

Code of Ethics for members NOT holding COP

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This Presentation Covers:

1. Code of Ethics (COE) in General and its applicability to members NOT holding COP
2. Fundamental Principles
3. Threats and Safeguards (for members in service)
4. COE Broad Content :
 - a. Chartered Accountants Act (C A Act) 1949
 - b. First Schedule to C A Act,1949
 - c. Second Schedule to C A Act,1949

Following topics are covered in second part of presentation by CA C.N.Vaze

- d. Important Pronouncements
 - e. Council Guidelines & Self-Regulatory measures Recommended by the Council
5. Disciplinary Mechanism
 6. Important Case Studies

➤ **Ethics in General and Code of Ethics**

Ethics can be explained in different ways. Ethics in general means the implementation of expected or standard values in actual life. The standard set of values necessary to follow for to be fit to be in that position are Ethics. It is a minimum standard of behaviour expected by the society from the person or class or group of persons. Normally those in higher authorities are expected to bind themselves by higher level of following Ethics.

Codes of Ethics are such set of standards laid down for an Accountancy Profession by the statute governing the Profession that is Chartered Accountants Act, 1949. The statute has given the Chartered Accountants authority of examination of the financial affairs of the clients and responsibility of expressing opinion based on such examination. This authority come with responsibility to follow certain values in professional behaviour with various stake holders and the therefore the Act and Council wherever authorised has prescribed certain code to be adhered to or Dos and Don'ts to be followed by the member of profession and collectively called earlier as code of conduct and now as Code of Ethics

CODE OF ETHICS (COE) – ITS NECESSITY

The whole foundation of any profession, particularly CA profession, is its credibility. The sole purpose of COE is to ensure and uphold this credibility. It distinguishes a profession from business. This is not to say that a business need not or does not have ethics.

Many of our members perceive COE as a burden. They are totally mistaken. On the contrary COE seeks to protect the interests of the profession as a whole. It is a shield that enables us to command respectability.

Another grievance among members is that when the entire world is behaving anyway it wishes, why CAs be subjected to such restrictions that are apparently outdated! Answer is simple. Just as eternal vigilance is a cost of independence, the restrictions are the cost for the credibility and respect. In ancient Chaturvarnya system, Brahmin class enjoyed privileges. At the same time, there were maximum restrictions on that class. In today's world, intellectuals and professionals are the Brahmin class.

On the other hand, there is a criticism against our Council that the complaints against CAs are not processed very seriously, there is considerable delay in disposing of the complaints; punishments awarded are too mild, and so on. Thus, the society expects the COE to be implemented very strictly.

SOURCE OF COE –

Our Institute's Motto – '**Ya Esha Supteshu Jagarti**' is adopted from Kathopanishad and it denotes 'eternal vigilance' – awakening when the world is asleep.

It requires following certain principles or standards to be vigilant and to perform the task of expressing opinion without fear or favour and this requires adhered to the standards as given in Code of Ethics.

There are four recognised sources of law –

- First is 'custom'. E.g. Our Hindu law;
- Second is Legislation – Codified law. E.g. various Acts that we study.
- Third is judicial pronouncements; and
- Fourth is experts' opinion.

The Chartered Accountants' Act, 1949 (as amended by the CAs (Amendment) Act, 2006) and First and Second Schedule thereto contains certain provisions that give us this COE.

SUGGESTED READING / REFERENCES –

Code of Ethics (COE) enumerates not only from the Act, but various pronouncements, guidelines, etc. Reading or referring to following literature is suggested for full and proper understanding of the Code of Ethics.

- The Chartered Accountants Act, 1949 [as amended by the CAs (Amendment) Act, 2006].
- CA Regulations of 1988.
- ICAI publication on 'Code of Ethics' (Eleventh edition January 2009). Chartered Accountants
- FAQs published by ICAI. (Aug. 2004).

- Appellate Authority (Procedure) Rules, 2011.
- Manual for members.
- ICAI Website for various pronouncements.
- Ethical Standard Board ('ESB') website and Handy brochure namely Ethics Plus issued by the ESB

The important standards or Ethics to be followed by the Professionals or DOs and Don'ts from the point of view of those members not holding COP are summarised in following pages.

