

**WIRC of ICAI
Refresher Course on
ICAI Code of Ethics**

**“ Volume-2 of Revised Code of Ethics
w.r.t Schedules to CA Act.”**

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Code of Ethics – Volume – II – Coverage

➤ Important Ethical Aspects covered in Sections in CA Act.

Section 2 : Members who are deemed to be in Practice

Section 6 : Significance of the Certificate of Practice

Section 7 : Practising Member is prohibited to use designation(s) other than 'Chartered Accountant'

Section 8 : Disabilities for the purpose of membership

Section 20 : Removal from the Register

Section 21 : Procedure in Inquiries for Disciplinary Matters relating to misconduct of the members.

Section 22 : Conduct of the members in any other circumstances

Section 24 : Penalty for falsely claiming to be a Member etc.

Section 25 : Companies not to engage in Accountancy

Section 26 : Unqualified persons not to sign documents

Section 27 : Maintenance of Branch Offices

➤ Schedule-I and Schedule-II of CA Act.

➤ CA Regulations 1988.

➤ Accounting and Auditing Standards

- Statements , Standards and Guidance Notes.

➤ Council Guidelines/ Announcements

➤ Self Regulatory Measures recommended by the Council

➤ Announcements/Clarifications by ESB

Chartered Accountant in Practice

- A Chartered Accountant can be either in Practice or can be engaged in occupation otherwise than in Practice.
- Section 2(2) of CA Act has defined the term “to be in Practice” by enumerating the activities in which a Member engages himself/herself. These activities are –
 - Practice of accountancy or
 - Auditing or verification of financial transactions, books, accounts or records or
 - Preparation, verification or certification of financial accounting and related statements or
 - 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
 - Such other services as prescribed Council.
- Activities prescribed by Regulation 191 of CA Regulations –

A liquidator, trustee, executor, administrator, arbitrator, receiver, adviser or representative for costing, financial or taxation matters or can take up an appointment made by the Central Government or a State Government or a court of law or any other legal authority or acts as a Secretary.
- Further the Council has passed a resolution permitting a Chartered Accountant in practice to render entire range of “Management Consultancy and other Services” and under this category, the Council has from time to time listed 28 different types of activities/services which a Chartered Accountant in practice can undertake.

Chartered Accountant in Practice

➤ Management Consultancy and other Services – (Some Important Services)

- Financial management planning,
- Working capital management,
- Preparing project reports and feasibility studies,
- Budgeting, Inventory management,
- Market research and demand studies,
- Cost control and value analysis,
- Management and operational audits,
- Valuation of shares and business and advice regarding amalgamation, merger and acquisition, Acting as Registered valuer under Companies Act, 2013 r.w. Companies (Registered Valuers & Valuation) Rules, 2017.
- Systems analysis and design, and computer related services,
- Acting as advisor or consultant to an issue,
- Investment counselling in respect of securities,
- Acting as registrar to an issue and for transfer of shares/other securities,
- Quality Audit, Environment Audit, Energy Audit,
- Acting as Recovery Consultant in the Banking Sector,
- Insurance Financial Advisory Services under IRDA Act, 1999 including Insurance Brokerage not Including Insurance Agency.
- Insolvency Professional etc.
- **Administrative Services.**

Chartered Accountant in Practice

➤ Administrative Services – Sub Section 602 Of Volume-I

‘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.’

Providing administrative services to an audit client does not usually create a threat. Examples of administrative services include:-

- *Word processing services.*
- *Preparing administrative or statutory forms for client approval.*
- *Submitting such forms as instructed by the client.*
- *Monitoring statutory filing dates, and advising an audit client of those dates.*

➤ Section 6 of The Chartered Accountants Act, 1949:

No member of the Institute shall be entitled to practise whether in India or elsewhere unless he has obtained from the Council a certificate of practice

➤ Explanation to Section 2(2):-

An associate or a fellow of the Institute who is a salaried employee of a Chartered Accountant in practice or a firm of such Chartered Accountants or a firm consisting of one or more members of any other professional body having prescribed qualifications shall, notwithstanding such employment, be deemed to be in practice for the limited purpose of the training of articled assistants.

