

ETHICAL BEHAVIOUR & PROFESSIONAL ENHANCEMENT



**WESTERN INDIA REGIONAL
COUNCIL OF ICAI**

21ST JULY, 2022

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Code of Ethics



- ICAI being member of International Federation of Accountants (IFAC), has considered the Ethics standards issued by International Ethics Standards Board for Accountants (IESBA) while framing Code of Ethics for CAs.
- The earlier (2009) edition of ICAI Code of Ethics is based on 2005 edition of IESBA Code of Ethics.

Code of Ethics



- **Earlier Code of Ethics was in Two Parts**

- **Part-A : [Based on IFAC/IESBA Code of Ethics, 2005 edition]**

- Chapter – 1 : General application of the Code
- Chapter – 2 : Professional Accountants in public practice
- Chapter – 3 : Professional Accountants in service

- **Part –B : [Based on domestic Indian provisions]**

- Chapter – 4 : Accounting and Auditing standards
- Chapter – 5 : The Chartered Accountants Act, 1949
- Chapter – 6 : Council Guidelines
- Chapter – 7 : Self Regulatory Measures Recommended by the Council
- Appendices A –F

Code of Ethics



- ICAI Code of Ethics, 2019 issued on 4th February, 2019 as a Guideline of the Council.
- Based on International Ethics Standards Board for Accountants (IESBA) Code of Ethics, 2018 edition.
- Approved by Council at its 379th Meeting held on 17th–18th Dec., 2018.
- It has come into effect from **1st July, 20-20.**
- ICAI Code of Ethics, 2019 is the revised version of Part-A of the earlier Code of Ethics, 2009.
- Part-B of ICAI Code of Ethics, 2009 has also been revised.

Structure of new Code of Ethics



- The new CoE contains 3 Volumes :
- **Volume I :**
- Part 1 : Applicable to all PA. Comply with Code, Fundamental Principles & Conceptual Framework.
- Part 2 : Ethics applicable to all PA in Service
- Part 3 : Ethics applicable to all PA in Public Practice
- Part 4 : International Independence Standards :
 - Part 4A : For Audits & Reviews (Sec. 400 to 899)
 - Part 4B : For Other Assurance Engagements (Sec. 900 to 999)

Structure of new Code of Ethics



- **Volume II :**
- Chapter – 1 : Accounting & Auditing Standards
- Chapter – 2 : The CA Act, 1949
- Chapter – 3 : Council Guidelines for advertisement
- Chapter – 4 : Council Guidelines, 2020
- Chapter – 5 : Self-Regulatory Measures Recommended by the Council

Structure of new Code of Ethics



- **Volume III : It has two Schedules : “Case Laws Referencer”**
- First Schedule : Professional Misconduct
- Part I : in relation to CA in Practice
- Part II : in relation to CA in Service
- Part III : in relation to all Members in general
- Part III : Other than professional Misconduct of Members in General
- Second Schedule : Professional Misconduct
- Part I : in relation to CA in Practice
- Part II : in relation to all Members in general
- Part III : Other than professional Misconduct of Members in General

Structure of new Code of Ethics



- **Volume III :**
- The Volume-III of Code of Ethics i.e. Case Laws Referencer brings out subject-wise disciplinary cases that a member in practice or service must have in mind while performing his duties. There is improved guidance on number of issues e.g. under “Other Misconduct” lot of new instances have been incorporated and updated

General Application of Code –Fundamental Principles



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

(a) Integrity–Being straightforward and honest in all professional relationships. Implies fair dealing & truthfulness

(b) Objectivity –Not allow bias, conflict of interest or undue influence of others to override professional judgments.

(c) Professional Competence and Due Care–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.

General Application of Code –Fundamental Principles



•**(d) Confidentiality**—The confidentiality of information acquired -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—Should comply with relevant laws and regulations and should avoid any action that discredits the profession.

Threats in Compliance of Fundamental Principles



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

Continued

Threats in Compliance of Fundamental Principles



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

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

Safeguards for the Threats



- **(A) Safeguards created by the profession, legislation or regulation.**

(B) Safeguards in the work environment –

- Firm wide safeguards.
- Engagement-specific safeguards.
- Safeguards within the client's systems and procedures.