➤ **Applicability of CODE of ETHICS for members NOT holding COP**

Normally it is assumed that COE is applicable only to members holding COP and other members are not regulated. However, COE is not only applicable, but rather binding on all the members of the Institute whether holding COP or

Sec 22. Professional or other misconduct defined

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

A member is liable to disciplinary action under Section 21 of the Chartered Accountants Act, if he is found guilty of any professional or "other misconduct".

This provision not only empowers, but cast duty on the Director (Discipline) to **enquire into any conduct of a member under any other circumstance**. This is considered necessary because a Chartered Accountant is expected to maintain the highest standards and integrity even in his/her personal affairs and any deviation from these standards would expose him/ her to disciplinary action.

The words "Other misconduct" is broader one and cover the misconduct or wrong doings or deviation from the Ethics even if it's not directly related to Profession. Therefore, even a member not holding COP exposes himself to disciplinary action and it is very much necessary for such members to be acquainted with the COE. The Part II, III and IV of First Schedule and Part II & III of Second Schedule details the situation where members will be held guilty and liable even when he doesn't hold COP. The relevant clauses are discussed in the later part under broad content of COE.

The example of such misconduct is "a member who is found to have forged the will of a relative may be liable to disciplinary action even though the forgery may not have been done in the course of his professional duty."

Few more example / relevant pronouncements are given below.

- Where a Chartered Accountant had misrepresented to a firm while seeking employment as an Accountant that he had worked for 3 years as a senior Assistant with another firm. Held he was guilty of "other misconduct" in terms of Section 21 of the Act.

(B.K. Chakraborty in Re:- Page 872 of Vol. IV of the Disciplinary Cases and pages 254-255 of October, 1969 issue of the Institute's Journal - Judgement delivered on 19th July, 1969).

- In February 2003, the Hon'ble Gujarat High Court had dealt with the case where the member had authored and published a book titled 'Tax Planning for Secret Income (Black Money)'. On going through the preface as well as the contents of the book it was seen that the author had explained in detail the various methods of creation of black money followed by different Sections of society and the methods, legal as well as illegal, generally adopted to convert the same into white. Since it appeared that the title of the book, its preface, its contents and in totality the book was likely to create an impression in the eyes of common man that Chartered Accountants are experts in helping in the creation of black money and its conversion into white money though there is no direct reference as such to the Chartered Accountants; this might tend to lower the image of the profession in the public eyes. Held that the member was guilty of "other misconduct

The Hon'ble Gujarat High Court in its judgement dated 14th February, 2003 observed that:

"... Having regard to the old age of the Respondent, ailments that he is suffering from, repentance that he has shown in the Court and the time lag that has elapsed, as also his statement that he has never published any such writing after the publication of the Said book, in our opinion, interest of justice will be met if the Respondent is removed forthwith from the membership of the Institute for a period of five years. We accordingly, while upholding the Respondent guilty of misconduct, direct that the Respondent be removed forthwith from the membership of the Institute for a period of five years. The reference stands disposed of accordingly with no order as to costs".

The submission made by the learned counsel for the Respondent that the operation of this order may be stayed to enable the Respondent to approach the higher forum was also of accepted by High Court.

A review petition and special Leave Petition filed against the above judgement in Supreme Court was also dismissed.

(P.C. Parekh in Re: –Page 63 Vol. VIII-1-21(6) of Disciplinary Cases – Judgement of the Gujarat High Court dated 14th February 2003 and judgement of Supreme Court dated 6th August, 2003 and published in the February, 2004 issue of Institute's Journal at Pages 869 to 890).

- A member, who is not in practice, is precluded from accepting engagement to render services of any of the types normally prescribed for a Chartered Accountant, even though for doing so, he does not require any other special qualifications. Certificate of Practice is so significant, and the member not holding COP is precluded from accepting engagements prescribed for Chartered Accountants even if some of such service like tax representation doesn't require COP or even CA qualification. This is discussed in detail in following decision.

In 1954, a member of the Institute who was in practice was suspended from practice for a period of six months though not removed from membership. Pursuant to the order of the High Court, he was asked to surrender the Certificate of Practice issued to him for the period of suspension which he did. He however contended that he could practice as an income-tax practitioner under Section 61 of the Indian Income-tax Act, 1922 being qualified otherwise than as a Chartered Accountant to do so.