Chartered Accountant in Practice- Engagement in Other Business or Occupation

Relevant Clauses in Schedules to CA Act -

Part – I of The First Schedule : Clause (11): Engaging business/occupation other than CA :-

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he engages in any business or occupation other than the profession of chartered accountants unless permitted by the Council so to engage ... Provided that nothing contained herein shall disentitle a chartered accountant from being a director of a Company, (not being a managing director or a whole time director), unless he or any of his partners is interested in such company as an auditor;

Hence Director simpliciter or Independent Director (no involvement in affairs except for Board Meetings) is allowed.

“Director Simplicitor” means an ordinary/simple Director, who is not a Managing Director or Whole time Director and is required only in the Board Meetings of the company and not paid any remuneration except for attending such meetings.

No equivalent of Director Simpliciter in LLPs : A member in practice cannot become a partner/ designated partner (non-working and non-remuneration drawing) in an LLP not carrying out professional work.

Chartered Accountant in Practice- Engagement in Other Business or Occupation

Relevant Clauses in Schedules to CA Act -

Part – I of The First Schedule : Clause (11): Engaging business/occupation other than CA :-

Regulation 190 A & Appendix 9 to CA Regulations, 1988. (Illustrative list)

General Permission-

- Employment with CA Firm, Private Tutorship, Author of Books & Articles, Holding Public Offices like MLA/MP etc., Honorary Office bearer in Charitable, Educational or Other Non Profit Organisation, Notary, SEM, Valuation of Papers, Paper setters, Examiners etc., part time tutor in coaching organisation of Institute, Editorship of Professional Journals.
- Acting as Loss Surveyor under Insurance Act, Recovery consultant in Banks.
- Owning Agricultural land and carrying agricultural activity.

Special Permission :

- Lecturer in University/Colleges- Total direct teaching hours should not exceed 25 hours a week.
- Editorship other than Prof Journals, Mg. Director, Whole time Director of Company with no interest.

Chartered Accountant in Practice- Part Time in Practice

- APPENDIX 'H' of Volume – II – Council Resolution
 - Any member engaged in any other business or occupation, in terms of general or specific permission granted shall be deemed to be '**Part Time in Practice**' except in case of the specific or general permission under Regulation 190A so granted –
 - Author of Books & Articles, Holding Public Offices like MLA/MP etc., Honorary Office bearer in Charitable, Educational or Other Non Profit Organisation, Notary, SEM, Valuation of Papers, Paper setters, Examiners etc., part time tutor in coaching organisation of Institute, Editorship of Professional Journals (Not in employment).
 - Holding of Life Insurance Agency Licence for the limited purpose of getting renewal commission
 - Attending classes and appearing for any examination.
 - Any coaching assignment organized by the Institute, its Regional Councils and Branches of Regional Councils.
 - Acting as Loss Surveyor under Insurance Act, Recovery consultant in Banks. (Not in employment)
 - Owning Agricultural land and carrying agricultural activity
 - Engagement as Lecturer in an University, affiliated college, educational institution, coaching organisation, private tutorship, provided the direct teaching hours devoted to such activities taken together do not exceed 25 hours a week.
 - A member who is deemed to be '**Part Time in Practice**' is not entitled to perform attest function and shall not be entitled to train articled assistants.

Attest function means services pertaining to audit, review, certification, agreed upon procedures, and compilation, as defined in the Framework of Statements on Standard Auditing Practices and Guidance Notes on Related Services published in the July, 2001 issue of the Institute's Journal.