Advertisement and solicitation



- **(Clause 6 of Part I of the First Schedule)**
- The logic and spirit behind this clause is indeed very laudable. Advertisement, if permitted, often degenerates into cheaper forms of publicity.
- The point that some of the ethical norms should change with the time has been well taken. Nevertheless, there is abundant wisdom in the belief that the work of a professional is his best advertisement.

The quote from the ICAI publication on COE



- ***“The satisfaction of clients would be the best advertisement which would lead to other clients. Unabashed advertisement would affect the public esteem in which the profession is held and would act to the disadvantage of its members. An advertisement is not a key to success in the profession. It is the quality of service which attracts and retains the clients.”***

Tender : NOTIFICATION – 7/4/2016

Guideline No. 1-CA(7)/03/2016



- A member of the Institute in practice shall not respond to any tender issued by an organization or user of professional services in areas of services which are exclusively reserved for CAs, such as audit and attestation services. However, such restriction shall not be applicable :
- where minimum fee of the assignment is prescribed in the tender document itself or
- where the areas are open to other professionals along with the CAs.

Calculation of Tender Price



- The cost sheet be maintained by members of the Institute responding to tenders and accepting the professional work based thereupon, incorporating details of the costs being incurred therein having regard to number of persons involved, hours to be spent, etc.

Response to Tenders, Advertisements & Circulars



- **Whether a member in practice can respond to Tenders, Advertisements and Circulars?**
- Yes, it is permitted as per proviso (ii) to clause (6) of part I of the First Schedule to the Chartered Accountants Act, 1949.
- There is no prohibition to respond to tenders and requests made by users of professional work.

Solicit clients or professional work by advertisement



- **Can a practicing CA solicit clients or professional work by, advertisement?**
- No, Clause (6) of Part-I of the First Schedule to the CA Act, 1949 prohibits a practicing CA
- It prohibits a practicing CA from soliciting clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means. However, there are exceptions too.

Securing work taking service of others



- **Can a practicing CA secure any professional business through the services of a person who is not his employee or partner?**
- No, Clause (5) of Part-I of First Schedule to the CA Act, 1949 prohibits.

Securing work by advertisement



- **Can a practicing CA solicit clients or professional work by, advertisement?**
- No, Clause (6) of Part-I of the First Schedule to the CA Act, 1949 prohibits.

Response to announcement & quoting fees



- **Whether member in practice is permitted to respond to announcement for empanelment for allotment of audit and other professional work and quote fees on enquiries being received?**
- Yes. Refer proviso (ii) to clause (6) of the part-I of the first schedule to the CA Act, 1949.
- The quotations of fees can be sent, if enquiries are received.

Name in Telephone Directory



- **Whether a member in practice is permitted to have his name published in Telephone Directory?**
- Yes, a member in practice is permitted to have his name published in the telephone directory subject to certain conditions. Refer Para (c) under Clause (6) of Part I of the First Schedule to the CA Act, 1949.

Mentioning firm name in articles



- **Can a member in practice indicate in a book or an article, authored /contributed/published by him, his association with any firm of CAs?**
- No, Refer Para (e) under Clause (6) of Part I of First Schedule to the CA Act, 1949 as appearing in the Code of Ethics, a member is not permitted to indicate in a book or an article, authored/contributed/published by him, the association with any firm of CAs.

Circulating Questionnaire



- **Whether it is permissible for a CA firm to circulate a questionnaire among the clients seeking views of the clients for review of the services of the firm?**
- No, it is not ethically proper to issue such questionnaire.

Roving inquiries



- **Can a CA in practice solicit professional work by making roving enquiries?**
- No, Refer para (g) under clause (6) of Part-I of the First Schedule to the CA Act, 1949 of Code of Ethics.
- It is not permissible for a member to address letters or circulars to persons who are likely to require services of a CA. It would tantamount to advertisement.

Advertisement in press



- **Can a CA in practice/ firm give advertisement in press**
- **No.**

Advertisement in press for own staff

- **Whether it is permissible for a member in practice to publish an advertisement in the press for recruiting staff in the member's own office?**
- Yes, in terms of the provisions of Paragraph 3.8.1 of Council Guidelines for Advertisements, 2008.
- Provided that only the name and address of the member or that of his firm, with the description CA(s) is mentioned in such advertisement and the advertisement is not displayed more prominently than is usual for such advertisements or the name of the member or that of his firm with the designation CA(s) appears in type not bolder than the substance of the advertisement.