He further wrote to the Institute saying that he was not "going in for practice as Chartered Accountant but doing income-tax cases as per the provisions of Section 61 (iv) (a) (b) and (c) of the Indian Income-tax Act, 1922". He also stated that in his opinion Section 2(2) of the Chartered Accountants Act did not supersede Section 61 of the Indian Income-tax Act, and that he was entitled to practise as an Income-tax practitioner even before becoming a member of the Institute and he had only resumed this work since he could not practice as a Chartered Accountant.

The above contention of the member was not accepted by the Council on the following grounds:

"(a) once the person concerned becomes a member of the Institute, he is bound by the provisions of the Chartered Accountants 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 Chartered Accountant and a member of the Institute. Having, as it were, brought himself within the jurisdiction of the Chartered Accountants Act and its Regulations, he could not set them at naught by contending that even though he continues to be a member of the Institute and has been punished by suspension from practice as a member, he would be entitled, in substance, to practice in some other capacity.

(b) 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."

Thus, a Chartered Accountant, whose name has been removed from the membership for professional and/or other misconduct, during such period of removal, will not appear before the various tax authorities or other bodies before whom he could have appeared in his capacity as a member of this Institute.

[Ref. A.C. Kaher in Re: - Page 64 of Vol. IV (1) of Disciplinary Cases].

Judgement delivered by Supreme Court in "**Council of the Institute of Chartered Accountants of India and another vs. B. Mukherjea**" (AIR 1958 SC 72) is also relevant.

In this case SC decided that if a member of the Institute is found, prima facie, guilty of conduct, which, in the opinion of the Council renders him unfit to be a member of the Institute, even though such conduct may not attract any of the provisions of the Schedule, it would still be open to the Council to hold an enquiry against the member in respect of such conduct and a finding against him, in such an enquiry, would justify appropriate action being taken. by the High Court."

From the above and other pronouncements as well as judgements, it is aptly clear that considering a Chartered Accountant (whether holding COP or NOT) is expected to maintain the highest standards and integrity even in his/her personal affairs and any deviation from these standards would expose him/ her to disciplinary action and therefore it is necessary for the members even NOT holding COP to know and strictly adhered to the standards or Ethics set by the Law or council wherever authorised by the Law.

➤ **Fundamental Principles**

A professional accountant is required to comply with the following fundamental principles:

(a) **Integrity** : A professional accountant should be straightforward and honest in all professional and business relationships.

(b) **Objectivity** : A professional accountant should not allow bias, conflict of interest or undue influence of others to override professional judgments.

(c) **Professional Competence and Due Care** : A professional accountant has a continuing duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques. A professional accountant should act diligently and in accordance with applicable technical and professional standards while providing professional services. *

(d) **Confidentiality** : A professional accountant should respect the confidentiality of information acquired as a result of professional and employment relationships and should not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and employment relationships should not be used for the personal advantage of the professional accountant or third parties.

(e) **Professional Behaviour** : A professional accountant should comply with relevant laws and regulations and should avoid any action that discredits the profession.

➤ **Threats and Safeguards (for members in service)**

Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances. Many threats fall into the following categories:

(a) Self-interest threats, which may occur as a result of the financial or other interests of a professional accountant or of a relative*;

(b) Self-review threats, which may occur when a previous judgment needs to be re- evaluated by the professional accountant responsible for that judgment;

(c) Advocacy threats, which may occur when a professional accountant promotes a position or opinion to the point that subsequent objectivity may be compromised;

(d) Familiarity threats, which may occur when, because of a relationship, a professional accountant becomes too sympathetic to the interests of others; and

(e) Intimidation threats, which may occur when a professional accountant may be deterred from acting objectively by threats, actual or perceived.

