

Dimensions in the implementation of the Code of Ethics

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Need of Ethics when law is in place

Ethics - Need of the Hour

This century is witnessing vibrant & manifold development . But all development can come to a nought if it is not caressed by an equally vibrant system of ethics.

Ethics and Law

- Ethical values and legal principles are closely related, but ethical obligations typically exceed legal duties. In some cases, the law mandates ethical conduct. Examples of the application of law to ethics include employment law and codes of ethics.
- Though law often embodies ethical principles, law and ethics are far from co-extensive. The law does not prohibit many acts that would be widely condemned as unethical. And the contrary is true as well.
- The objective of law and ethics may be same. But ethics achieves that by encouraging people to maintain rightful professional conduct.

Ethics in Accountancy

- **Ethics in the profession of accountancy is invaluable to the members of the profession and to those who rely on their services. The stakeholders are many - clients, credit grantors, governments, taxation authorities, employees, investors, the business and financial community and the general public.**
- **IFAC has established the International Ethics Standards Board for Accountants (IESBA) to function as an independent standard-setting body under the auspices of IFAC . The IESBA develops ethical standards and guidance for use by professional accountants. It encourages member bodies to adopt high standards of ethics for their members and promotes good ethical practices globally. The IESBA also fosters international debate on ethical issues faced by accountants.**

The Code of Ethics

- **High Expectations.**
- **Regulating the relationships of Chartered Accountants.**
- **International Obligation.**

ICAI Code of Ethics

ICAI has Code of Ethics (earlier called Code of Conduct) for its members since 1963. The responsibility to update it from time to time is bestowed on the Ethical Standards Board of the Institute . The mission of the Board is :

"To work towards evolving a dynamic and contemporary Code of Ethics and ethical behaviour for members while retaining the long cherished ideals of `excellence, independence, integrity' as also to protect the dignity and interests of the members"



Code of Ethics - Enforceability

ICAI : Complying with Ethics since inception

- The Chartered Accountants Act was passed in 1949 with a view to regulate the profession of accountancy in India. ICAI was also established in the same year for administration of the Act. Accounting, auditing and ethical standards are formulated and monitored for compliance under the provisions of the Act by the ICAI.
- The CA Act and the Schedules appended to the Act set out the permissible norms for the members of the profession. The two Schedules spell in detail the various acts and omissions entailing professional/other misconduct, which are dealt with punishment in accordance with Chapter-V of the Act. As regards quality control, the Institute has the responsibility under Section 15 of the Act to ensure quality of standards of performance of its members. The Disciplinary mechanism of the Institute is provided in the Act, and thus with the sanction of law behind, it has effectively been followed since the enactment of the Act without any difficulty.

Code of Ethics, 2009

- *Code of Ethics, 2009* is divided into Part-A and Part-B .
- The Part-A has been issued as Council Guideline , thus non –compliance of Part-A is punishable under Item (I) of Part –II of the Second Schedule to the Chartered Accountants Act, 1949 .
- The Part-B is based upon statutory stipulations , including the Chartered Accountants Act, 1949 , Council decisions/guidelines, decisions of High Courts etc.



Code of Ethics – Awareness

The challenge of creating awareness

The Ethical Standards Board is saddled with the responsibility of working towards evolving a dynamic and contemporary Code of Ethics and ethical behaviour for members while retaining the long cherished ideals of 'excellence, independence, integrity' as also to protect the dignity and interests of the members.

To achieve this end, it takes a plethora of measures for creating awareness among members on the provisions of ethics. Programmes on ethics in far flung areas of the country are organised.

Obligation towards IFAC

The IFAC rules mandate compliance with the requirements stipulated by IESBA/ IFAC from time to time . IFAC Member bodies are now required to notify their members of the new, proposed , and revised provisions of the IESBA Code of Ethics and other pronouncements issued by the IESBA.

Basic Principles

Sr.	PARTICULARS	PART – A	PART - B
1	Approach	Principle based	Rule based
2	Framework	Conceptual framework based on general principles.	Based on legal framework as per CA Act, 1949.
3	Authority	It suggests basic principles in modular form along with examples as guidelines of the Council.	Authority founded in specific Statute
4	Enforceability	Professional Accountants to see enforceability themselves.	Inbuilt mechanism for its enforcement is in place



Code of Ethics – Part A : Approach



Five fundamental principles for chartered accountants

Integrity

- CA to be straightforward and honest
Professional work must not be influenced by self – interest or interest of other parties
- *Examples*
CA in practice – When a CA knows that financial statements are materially misstated he should not express a true and fair view on such financial statements.

CA in employment - A CA employed in a limited company run by one director discovers that some employees are paid in cash instead of formal payroll and some people are being employed illegally and there are no records of formal employment documents or contracts. The CA should bring out this fact to the statutory auditors.

Objectivity

- Should not allow bias, conflict of interest or undue influence of others to override professional judgments.