Article with achievements & awards



- **Whether a write-up in an Advertisement may contain any information about an achievement or award given to a member?**
- Yes, if awards etc. given by :
- **Central or State Govt. or Regulatory bodies.**

Advertise services on social networking websites



- **Whether a member in practice can advertise their services on social networking websites?**
- Yes, a member in practice may advertise through a write up on social networking websites setting out his particulars or services, subject to the Council Guidelines for Advertisement, 2008. These Council Guidelines are appearing in Volume-II of Code of Ethics, 2020.

Sharing of fees with any person



- **Can a CA in practice pay to any person any share, commission or brokerage in the fees or profits of his professional business?**
- No, Clause (2) of Part-I of the First Schedule to the CA Act, 1949 prohibits.
- He can do so only with member of the Institute or a partner or a retired partner or the legal representative of the 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.

Soliciting work by circular or advertisement



- **Can one solicit work even from other CAs by issuing circulars or advertisement?**
- Yes can seek work from other CA on one-to-one basis.

Sharing fees for Govt. Audits



- **Can a CA in practice share his fees with the Government in respect of Government Audit?**
- Yes. Certain amount of fees may be parted for Government audits..

Partnership with foreign professional



- **Can a CA in practice enter into partnership with a practicing CA of a recognized foreign professional body for sharing fee of their partnership within India?**
- Yes, Clause (4) of Part-I of First Schedule to the CA Act, 1949 permits.
- Sharing of fees of the partnership business within India or outside India, both are permitted.

Advertisement is permitted abroad



- **Although advertisement is permitted abroad, the following questions still remain**
- Whether the advertisement is appropriate?
- Whether it will benefit our members as well as the users of our services?
- Whether it focuses on service or on brand – building?
- The Council and the concerned Committee feels that no change is warranted in the present position.

Rules for Website



- The Council came out with detailed guidelines first in January, 2001.
- The Council carried out certain corrections in July, 2003.
- Further amendments carried out by the Council in August, 2015.
- The most important point is that it should run on a **“pull” model** and not a **“push” model**.
- The address of the website should be intimated to the ICAI within 30 days.

Application for empanelment



- If a member come to know of the maintenance of panel by Govt. or other organization, he may apply.
- Roving inquiries not permissible.
- Also he cannot request for allotment of work.
- Refrain for empanelment with registration fees/deposit for audit and exclusive fields for CAs.
- Fees/deposit may be paid for non-exclusive areas.

Name in Telephone Directory



- It is permitted if specific guidelines are followed.

Quotation of fees for tender



- It is permissible to quote fees on enquiries being received or respond to tenders from the organisations requiring professional services which maintain such panel.
- Literature can not be distributed.

Advertisement seeking professional work



- A member is permitted to issue a classified advertisement in the Journal / Newsletter of only the Institute.

Sharing fees with/from other professionals



1. A member in CA practice is now permitted to share his fees from professional practice with other professionals.
 2. He can also get his share of fees from such other professionals.
 3. Further, he can now accept professional assignments by an arrangement with such other professionals.
 4. The list of other (permitted) professionals is now in the Regulation no. 53A – viz . CS, CWA, Actuary, B.E., B. Tech, Architect, Lawyer and MBA.
- Also see Regulation 53-B for CA entering into partnership with such professionals.

(G) Fees –Relative Size

- In the revised Code, where for two consecutive years, total gross annual professional fees from the audit client and its related entities represent more than 15% of total fees, the firm shall disclose to Those charged with Governance, in case of PIE clients.
- No such ceiling on total fees of the Firm would be applicable :
 - where such fees does not exceed Rs. 5 Lakhs, &
 - in the case of audit of government Companies, public undertakings, nationalized banks, public financial institutions or Government appointments.

(G) Continued..... Fees –Relative Size



- The rule applies ONLY where such 15% fees is received from an AUDIT CLIENT.
- The revised CoE does not put bar on acceptance of more than 15% fees from a single client. There is only requirement of disclosure & taking safeguards prescribed therein.
- Accordingly the audit may be continued taking proper safeguards.

Can a member share profits with the widow of his deceased partner?

- Yes, when there are two or more partners and one of them dies, the widow of the deceased partner can continue to receive a share of the profit of the firm. A legal representative, say widow of a deceased partner, would be entitled to share the profits only where the partnership agreement contains a provision that on the death of the partner his widow or legal representative would be entitled to such payment by way of sharing of fees or otherwise for the specified period.