Note : *Part Time Association with Firm (For MEF/CAG Empanelment) does not mean 'Part Time in Practice'*

Chartered Accountant in Practice and HUF

Relevant Clauses in Schedules to CA Act -

Part – I of The First Schedule : Clause (11): Engaging business/occupation other than CA :-

HUF vis-à-vis member in practice

Position in the Revised Code

Guidance on a member in practice being member / Karta in a HUF doing business incorporated

- Must result from inheritance/succession/partition of the family business
- Only after specific and prior approval of the Council
- Karta cannot have active role
- Attest functions not permitted

Clarification incorporated that a member engaged as Karta of a HUF doing family business, will be within the limit prescribed by Council if he makes investments from the funds pertaining to HUF only, provided, he is not actively engaged in the management of the said business.

Sharing of Fees or Profits

Relevant Clauses in Schedules to CA Act -

Part – I of The First Schedule

Clause (2) : Sharing Fees or Profits with Non CAs:-

A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business, to any person other than -

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

Clause (3): Receiving Share in Profits from Non CA

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

Sharing of Fees or Profits

Regulation 53 A & 53 B of Chartered Accountants Regulation 1988 -

Prescribed Professional Bodies :

- a) The Institute of Company Secretaries of India
- b) The Institute of Cost and Works Accountants of India
- c) Bar Council of India
- d) The Indian Institute of Architects
- e) The Institute of Actuaries of India
- f) Professional bodies or institutions outside India whose qualifications relating to accountancy are recognised by the Council.

Prescribed Qualifications :

- a) CS, ICWA, Actuary.
- b) B.E., B.Tech., Architect, Bachelor in Law from a University established by law or an institution recognised by law
- c) Master in Business Administration from Universities established by law or technical institutions recognised by All India Council for Technical Education.

- Hence sharing of Fees or Profits (giving or receiving) is allowed with above persons.
- No bar in sharing of fees if stipulated by any Statute. (e.g. 20% of fees was payable to Govt. under MCS Act)
- Referral Fees amongst members has been now permitted under commentary to Clause 3. (Also Refer Para 330.5 of Volume-I for Safeguards)

Entering in Partnership

- **Relevant Clause in Schedules to CA Act -**
- **Part – I of The First Schedule**

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

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

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

Multi Disciplinary Partnerships (MDP)

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

Solicitations, Promotion, Advertisements etc.

Relevant Clauses in Schedules to CA Act -

Part – I of The First Schedule

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

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

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

- Rowing enquiries/applications for professional work should not be made.
- Recommendation Letters should not be obtained and submitted for securing work.
- Using undue influence to get the work is prohibited.

Acceptance of Original Work of Client introduced by another Member :

A member should not accept the 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. (Council Decision- FAQ-45)

Solicitations, Promotion, Advertisements etc.

Relevant Clauses in Schedules to CA Act -

Part – I of The First Schedule

Clause (6): Solicitation of Professional Work :-

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

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

Solicitations, Promotion, Advertisements etc.

Part – I of The First Schedule

Clause (6): Solicitation of Professional Work :-

Tendering Guidelines, 2016

- Tender for services/areas exclusively reserved for Chartered Accountants should not be responded unless minimum fees has been prescribed in the same.
- Tender for services/areas are open to other professionals along with the Chartered Accountants can be responded.
- Tender for services/areas are open to CAs and other professionals – But Tender document specifies that only CAs should apply – such tenders can be responded.
- Assignments where quotations have been called for from practicing members/firms through individual letters can be responded.
- A member can respond to tenders where only technical bid has been asked for, followed by financial quotations request from the shortlisted members through individual letters.
- The Institute can call for any papers/documents related to bid submitted by members in response to respective tender.

Solicitations, Promotion, Advertisements etc.

Part – I of The First Schedule

Clause (6): Solicitation of Professional Work :-

➤ Press Advertisement-

- Can be allowed giving factual information regarding for changes in partnership, address, Advertisement for recruiting staff in the member's own office, Write Ups (see next Clause-7) etc.
- **Advertisements for Celebrations on Silver Jubilee etc. :** Considering the need of interpersonal socialization/ relationship of members through such get together occasions, advertisement for Silver, Golden, Diamond, Platinum or Centenary celebrations of CA Firms may be published in newspaper.
- Members/Firms are prohibited from inserting advertisements for soliciting clients or professional work under box numbers in the newspapers.
- A member is permitted to issue a classified advertisement in the Journal/Newsletter of the ICAI.
- Notice in the press relating to the success in an examination of an individual candidate, should not contain any element of undesirable publicity.

