is non-executive director, required in the Board Meetings only, and not paid any remuneration except for attending such Board Meetings.

21. A CA Firm may register itself on Udyog Aadhar, a web portal of Ministry Micro, Small and Medium Enterprises.

22. A Chartered Accountant in practice being Director Simplificator in a Company cannot sign ROC Forms of the Company as it is a direct conflict of role.

23. Members in practice are allowed to accept a particular position e.g. Whole Time director/ Managing Director in Companies registered under Section 8 of Companies Act, 2013 provided his position is honorary and the Companies

falls under the category of charitable, educational, or other non-commercial.

24. Non-executive/independent director in a Co-operative Bank - Not interested as auditor, Not involved in day to day activities - Permissible

A Member in practice may be a Non-executive/independent director in a Co-operative Bank, provided he is not involved into day to day activity of the organization, nor he or any of his partners are interested in the Bank as an auditor.

25. Member of Board of Management-Primary (Urban) Co-operative Banks-Permissible

It is permissible for a practicing Chartered Accountant holding Certificate of Practice to become a member of the 'Board of Management' in Primary (Urban Co-operative Banks) as it is similar to Director-Simplificator; where there is no involvement of a member in the day-to-day functioning/operations and not signatory etc. and only sitting fees for the services rendered are provided.

26. Trademark or Patent Attorney - Not permissible, IPR advisory permitted

Member in practice cannot act as Trademark or Patent Attorney. However, Professional advice in relation to Intellectual Property Rights (IPR) is a routine professional work for a Chartered Accountants in practice and same is permissible under the provisions of the Chartered Accountants Act, 1949.

27. It is permissible for a member in practice to become professional director in the Board of Management of a Co-operative Bank.

28. It is permissible for a member to set up practice in IFSC/GIFT city.

29. It is permissible for a member to render professional services to IFSC units from offices outside IFSC.

30. A Chartered Accountant, who is a member of a Trust, **can be the auditor of the said trust**. If it is not prohibited under any law or otherwise conflicts with COE (Amended) []
31. A chartered accountant who is the **statutory auditor of a bank** cannot for the same financial year accept **stock audit of the same branch** of the bank or any of the branches of the same bank or sister concern of the bank, for the same financial year. []
32. A CA Firm which has been appointed as the **internal auditor of a PF Trust** by a Government Company cannot be appointed as its Statutory Auditor. []
33. A **concurrent auditor** of a bank 'X' cannot be appointed as statutory auditor of bank 'Y', which is sponsored by 'X'. []
34. A CA/CA Firm can act as the **internal auditor of a company & statutory auditor of its employees PF Fund** under the new Companies Act, 2013.
35. There is no prohibition for **internal auditor** of a company to acquire/purchase **shares of the said Company**. []
36. A Chartered Accountant in practice can act as **Authorized Representative of a Foreign Company**, provided he is not the auditor of the said Company. []
37. In case where **Chartered Accountant in practice is a non-executive director in a company**, he or a Firm in which he is a partner, should not accept the appointment as a **statutory auditor of a Company which is a joint venture of the original Company**, as it would impact independence.
38. The Ethical Standards Board in 2013 generally apply the stipulations contained in the then amended Rule 11U of Income Tax generally, wherein statutory auditor /tax auditor cannot be the **valuer of unquoted equity shares of the same entity**.
The Board has at its recent Meeting (January, 2017) has reviewed the above, and decided that where law prohibits for instance in the Income Tax Act and the rules framed thereunder, such prohibition on statutory auditor/tax auditor to be the valuer will continue. []
- But where there is **no specific restriction under any law**, the said eventuality will be permissible, subject to compliance with the provisions, as contained in the Code of Ethics relating to independence. []
39. The Ethical Standards Board had in 2011 decided that it is not permissible for a member who has been **Director** of a Company, upon resignation from the Company to be appointed as an auditor of the said Company, and the **cooling period for the same may be 2 years**. []
40. The **concurrent auditor** of a Branch can undertake the **assignment of LFAR only** with respect to Branches which are **not subject to Statutory Audit**. With respect to Branches which are **subject to Statutory Audit**, the LFAR assignment shall be undertaken by the **Statutory Auditor**. []
41. **Concurrent Audit and the assignment of (quarterly) limited review of the same Bank cannot be undertaken simultaneously** as the concurrent audit being a kind of **internal audit** and the **quarterly limited review** being a kind of statutory audit undertaken simultaneously **are prohibited under the provisions of Code of Ethics**. It may however be noted that the Concurrent Auditor of a Branch of a Bank may be required to **submit a specific Review Report** to the Management on quarterly basis. Such assignment of specific review may be undertaken by the **Concurrent auditor** of the Bank. []
42. **Statutory audit of the Society - Immediate family member hold honorary position in management committee - Not permissible** []
It is not permissible for a member in practice to accept the appointment of statutory audit of the society wherein immediate family member i.e., spouse or dependent, of member hold honorary position of one of the managing committee of the institutes governed by the society. []
43. Statutory auditor of an entity is not permitted to engage in assignment of **compilation engagement**, of that entity as per SRS 4410. []