Sharing of fees between the widow or the legal rep. of the proprietor of a single member firm

- No, there could not be any sharing of fees between the widow or the legal representative of the proprietor of a single member firm and the purchaser of the goodwill of the firm on the death of the Sole proprietor of the firm.

ILFS Case study



- Auditors were providing huge other services
- Nod of Audit Committee approvals were obviated
- Audit staff rotation was absent
- Familiarity threat was fully functional
- Independence in mind of Audit Firm was lacking
- The total audit fee for 15 engagements listed in Annexure-I was Rs. 666.63 lakhs compared to the audit fee Rs. 401 lakhs for the year 2017-18
- These 15 engagements were from ILFS Ltd. (Holding Co.) or directly from IFIN. It do not include engagements given by other Associates & Group Companies of IL&FS.

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Fees on percentages basis



- Refer Clause 10 of Part-1.
- The fees which are based on :
- a percentage of profits or
- contingent upon the findings, or
- are contingent upon results of such work;
is not allowed.
- Exceptions are given in Regulation 192 of The CA Regulations, 1988.

Fees on percentages basis – relaxation by ICAI



- The Council, pursuant to authority vested into it has in the following circumstances, permitted charging of fee based on percentage of profits or contingent upon the findings, or results of such work :
 - Charging of Fees by Members enrolled as Insolvency professional
 - Fee for rendering Non-assurance services to non-audit clients.

Referral Fees or Commissions



- Payment or receipt of referral fees does create a self-interest threat to compliance with the principles of objectivity and professional competence and due care.

Few important structural changes in new Code



- Independence requirements for (1) Audit and Review Engagements, and (2) other Assurance engagements differentiated,
- Independence sections re-characterized as “*International Independence Standards*”,
- Change in the drafting conventions e.g. “should” to “shall”,
- New pattern of structuring of sections – Requirements distinguished,
- Increased clarity of responsibility for compliance - Firms, network firms, individuals within firms.

Changes fall under following broad heads

- Where domestic provision stricter than corresponding IESBA provision e.g. total bar on Accounting by the Statutory Auditor.
- Where domestic legal requirement governs the issue e.g. “Network” would only refer to Network registered with ICAI.
- Where a domestic requirement has no corresponding provisions in IESBA Code e.g. Firm Rotation.
- Language changes –for example, “professional accountant in business” mentioned as “professional accountant in service” as per CA Act, 1949.

Bird Eye-view on changes in CoE, 2019



• (A) Key Audit partner

This term was not there in ICAI CoE, 2009, but has been included in ICAI CoE, 2019 as:-

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

Depending upon the circumstances and the role of the individuals on the audit, “other audit partners” might include, for example, audit partners responsible for significant subsidiaries or divisions.”

(B) Independence Standards



- 2009 Code contains Section 290 (“*Independence – Assurance Engagements*”).
- 2019 edn. based on 2018 IESBA Code introduces Parts 4A & 4B :-
- ***Part 4A : Independence for Audit and Review Engagements.***
- ***Part 4B : Independence for Assurance Engagements other than Audit and Review***
- 4A and 4B christened as “Independence Standards”, as against “Section” earlier.

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



- While providing a professional service to a client or for an employer, a Professional Accountant may come across an instance of non-compliance with laws and regulations (NOCLAR) or suspected NOCLAR committed or about to be committed **by the client or the employer**, or by those charged with governance, management or employees of the client or employer.



CONTINUED....

Non-Compliance with Laws and Regulations (NOCLAR)



- Accepting that PA has a prima facie ethical responsibility to not turn a blind eye to the matter, NOCLAR is introduced to guide us to deal with the situation considering how best to serve the public interest in these circumstances.
- Laws and regulations having nexus to PAs' professional training and expertise, i.e.:
 - Having direct effect on the determination of material amounts and disclosures in the financial statements,
 - Compliance of which fundamental to the entity's business,
 - Compliance necessary to avoid material penalties.

CONTINUED....

Non-Compliance with Laws and Regulations (NOCLAR)



- Examples of laws and regulations required to be addressed are :-
- Fraud, corruption and bribery, Money laundering, terror financing and proceeds of crime.
- Securities markets and trading, Banking and other financial products and services.
- Data protection, Environmental protection, Public health and safety.
- Tax and pension liabilities and payments.