➤ Issue of Greeting Cards or Invitations

- The designation "Chartered Accountant" as well as the name of the firm may be used in greeting cards, invitations for marriages and religious ceremonies or any invitations for opening office etc.
- Such greeting cards or invitations etc. are sent only to clients, relatives and friends of the members concerned.

Solicitations, Promotion, Advertisements etc.

- **Sponsorship :**
 - Member or Firm not permitted to sponsor an event. However, may sponsor an event conducted by a Programme Organizing Unit (PoU) of ICAI , provided it has prior approval of ICAI Central Office.
 - Members sponsoring activities relating to CSR may mention their individual name with the prefix “CA”. However, the mention of Firm name or CA Logo is not permitted.
- **Advertising of Coaching :** Provisions of ICAI Announcement dt. 18.5.2017- Members should abstain from advertising their association with Coaching /teaching activities through hoardings, posters, banners and by any other means.
- **illumination of Sign Board :** Use of glow signs or neon lights on large-sized-boards as is used by traders or shop-keepers would not be proper. Members to exercise discretion and good taste while putting signboards keeping in mind it’s appropriate visibility and illumination.
- **TV/ Movie Credit :** Member’s / firm’s name allowed in TV/Movie Credits , provided not mentioned differently from other persons.
- **Interview :** Sharing of Firm details during interview not to result in publicity if such detail are given only on a specific question and of factual nature only.
- In Books, Articles and presentations, Professional attainments are prohibited however use of prefix of “CA” or name of Firm permitted.

Solicitations, Promotion, Advertisements etc.

- **Uploading Educational Videos** : Educational videos may be uploaded by members; however, no reference should be made to the CA Firm wherein he may be a partner/proprietor. No contact details.
- **Appearance on TV / Films and Internet** : Members may appear on television, films and Internet and agree to broadcast in the Radio or give lectures at forums and may give their names and describe themselves as Chartered Accountants. Special qualifications or specialized knowledge directly relevant to the subject matter of the programme may also be given. Firm name may also be mentioned, however, any exaggerated claim or any kind of comparison is not permissible. What he may say or write must not be promotional of him or his firm but must be an objective professional view of the topic under consideration.
- **Advisory on Mentioning Fees in Advertisements issued by Members - (28-04-2020)**

It is clarified that the quantum of Fees (including free of charge), whatsoever, should not be mentioned by members in any Advertisement of services or posting of particulars.
- **Ranking of CA Firms- Sharing of details of the Firm** :- Certain entities are seeking details of the Chartered Accountants firms, for the purpose of making ranking of the various Firms through comparison of different parameters. Sharing of details of the Firm for this purpose is not allowed as sharing of such details would tacitly result in claiming superiority of one firm over other.

Solicitations, Promotion, Advertisements etc.

➤ Network

- Associations with “Network” as a medium of referral of professional work is permissible only if the Network is registered with the Institute, comprising only of Chartered Accountants/ Chartered Accountant Firms, and governed by the Institute’s Network Guidelines. (Announcement on 11.12.2019)

➤ Application based Service provider Aggregators :

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.

➤ Logo

- The use of logo/monogram of any kind/form/ style/design/colour etc. whatsoever on any display material or media e.g. paper stationery, documents, visiting cards, magnetic devices, internet, sign board, by the members in practice and/or the firm of Chartered Accountants, be prohibited.
- Use/printing of member/firm name in any other manner tantamounting to logo/monogram was also prohibited.
- Common CA Logo can be used as per Logo Guidelines.

Solicitations, Promotion, Advertisements etc.

Relevant Clauses in Schedules to CA Act -

Part – I of The First Schedule

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

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

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

Advertisement Guidelines, 2008.