Clause 4-1-2 (Contd...)

44. It is not permissible for a member/ firm being the statutory auditor of a Bank to accept the **assignment of ASM** of a customer of the same Bank simultaneously. He can accept either of the Assignments at one time.

45. A member in practice cannot be appointed as an **Internal Auditor** and **Procurement officer** simultaneously in an organization.

46. **BRSR:**

Prohibited Not permissible for statutory auditor to prepare Business Responsibility & Sustainability Reporting (BRSR) study to Audit Clients.

Permitted He may provide advisory services on the same. Further statutory auditor can be "Assurance provider of BRSR core" (Ref. SEBI circular dt. 12.07.2023) for the same client.

Clause 10-1-2

47. A chartered accountant cannot exercise **lien over the client documents/records** for non-payment of his fees.

Clause CGG-X

48. A Chartered accountant can hold the **credit card of a bank** when he is also the auditor of the bank, provided the outstanding balance on the said card **does not exceed 1,00,000** beyond the prescribed credit period limit on credit card given to him.

49. A Chartered Accountant in practice is not permitted to accept **audit assignment of a bank** in case he has taken **loan against a Fixed Deposit** held by him in that bank.

50. For the purpose of Appointment of an auditor when **he is indebted** to a concern, as dealt with under **Chapter X of the Council General Guidelines, 2008**, the term "auditor" shall not include internal auditor, concurrent auditor or an auditor giving report to the Management. In other words, the provision relating to **criteria/limit of indebtedness** shall apply only to statutory audits.

ESB Recent FAQs

Announcement on Ranking of CA Firms.

➔ Providing ranks or providing information to entities providing **ranks to CA Firms** is **violative** of Item 6 of Part-I of First Schedule to The Chartered Accountants Act, 1949. Additionally, it results in claiming superiority of one firm over other, which is prohibited in terms of the Advertisement Guidelines of the ICAI under Item 7 of Part -I of First Schedule to The Chartered Accountants Act, 1949.

➔ Whether a CA in practice is required to obtain any trade license for practicing?

No.

➔ Whether a write-up in an Advertisement may contain any information about an achievement or award given to a member?

Yes, provided it has been awarded by the Central or State Governments or Regulatory bodies.

➔ Whether the office of a Chartered Accountant is permitted to go in for ISO certification or other similar certifications?

Yes, However, the member cannot use the expression like "ISO Certified" on his professional documents.

➔ Whether a member in practice owning intellectual property rights of domain names sell these domain names to some entity for earning royalty on the same?

No.

➔ Whether a member, who is the statutory auditor of a company, can let out property owned by his Hindu Undivided Family (HUF) to the said Company?

Such a transaction should be avoided from an independence perspective.

➔ Whether a member in practice is generally permitted to write script/story for a movie?

No, Such a member would require prior and specific permission of the Council in this regard.

➔ Whether a member in practice can also practice simultaneously as an Actuary?

No.

Whether a member in practice is permitted to be an athlete/ play tournaments simultaneously along with holding COPs?

Not permissible

Whether a statutory auditor can accept the system audit of same entity?

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

Whether CA is qualified to be appointed as statutory auditor of one associate company when he is the internal auditor of another fellow associate company.

Yes.

Whether there is any minimum audit fee to be charged by the members of the Institute?

No.

Whether a member in practice can establish a Tax Information Network- Facilitation Centre (TIN-FC)? Whether he can be franchise for a TIN-FC?

Permissible.

Whether partner of a Firm of Chartered Accountants doing audit of an Insurance company can accept the assignment of surveyor of the said Company?

No.