CONTINUED....

Non-Compliance with Laws and Regulations (NOCLAR)



- Following matters not in scope of NOCLAR :-
- Clearly inconsequential (i.e., of little value; not important or worth considering)
- Personal misconduct unrelated to the business activities
- Non-compliance other than by the client or employer.

CONTINUED....

Non-Compliance with Laws and Regulations (NOCLAR)



- PA to address NOCLAR only when, and if, he encounters the same **in the course of providing a professional service to a client.**
- Appropriate authority for disclosure will depend on the nature of the matter, e.g. SEBI for fraudulent financial reporting.
- In 2019 Code, it has been initially made applicable to Auditors/Employee CAs of Listed entities in India.
- Applicable to only audit assignments in India.
 - NOCLAR COMPLETED

(D) Firm rotation/ Partner Cooling



- 2019 Code incorporates Firm rotation requirements (e.g. under Companies Act, 2013) vide section 550 for providing comprehensive guidance for members.
- 5 Years cooling off for engagement partner.
- In earlier Ethics only rotation of partners was covered. New CoE emphasize not only rotation of partners, but also of Firms.

(E) Taxation services to the Audit clients

- **ICAI Code Ethics, 2009** : Taxation to Audit client include compliance, planning, provision of formal taxation opinions and assistance in the resolution of tax disputes. Such assignments are generally not seen to create threats to independence.

- **ICAI Code of Ethics, 2019 (604)** : Further guidance on Taxation matters provided.

Generally, it states that providing tax services to an audit client might create a self review or advocacy threat – having an appropriate reviewer, not involved in providing the service, review the audit work etc.

Taxation services to the Audit clients

- **Tax Return preparation** –Usually no threat.
- **Tax Calculations for the Purpose of Preparing Accounting Entries (that will subsequently be audited by the Firm)** -Creates a self-review threat
- **Tax Planning & Other Tax Advisory Services** - Might create self-review/advocacy threat- appropriate safeguards to be adopted, e.g. Using professionals who are not audit team members to perform the service;

Taxation services to the Audit clients



- **Tax Services Involving Valuations** - Might perform only where the result of the valuation will not have a direct effect on the financial statements.
- **Assistance in the Resolution of Tax Disputes**
-Might create a self-review or advocacy threat – appropriate safeguards to be adopted –Not to provide if involves acting as advocate for the audit client OR amounts involved are material to the financial statements on which the firm will express an opinion.

(F) Documentation

- 2009 Code requires Firms to document their conclusions regarding compliance with independence requirements (290.27).
- In the 2019 Code, the requirements of Documentation given in greater detail.
- NOCLAR requires all steps in responding with NOCLAR to be documented.

(H) Criteria of Indebtedness

- IESBA Code of Ethics, 2018 brought concept of materiality of Loans and Guarantees. Whether a loan or guarantee is material would depend on combined net worth of the individual and his immediate family members. It's a new concept, introduced for the 1st time.
- Concept adopted in ICAI Code of Ethics, 2019
- In the revised Code, the application of safeguards is required, when necessary, to eliminate threats or to reduce them to **'an acceptable level' (level which a reasonable and informed third party would conclude, is acceptable)**. Previously safeguards had to be considered if a threat was other than **"clearly insignificant"**.

(I) Public Interest Entity (PIE)



- 2019 edition contains a new term “Public Interest Entity” (PIE).
- Enhanced independence requirements for PIE in the new Code.
- Definition of PIE, as given in IESBA Code of Ethics extended by inclusion of banks and insurance companies in the 2019 Code.
- Firms encouraged to determine whether to treat an additional entities as PIE because of large number of stakeholders.

(J) Inducements – Gifts and Hospitality



- Inducements elaborated.
- To first see whether prohibited by Laws and Regulations.
- Offering also prohibited.
- Reasonable and Informed Third Party test – To see whether it is with the intent to improperly influence the behaviour of the recipient or of another individual.
- Clarifications about appropriate boundaries for offering and accepting of inducements.
- Extended to PAs in service also.
- Total prohibition in case of Audit/Assurance clients to continue.

(K) Ineligible Services – If you are auditor.....



- Accounting & Book Keeping services
- Internal Audit
- Design & implementation of any financial info. system
- Actuarial services
- Investment advisory services
- Investment banking services
- Outsourced financial services
- Management services.