- “**write up**” means the writing of particulars as per the Guidelines **setting out services (names of Clients not allowed)** rendered by the Members or firms and
- Any writing or display of the particulars of the Members/Firms **issued, circulated or published by way of print or electronic mode** or otherwise including in newspapers, journals, magazines and websites which include social Networking Websites (in Push as well in Pull mode) in accordance with the Guidelines.

Solicitations, Promotion, Advertisements etc.

➤ Professional Stationery and Visiting Cards etc:

- ICAI Diploma can be mentioned on card; not certificate course.
- Descriptions like 'President of ----- Club' etc. should not be used.
- Designations like 'Member of Parliament', 'Municipal Councillor' not allowed on stationery.
- Vision/Mission Statements or Catchwords etc. not allowed.
- Adjectives like 'ITAT lawyer', 'Finance Consultant' etc. should not be mentioned. However, "Insolvency Professional", "Registered Valuer" is permissible.
- The date of setting up the practice by a member or the date of establishment of the firm on professional stationery not permitted.
- When members are allowed to practice in addition to Chartered Accountancy as Advocate, Company Secretary, Cost Accountant etc, can not use both designations at a time.
- Use of the designation 'Chartered Accountant' allowed only on professional documents. (Other places-Prefix "CA" can be used.)
- Members being Directors in Companies, members of Political parties or CA Cells in the political parties, holding different positions in clubs or other organizations not permitted to mention these positions as they would be violative of Section 7 of the Act
- Mentioning qualifications of foreign Accounting Institutes having MRA/MOU with ICAI permitted.

Solicitations, Promotion, Advertisements etc.

Advertisement Guidelines- Write Ups

- It shall be honest and truthful.
- There shall be no exaggerated claims for the services offered by the member or the Firm, or the qualifications or experience of the member or any of the partners or any other person associated with the Firm.
- 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) or names of clients (both the past and present) or the fees charged.
- It should not contain any information about achievements /awards (except the awards given by the Central or State Governments or Regulatory bodies) or any other position held , or accreditation(s) granted by any organisation.
- Monogram of any kind or use of any kind of catch words is not permissible.
- The Membership No./FRN (as may be applicable) is mandatory to be mentioned in the write-up.
- It should not be of font size exceeding 14.
- It must not be violative of any provisions of Chartered Accountants Act, 1949, Chartered Accountants Regulations, 1988, Code of Ethics, 2020 or any Guideline of the Council.
- Passport style photograph of Proprietor/Partners is permitted.

Solicitations, Promotion, Advertisements etc.

Advertisement Guidelines- Websites

- Websites are run on a “pull” model and not a “push” model of the technology. (only person who wants to locate the Firm, shall have access)
- None of the information contained in the Website be circulated on their own or through E-mail or by any other mode or technique except on a specific “pull” request.
- No circular or advertisement to be issued to attract people to the website.
- Articles, professional information, bulletin boards, professional updation, educational videos of professional importance and other matters of larger importance or of professional interest are allowed on the website.
- The chat rooms can be provided which permit chatting amongst members of the ICAI and between Firms and its clients.
- The Firms can provide document management facility with distinct log in and password facility to the clients to access copies of their documents on the Firm website.
- The Firm can provide link of its page on Social Networking site.
- The members/firms can provide on line advice to their clients who specifically request for the advice whether free of charge or on payment.
- No Advertisement in the nature of banner or any other nature will be permitted on the Website.
- Advisory dated 14th October 2020 regarding prohibition of certain features on website is also relevant.

Solicitations, Promotion, Advertisements etc.

Advertisement Guidelines

Online Third Party Platforms:

- Websites providing advisory services on taxation and other areas where Chartered Accountants are rendering professional service through these Websites are allowed.
- No other service, besides consultancy and advice can be rendered through such websites.
- On the Website, contact address of the Chartered Accountant concerned is not provided nor such Website will contain any material which advertises professional achievements or status of such Chartered Accountant.

Publication of Name or Firm Name by Chartered Accountants in the Telephone or other Directories :

- The entry should not appear in any other section/category except that of 'Chartered Accountants'.
- The member/firm should belong to the town/city in respect of which the 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 the impression of publicity/advertisement.
- The entries should not be restricted and should be open to all the Chartered Accountants/firms.