THE FIRST SCHEDULE

(See sections 21(3), 21A(3) and 22)

PART I Professional misconduct in relation to chartered accountants in practice

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he—

(1) allows any person to practice in his name as a chartered accountant unless such person is also a chartered accountant in practice and is in partnership with or employed by him;

(2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner, or a member of any other professional body or with such other persons having such qualifications as may be prescribed, for the purpose of rendering such professional services from time to time in or outside India.

Explanation.—In this item, “partner” includes a person residing outside India with whom a chartered accountant in practice has entered into partnership which is not in contravention of item (4) of this Part;

(3) accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute:

Provided that nothing herein contained shall be construed as prohibiting a member from entering into profit sharing or other similar arrangements, including receiving any share commission or brokerage in the fees, with a member of such professional body or other person having qualifications, as is referred to in item (2) of this Part;

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

(5) secures, either through the services of a person who is not an employee of such chartered accountant or who is not his partner or by means which are not open to a chartered accountant, any professional business:

Provided that nothing herein contained shall be construed as prohibiting any arrangement permitted in terms of items (2), (3) and (4) of this Part;

(6) solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means:

Provided that nothing herein contained shall be construed as preventing or prohibiting—

(i) any chartered accountant from applying or requesting for or inviting or securing professional work from another chartered accountant in practice; or

(ii) a member from responding to tenders or enquiries issued by various users of professional services or organisations from time to time and securing professional work as a consequence;

(7) advertises his professional attainments or services, or uses any designation or expressions other than chartered accountant on professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Chartered Accountants of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council: ~~~~~

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

(8) accepts a position as auditor previously held by another chartered accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing; ~~~~~

(9) accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of section 225 of the Companies Act, 1956 [or

sections 139 to 141 of the Companies Act, 2013 or any other law pertaining to appointment of auditors for the time being in force] in respect of such appointment have been duly complied with; ~~~~~

(10) charges or offers to charge, accepts or offers to accept in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or results of such employment, except as permitted under any regulation made under this Act; ~~~~~

(11) engages 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 a managing director or a whole time director) unless he or any of his partners is interested in such company as an auditor;

(12) allows a person not being a member of the Institute in practice, or a member not being his partner to sign on his behalf or on behalf of his firm, any balance-sheet, profit and loss account, report or financial statements. ~~~~~

PART II Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he being an employee of any company, firm or person—

(1) pays or allows or agrees to pay directly or indirectly to any person any share in the emoluments of the employment undertaken by him; ~~~~~

(2) accepts or agrees to accept any part of fees, 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. ~~~~~

PART III 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—

(1) not being a fellow of the Institute, acts as a fellow of the Institute; ~~~~~

(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; ~~~~~

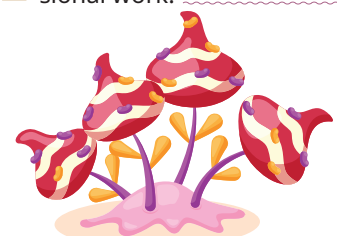
(3) while inviting professional work from another chartered accountant or while responding to tenders or enquiries or while advertising through a write up or anything as provided for in items (6) and (7) of Part I of this Schedule, gives information knowing it to be false. ~~~~~

PART IV Other 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 other misconduct, if he—

(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; ~~~~~

(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. ~~~~~



THE SECOND SCHEDULE

(See sections 21(3), 21B(3) and 22)

PART I

Professional misconduct in relation to CA in practice

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he—

- (1) discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client or otherwise than as required by any law for the time being in force; ~~~~~
- (2) certifies or submits in his name, or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice; ~~~~~
- (3) permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast; ~~~~~
- (4) expresses his opinion on financial statements of any business or enterprise in which he, his firm, or a partner in his firm has a substantial interest; ~~~~~
- (5) fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity; ~~~~~
- (6) fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity; ~~~~~
- (7) does not exercise due diligence, or is grossly negligent in the conduct of his professional duties; ~~~~~
- (8) 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; ~~~~~
- (9) fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances; ~~~~~
- (10) fails to keep moneys of his client other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for purposes for which they are intended within a reasonable time. ~~~~~

PART II

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—

- (1) contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council; ~~~~~
- (2) being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment except as and when required by any law for the time being in force or except as permitted by the employer; ~~~~~
- (3) includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false; ~~~~~
- (4) defalcates or embezzles moneys received in his professional capacity. ~~~~~
- (5) acts as an auditor of the company in contravention of the provisions of the Companies Act, 2013. ~~~~~

PART III

Other 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 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.