Safeguards:

Safeguards that may eliminate or reduce such threats to an acceptable level fall into two broad categories:

(a) Safeguards created by the profession, legislation or regulation; and

(b) Safeguards in the work environment

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

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

Safeguards in the work environment include, but are not restricted to:

- The employing organization's systems of corporate oversight or other oversight structures.
- The employing organization's ethics and conduct programs.
- Recruitment procedures in the employing organization emphasizing the importance of employing high caliber competent staff.
- Strong internal controls.
- Appropriate disciplinary processes.
- Leadership that stresses the importance of ethical behaviour and the expectation that employee will act in an ethical manner.
- Policies and procedures to implement and monitor the quality of employee performance. Timely communication of the employing organization's policies and procedures, including any changes to them, to all employees and appropriate training and education on such policies and procedures.
- Policies and procedures to empower and encourage employees to communicate to senior levels within the employing organization any ethical issues that concern them without fear of retribution.
- Consultation with another appropriate professional accountant

In circumstances where a professional accountant in service believes that unethical behaviour or actions by others will continue to occur within the employing organization, he should consider:

- Informing his seniors or those charged with Governance
- Seeking legal advice.
- In those extreme situations where all available safeguards have been exhausted and it is not possible to reduce the threat to an acceptable level, a professional accountant in service may conclude that it is appropriate to resign from the employing organization.

Broad Content or Framework or Scope of COE

Chartered Accountants Act, 1949 and Schedule 1 & Schedule 2 prescribes the Dos and Don'ts for members.

Some of the sections of the C A Act, 1949 relevant to members not holding COP are discussed below:

Sec 2(2): Members who will be deemed to be in Practice

There are 2 types of the member:

Those in practice and

Those in service or otherwise not holding COP.

Sec 2(2) of the Chartered Accountant Act, 1949 defines the members who are deemed to be in practice even though they are not holding COP.

The relevant text of the section 2(2) is as given below:

A member of the Institute shall be deemed "to be in practice", when individually or in partnership with chartered accountants in practice, or in partnership with members of such other recognised professions as may be prescribed, in consideration of remuneration received or to be received, –

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

(ii) offers to perform or performs services 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 chartered accountant in practice and the words "to be in practice" with their grammatical variations and cognate expressions shall be construed accordingly.

Explanation – 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 firm consisting of one or more chartered accountants and 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. Pursuant to clause i(iv) of Sec 2(2), the council has passed the following regulation

Resolutions passed by the Council under clause (iv) of sub-section (2) of Section 2

(1) "Resolved that a member of the Institute shall be deemed to be in practice during the period he renders service with armed forces."

(2) "Pursuant to Section 2(2) (iv) of the Chartered Accountants Act, 1949, the Council hereby reiterates its opinion that the service that may be rendered by a Chartered Accountant in practice include the entire range of Management Consultancy Services."

(Please refer the Annexure at the end of presentation for long List of services included in Management Consultancy services)

(3) "Pursuant to Section 2(2) (iv) of the Chartered Accountants Act, 1949, the Council hereby reiterates its opinion that 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 a

liquidator, trustee, executor, administrator, arbitrator, receiver, adviser or representative for costing, financial or taxation matters or takes 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 unless his employment is on a salary-cum-fulltime basis; Provided that nothing contained hereinabove, shall apply to a member who is holding a Certificate of Practice from the Institute of Cost & Works Accountants of India or the Institute of Company Secretaries of India or from the Bar Council or such other bodies, as may be specified in this behalf, by the Council."

As per this sec 2(2) those performing or even offer to perform accounting services and rendering the long list of Management services shall be deemed to be in practice even though he is not holding COP. The exceptions to this deeming fiction are:

The member performs these services not in Professional capacity or as an Employee whose appointment is on a salary cum full time basis

OR

He is member holding COP from Other institutes or Bar Council or such other bodies, as may be specified in this behalf, by the Council."

Sec 7: Using a designation of Chartered Accountant and other than Chartered Accountant

Sec 7. Members to be known as Chartered Accountants

Every member of the Institute in practice shall, and any other member may, use the designation of a chartered accountant and no member using such designation shall use any other description, whether in addition thereto or in substitution therefor:] **Provided** that nothing contained in this Section shall be deemed to prohibit any such person from adding any other description or letters to his name, if entitled thereto, to indicate membership of such other Institute of accountancy, whether in India or elsewhere, as may be recognised¹⁷ in this behalf by the Council, or any other qualification that he may possess, or to prohibit a firm, all the partners of which are members of the Institute and in practice, from being known by its firm name as Chartered Accountants.

Thus all the member including those not holding COP can use the designation Chartered Accountant, but not in addition to anyother qualification. However, if a member who is not in practice and not holding COP and does not use the designation of a Chartered Accountant may use any other description.