Solicitations, Promotion, Advertisements etc.

Important Guidelines/ Announcements

- Advertisement Guidelines 2008. (As amended)
- Council General Guidelines.
- Website Guidelines issued by Council.
- Restriction on manner of entries in Directories.
- Guidelines for use of CA Logo.
- Council Guidelines for responding to Tenders issued on 7th April, 2016
- Announcement on use of designation other than 'Chartered Accountant'
- Announcement reg. abstaining from sharing of Firm details intended for comparison of Firms.
- Announcement on Advertising by members in practice engaged in Coaching/Teaching activities.

All the above Guidelines/ Announcements have been included in Volume-II now , with amendments, discussed herein.

Appointment as Auditors.

Relevant Clauses in Schedules to CA Act -

Clause 9 of Part-I of First Schedule.

Accepting Audit Appointment without ascertaining Company Law compliance :-

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

Council Guidelines:

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

Important Points :

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

Change in Auditors & Communication.

Relevant Clauses in Schedules to CA Act -

Part – I of The First Schedule

Clause (8): Non Communication with Previous Auditor :-

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

Important Points :

- Applicable to all types of audits.
- Position previously held by CA (and not previous year's CA) for same or similar assignment comprising same/similar scope.
- Communication to be made before acceptance of Audit.
- Mode of Communication discussed later..
- In case of Govt. Audits or Bank Audits, where work has to be attended immediately, the new auditor can give conditional acceptance making clear to the client that his acceptance of appointment is subject to professional objections by previous auditor, on the basis of which final decision will be taken.
- The underlying objective is that the member may have an opportunity to know the reasons for the change in order to be able to safeguard his own interest, the legitimate interest of the public and the independence of the existing accountant.

Change in Auditors & Communication.

Clause (8): Non Communication with Previous Auditor :-

Mode of Communication:- New Additions :

➤ Email Communication now allowed with some conditions :

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 following modes would in normal course provide evidence of communication –

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

➤ Duty on Previous Auditor in case of change of Auditorship :

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

Change in Auditors & Communication.

Relevant Guidelines and Clauses in Schedules to CA Act -

Council General Guidelines, 2008

A member of the Institute in practice **shall not accept** the appointment as auditor of an entity in case the undisputed audit fee of another Chartered Accountant for carrying out the statutory audit under the Companies Act, 1956 or various other statutes has not been paid:

Provided that in the case of sick unit, the above prohibition of acceptance shall not apply.

Explanation 1: For this purpose, the provision for audit fee in accounts signed by both - the auditee and the auditor shall be considered as “undisputed” audit fee.

Explanation 2: For this purpose, “sick unit” shall mean unit registered for not less than Five years and where the net worth is negative at the end of year.

Clause 1 of Part-II of Second Schedule.

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

Hence unless there is concrete proof available for payment of undisputed audit fees of the previous auditor, the new auditor shall not accept the audit. Otherwise it will be Mis-conduct as per Clause 1 of Part-II of Second Schedule.

Change in Auditors & Communication.

Addressing peculiar circumstances while communicating

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

Substantial Interest -Independence

Relevant Clauses in Schedules to CA Act -

Part – I of The Second Schedule :

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

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he expresses his opinion on financial statements of any business or enterprise in which he, his firm or a partner in his firm has a substantial interest;

Appendix 9 to CA Regulations, 1988 - Substantial Interest

a member shall be deemed to have a “substantial interest” in a concern –

- (i) in a case where the concern is a Company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of voting power at any time, during the relevant years are owned beneficially by such member or by any one or more of the following persons or partly by such member and partly by one or more of the following persons: (a) One or more relatives of the member; (b) Any concerns in which any of the persons referred to above has a substantial interest;
- (ii) in the case of any other concern, if such member is entitled or the other persons referred to above or such member and one or more of the other persons referred to above are entitled in the aggregate, at any time during the relevant years to not less than twenty percent of the profits of such concern.

Independence

Guidance Note on Independence of Auditors : (Self Regulatory Measures)

- Independence is – (a) Independence of Mind and (b) Independence in Appearance.
- Disqualifications to act as Auditors u/s. 141(3) of Companies Act 2013- An objective assessment to be made in letter and spirit.
- Not to undertake dual responsibility- e.g. Acting as Auditor & Liquidator.
- In case of appointments done by RBI/CAG- Not to accept any other assignment within one year from completion of Audit Assignment.
- Auditors can not provide Internal audit, Accounting and Book keeping services, partial prohibitions in valuation services, Cost Audit, IT Systems Services.
- CA is expected to be no less independent in the discharge of his duties as a tax consultant or as financial advisor than as a Auditor.
- Acceptance of the appointment as statutory auditor of PSU(s)/ Govt./Listed/ and other Public Company(ies) having turnover of Rs. 50 crores or more in a year and also accepting any other work or assignment or service in regard to the same entity on a remuneration which in total exceeds the fee payable for carrying out their statutory audit not allowed. (Notification No.1-CA(7)/60/2002 dated 8th March, 2002) **[Ref. Chapter IX of Council General Guidelines, 2008]**

Independence

Additional Clarification in Volume -II

- Modification in the situations of Conflict of Interest in accordance with Companies Act, 2013.
- Statutory auditor not to be the Internal Auditor simultaneously
- Internal auditor not to be the Tax auditor simultaneously
- Internal Auditor not to be the GST Auditor simultaneously
- Cooling off period after completion of tenure as Director - A member not to be the auditor of a Company for a period of two years from the date of completion of his tenure as Director

Independence

Disqualification of Auditors: Companies Act 2013

➤ **Disqualification based on Relationship**

- As per Section 141(3) (b), any employee or officer of the company.
- As per Section 141(3) (c), a person who is a partner or who is in the employment, of an officer or employee of the company.
- As per Section 141(3) (f), every person who is relative to a company's employee, director or anyone holding Key managerial post.

➤ **Disqualification of Auditor based on Conflict of interest**

- As per section 141(3) (d), if a person who, or his relative or his partner— ;
 - Is holding any interest or Security in the company or the holding or the subsidiary or its associate Company. It has been further provided that an relative may hold security or interest in the company of face value not exceeding 1 lakh rupees.
 - Is indebted to the company or its subsidiary, or its holding or associate company or subsidiary of such holding company, in excess of Rs. 5 lacs rupees.
 - Has given guarantee or provide any security in connection with the indebtedness of any third person to the company or its subsidiary, or its holding or associate company or a subsidiary of such holding company for value in excess of Rs. 1 lacs.

- As per Section 141(3) (e), A person or a firm who (whether directly or indirectly) has **business relationship** with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company.

Charging Fees on Percentage Basis/Contingencies

Relevant Clauses in Schedules to CA Act -

Part – I of The First Schedule.

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

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

Important Points :

- Fees can not be charged on the basis percentage of profits.
- Fees can not be charged based on findings or results of any contingency in Professional work.
- Even agreeing to charge or accept fees on percentage basis or contingent upon findings or results also would become professional misconduct.

Exceptions – Regulation 192 of Chartered Accountants Regulation 1988

- Receiver, Liquidator-basis-Realisation of Assets, Valuer-basis-Value of Asset, Debt Recovery Services-basis-Amount of Debts recovered, Cost optimisation Services-basis-Benefits derived.
- Auditor of Co-op. Societies-basis-Working Capital , Gross/Net Profit.
- Management consultancy services (approved by Council) -basis-percentage basis, contingent upon the findings, or results of such work.
- Certain fund raising services, the fees may be based on a percentage of the fund raised.
- Insolvency Professionals , Non Assurance Services to Non Audit Clients.

Allowing Non CAs to Practice/Sign

Relevant Clauses in Schedules to CA Act - Part – I of The First Schedule.