Further the member including a member in practice may use any other letters or description indicating membership of Accountancy Bodies which have been approved by the Council.

For example, though a member cannot designate himself as a Cost Accountant, he can use the letters A.I.C.W.A. after his name, when he is a member of that Institute.

Sec 8: Disabilities for purpose of Membership

Section 8 of the Act enumerates the circumstances (including being found on inquiry to have been guilty of professional or other misconduct) under which a person loose his entitlement from having his name entered in or borne on the Register of Members even though he has passed has passed such examination and completed such training as may be prescribed for members of the Institute. The relevant text of sec 8 is as follows:

8. Disabilities

Notwithstanding anything contained in Section 4, a person shall not be entitled to have his name entered in or borne on the Register if he –

(i) has not attained the age of twenty-one years at the time of his application for the entry of his name in the Register; or

- (ii) is of unsound mind and stands so adjudged by a competent Court;] or
- (iii) is an undischarged insolvent; or
- (iv) being a discharged insolvent, has not obtained from the Court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part; or
- (v) has been convicted by a competent Court whether within or without India, of an offence involving moral turpitude and punishable with transportation or 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, on an application made by him in this behalf, the Central Government has, by an order in writing, removed the disability; or
- (vi) has been removed from membership of the Institute on being found on inquiry to have been guilty of professional or other misconduct: **Provided** 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.

Sec 20: enumerates and mandates council for Removal of the member from the Register under certain circumstances. The relevant text is as below:

20. Removal from the Register

- (1) The Council may remove from the Register the name of any member of the Institute–
 - (a) who is dead; or
 - (b) from whom a request has been received to that effect; or
 - (c) who has not paid any prescribed fee required to be paid by him; or
 - (d) who is found to have been subject at the time when his name was entered in the Register, or who at any time thereafter has become subject, to any of the disabilities mentioned in Section 8, or who for any other reason has ceased to be entitled to have his name borne on the Register.
- (2) The Council shall remove from the Register the name of any member in respect of whom an order has been passed under this Act removing him from membership of the Institute.
- (3) If the name of any member has been removed from the Register under clause (c) of subsection (1), on receipt of an application, his name may be entered again in the Register on payment of the arrears of annual fee and entrance fee along with such additional fee, as 39 may be determined, by notification⁷, by the Council which shall not exceed rupees two thousand: **Provided** that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees two thousand, which shall not in any case exceed rupees four thousand.

Sec 21 & 22: Procedure in Inquiries for Disciplinary Matters relating to misconduct of the members of the Institute and detailed in second part of the presentation.

Sec 24 prescribes the Penalty for falsely claiming to be a Member or member in Practice by the member when a member doesn't have COP. The relevant text is reproduced below:

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

Any person who –

- (i) not being a member of the Institute –
 - (a) represents that he is a member of the Institute; or
 - (b) uses the designation Chartered Accountant; or
- (ii) being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practises as a chartered accountant, shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months or with fine which may extend to five thousand rupees, or with both

24A. Penalty for using name of the Council, awarding degree of chartered accountancy, etc.

(1) Save as otherwise provided in this Act, no person shall–

(i) use a name or the common seal which is identical with the name or the common Seal of the Institute or so nearly resembles it as to deceive or as is likely to deceive the public;

(ii) award any degree, diploma or certificate or bestow any designation which indicates or purports to indicate the position or attainment of any qualification or competence similar to that of a member of the Institute; or

(iii) Seek to regulate in any manner whatsoever the profession of chartered accountants.

(2) Any person contravening the provisions of subsection (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Sec 25 prescribe that Companies not to practice as Chartered Accountant and provides as follows:

25. Companies not to engage in accountancy

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

Explanation – For the removal of doubts, it is hereby declared that the “company” shall include any limited liability partnership which has company as its partner for the purposes of this section.

(2) If any company contravenes the provisions of sub-section (1), then, without prejudice to any other proceedings which may be taken against the company, every director, manager, secretary and any other officer 59 thereof who is knowingly a party to such contravention shall be punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent Conviction to five thousand rupees

SCHEDULES TO THE ACT

Professional/other misconducts by the members as provided in Schedules

The expression “*professional or other misconduct*” within the meaning of Section 22 of the Chartered Accountants Act shall be deemed to include any *act(s) or omission(s) provided in any of the two Schedules to the Chartered Accountants Act, 1949*. These schedules specifically provide the situations where the members shall be deemed to be guilty of misconduct.