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

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

- To safeguard the public against unqualified accountants.
- Duty of Members not to allow such persons to practice, if in their knowledge.

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

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

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

Suggested Steps:

- In every engagement involving attestation, prepare Report or Certificate adhering to ‘Guidance Note on Reports or Certificates for Special Purposes’ with Sign, Seal, Date and Place.
- Create UDIN for the same.

Preparation of Certificates and Reports

Relevant Clauses in Schedules to CA Act -

- **Part – I of The Second Schedule.**
- **Clause (3): Certifying Estimated Earnings :-**
- A Chartered Accountant in practice shall be deemed to be guilty of professional misconduct, if he 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;
- **Ref : SAE 3400 on The Examination of Prospective Financial Information.**

Auditing of Financial Statements & Reporting

Relevant Clauses in Schedules to CA Act -

• Part – I of The Second Schedule.

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

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

- certifies or submits in his name, or in the name of his firm, a report of an examination of financial statements unless the examination of such statements and the related records has been made by him or by a partner or an employee in his firm or by another chartered accountant in practice

Clause (5): Failure to disclose material facts :-

- fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;

Clause (6): Failure to report material misstatement :-

- fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;

Clause (8): Failure to obtain sufficient information :-

- fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion;

Clause (9): Failure to report material departures from Generally accepted audit procedure :-

- fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances (Requirements of Peer Review, UDIN, Mentioning of FRN etc. included)

Confidentiality and Custody of Client's Assets/Money

Relevant Clauses in Schedules to CA Act -

Part – I of The Second Schedule.

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

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

Part – II of The Second Schedule.

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

Clause (2): being an employee of any company, firm or person, discloses confidential information acquired in the course of his employment except as and when required by any law for the time being in force or except as permitted by the employer

Clause (4): defalcates or embezzles moneys received in his professional capacity.

Not Providing Information/ Providing Wrong Information

Relevant Clauses in Schedules to CA Act -

Part – III of The First Schedule.

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

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

Clause (2): **does not supply the information** called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority;

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

Part – II of The Second Schedule.

Clause (3): includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars **knowing them to be false**;

Breach of Professional Duties/ General Misconduct

Relevant Clauses in Schedules to CA Act - Part – I of The Second Schedule.

Clause (7): Grossly Negligent :-

- A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;

Part – II of The Second Schedule

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

Part – IV of The First Schedule

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

General Misconduct- Proved Guilty in Court

Relevant Clauses in Schedules to CA Act -

- **Clause 1 of Part IV of First Schedule**

- 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 not exceeding six months;

- **Part III of Second Schedule**

- 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.

Chartered Accountant in Service

- **Part – II of The First Schedule :**
- **Professional Misconduct in relation to Chartered Accountants 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 —
- **Clause (1): Sharing Emoluments :-**
- pays or allows or agrees to pay directly or indirectly to any person any share in the emoluments of the employment undertaken by him;
- **Clause (2): Accepting part of Fees etc from Professional engaged by employer company :-** 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;

**Important Aspects in Code of Ethics with
respect Recent Decisions/Announcements
of Ethical Standards Board.**

Recent Decisions/Announcements of Ethical Standards Board

- **There is no prohibition for internal auditor of a company to acquire/purchase shares of the said Company.**
- **It is not permissible for a member to use WhatsApp to send messages to make people aware about his practice, and mention the services provided therein.**
- **It is permissible for two or more Chartered Accountants in practice collectively to have joint training session for their clients on GST, and share the fees collected from the clients thereof.**
- **A Chartered Accountant, who is a member of a Trust, cannot be the auditor of the said trust.**
- **A Chartered accountant can hold the credit card of a bank when he is also the auditor of the bank, provided the outstanding balance on the said card does not exceed Rs 100000 beyond the prescribed credit period limit on credit card given to him.**
- **A chartered accountant cannot exercise lien over the client documents/records for non-payment of his fees.**
- **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.**

“In a conflict between the heart and the brain, follow your heart.”

— Swami Vivekananda

THANK YOU !!