There are four parts in the First Schedule

Part I contains **professional misconduct in relation to CAs in practice**. There are twelve clauses.

Part II covers misconduct **in relation to members in service** and has two clauses.

Part III specifies three clauses of **Professional misconduct in relation to members in general**.

Part IV contains two clauses of **‘Other Misconduct’ in relation to all members generally**.

There are three parts in the Second Schedule

Part I contains ten clauses **in relation to CAs in practice**

Part II has four clauses **relating to members generally**.

Part III covers residuary cases of **‘Other Misconduct’**.

SCHEDULES TO THE ACT:

FIRST SCHEDULE: 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

| <u>CLAUSE</u> | <u>MISCONDUCT</u> | <u>EXCEPTION</u> |
|----------------------|---|---|
| 1 | Allows any other person to practice in his own name. | Other person CA in practice; and Is in partnership; or Is in his employment. |
| 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 1. Member of the Institute or 2. partner or 3. retired partner or 4. the legal representative of the deceased partner or 5. member of any other professional body. 6. with such other persons having such other qualifications. |

| | | |
|---|--|---|
| 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 CA in Practice or such other person who is a member of any other professional body having such qualifications as may be prescribed 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 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 arrangement permitted in terms of item (2), (3) and (4) of this part. |
| 6 | Solicits clients or professional work either directly or indirectly by circulars, advertisement, personal communication or interview, or by any other means. | Provided that nothing herein contained shall be construed as preventing or prohibiting - Any CA from applying or requesting for or inviting or securing professional work from another CA in practice; or A member responding to tenders or enquires 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 CA 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 ICAI. 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 | If he accepts a position as auditor previously held by another CA or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing. | NIL |

| | | |
|----|---|---|
| 9 | Accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of section 139, 140 and 142 read with section 141 of the Companies Act, 2013, in respect of such appointment have been duly complied with; | NIL |
| 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 CA. | Unless permitted by the Council so to engage. |
| 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 of his firm, any balance sheet, profit and loss account, report on financial statements. | Signing documents not containing expression of opinion. |

FIRST SCHEDULE 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

| CLAUSE | MISCONDUCT | EXCEPTION |
|--------|---|-----------|
| 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; | NIL |
| 2 | Accepts or agrees to accept any part of fees, profits or gains from a lawyer, a CA or broker engaged by such company, firm or person by way of commission or gratification. | NIL |

FIRST SCHEDULE 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 other misconduct, if he—

| CLAUSE | MISCONDUCT | EXCEPTION |
|--------|--|-----------|
| 1 | Not being a fellow of the Institute, acts as a fellow of the Institute;(also see section 24) | NIL |
| 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 committee, Quality review Board or The Appellate Authority; | NIL |
| 3 | <ul style="list-style-type: none"> ➤ 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. | NIL |

FIRST SCHEDULE: 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—

| CLAUSE | MISCONDUCT | EXCEPTION |
|--------|---|-----------|
| 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. | NIL |
| 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. | NIL |

SECOND SCHEDULE: 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—

| CLAUSE | MISCONDUCT | EXCEPTION |
|--------|--|---|
| 1 | Discloses information acquired in the course of his professional engagements 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 CA in practice. |
| 3 | If he permits his name or name of his firm to be used in connection with the estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for accuracy of the forecast. | SAE 3400 'The Examination of Prospective Financial Information'. |
| 4 | Expresses his opinion on Financial Statements of any business or enterprise in which he, his firm, or a partner in his firm, or his relatives (AS 18) has a substantial interest; | This clause is meant for reports/certificates which are to be submitted to any outside authority, but not where statements are prepared by |

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| | | members in employment for INFORMATION SYSTEM of their employers etc. |
| 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 statements where he is concerned with that financial statement in a professional capacity. | NIL |
| 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; | NIL |
| 7 | Does not exercise due diligence, or is grossly negligent in the conduct of his professional duties; | NIL |
| 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. | NIL |
| 9 | If he fails to invite attention to any material departure from generally accepted audit procedures applicable to the circumstances. | NIL |
| 10 | Fails to keep moneys of his clients other than fees or remuneration or money meant to be expended in a separate banking account or to use such moneys for the purposes for which they are intended within a reasonable time. | Fees/Remuneration (even advance) Reasonable time usage. |

SECOND SCHEDULE: PART II

Professional misconduct in relation to members of the Institute generally
A Member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he -

| CLAUSE | MISCONDUCT | EXCEPTION |
|--------|---|--|
| 1 | Contravenes any of the provisions of this Act or the regulations made there under or any guidelines issued by the Council. | NIL |
| 2 | Being an employee of any company, firm or any 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. | NIL |
| 4 | Defalcates or embezzles moneys received in his professional capacity. | NIL |

SECOND SCHEDULE: 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 -

| CLAUSE | MISCONDUCT | EXCEPTION |
|--------|---|-----------|
| 1 | Is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months, | NIL |

Conclusion: Ethics to be effective should be followed in letter and spirit; same is case of Professional Ethics or Code of Ethics. If the members want to command the authority for the audit profession and respect and trust of the society, code of Ethics should be understood, agreed and followed in full spirit as applicable by all the members of the Institute whether or not they hold COP.

For members not holding COP even though applicable clauses are limited, utmost care should be taken by them particularly in view of

a. inclusion of any other conduct under any circumstances (other misconduct) within scope of the disciplinary action and

b. deeming fiction u/s 2(2) where member is deemed to be in practice when (for remuneration) he offers to perform or perform auditing services or render accounting services or Management Consultancy services unless he is full time salaried employee or holding COP of other institute and then all the COE for practising members will be applicable to such member even if he doesn't hold COP.

Ignorance about applicable code of Ethics can make the member liable for disciplinary action whether or not he holds COP.

Annexure

(as referred on page 8 of these notes)

Management Consultancy and other Services' defined (w r t clause (iv) of sub-section 2 of Section 2 of Chartered Accountants Act, 1949

In Section 2(2) of the Act, the term "to be in practice" has been defined as follows: - "A member of the Institute shall be deemed "to be in practice", when individually or in partnership with chartered accountants 15[in practice], 16[or in partnership with members of such other recognised professions as may be prescribed], 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 services 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 chartered accountant [in practice];

and the words "to be in practice" with their grammatical variations and cognate expressions shall be construed accordingly.

Explanation:- 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 shall, notwithstanding such employment, be deemed to be in practice for the limited purpose of the training of articled assistants".

5.2.3 Pursuant to Section 2(2) (iv) above, the Council has passed a resolution permitting a Chartered Accountant in practice to render entire range of "Management Consultancy and other Services" given below: The expression "Management Consultancy and other Services" shall not include the function of statutory or periodical audit, tax (both direct taxes and indirect taxes) representation or advice concerning tax matters or acting as liquidator, trustee, executor, administrator, arbitrator or receiver, but shall include the following:

* (i) Financial management planning and financial policy determination.

* (ii) Capital structure planning and advice regarding raising finance.

* (iii) Working capital management.

* (iv) Preparing project reports and feasibility studies.

(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.

* Consideration of "tax implications" while rendering the services at (i), (ii), (iii) and (iv) above will be considered as part of "Management Consultancy and other Services".

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- (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 of shares and business and advice regarding amalgamation, merger and acquisition.
- (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 hardware and development of software in all areas of services which can otherwise be rendered by a Chartered Accountant 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, distribution of publicity and issue material including application form, prospectus and brochure and deciding on the quantum of issue material (In doing so, the relevant provisions of the Code of Ethics 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 despatch of certificates and refunds, with the various agencies connected with the work. Explanation: For removal of doubts, it is hereby clarified that the activities of broking, underwriting and portfolio management are not permitted.
- (xx) Investment counselling in respect of securities [as defined in the Securities Contracts (Regulation) Act, 1956 and other financial instruments.] (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).
- (xxi) Acting as registrar to an issue and for transfer of shares/other securities. (In doing so, the relevant provisions of the Code of Ethics 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 the Insurance Regulatory & Development Authority Act, 1999, including Insurance Brokerage.

NOTES:

Code of Ethics (COE) for the members not holding COP
Western India Regional Council of ICAI-
SEMINAR on Code of Ethics 01.12.2018

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THANK YOU