Examples

- *CA in practice* – A CA should not accept gift of significant value from a client in exchange of changing his opinion on financial statements.
- *CA in employment* - A CA employed as director in a large services company, the CEO of the company is domineering , and exerts undue influence in running the company unlawfully. The CA perceives threats to his objectivity due to the CEO's behavior.

Professional Competence and Due Care

- Duty to maintain professional knowledge and skill current and at a level necessary to perform professional duties.

Examples

- *CA in practice* - A CA should perform audit in accordance with the SAS issued by ICAI and relevant laws applicable to the client.
- *CA in employment* - A CA employed as a financial controller at manufacturing company finds that the company is creating higher profit margins by inflating sales, thus causing potential threat that could push the company into insolvency and result in huge job losses. The CA should declare this information to tax authorities, as required by law, and follow the fundamental principle of professional competence, due care and diligence.

Confidentiality

- Maintain confidentiality of information acquired in course of performing duties and disclose such information only when specific authority from the client or a duty under law

Examples

- *CA in practice* – A CA acquires information which can effect a legal case pending against the client in a court of law. The CA can refuse to disclose this information to a third party unless there is duty under law to make such disclosure.
- *CA in employment* - A CA is financial director of a large MNC and is privy to information about a takeover bid to acquire a rival firm. The CA to refrain from disclosing the information to a family friend who is considering to sell shares in the rival organisation.

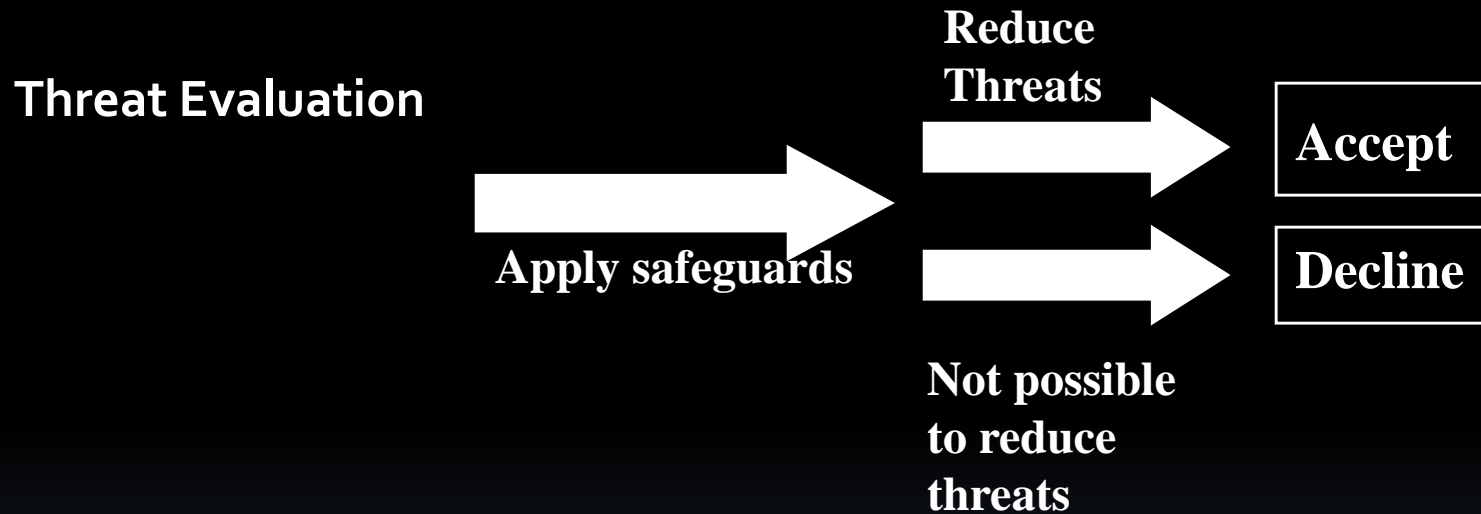
Professional Behaviour

- Comply with relevant laws and regulations and should avoid any action that discredits the profession.

Example

- *CA in practice* – A CA does not file his income tax return or pay taxes due from him has compromised the fundamental principle of professional behaviour.
- *CA in employment* - A CA employed as finance head of a small family owned Pvt Ltd Company. The Board of Directors comprised of family members and one family member is MD of the company. The Board decided that payment of pension contributions of deceased Chairman to be made to his brother and directed the CA to carry out the orders. The MD advised CA not to carry the directions of the Board. By not agreeing to the MD, the CA is complying with his professional duty of carrying out the directions of the Board of directors.

■ Conceptual Framework Approach



Examples of Threats

Self – Interest Threat

- *Self – Interest threat* may arise in a situation where the CA has a vested interest in an outcome, over which the CA has some degree of influence or control. It is not limited to purely financial interests.

For Example -

- A self-interest threat arises when a CA holds direct financial interest in the client or obtains material loan from the client

Self – Review Threat & Advocacy Threat

- ***A self – review threat*** created when a CA is called on to check, audit or approve a piece of work he was involved in originating.

For Example – A CA is asked to audit the books of accounts which have been prepared by him. A self – review threat is created.

- ***Advocacy threat*** created where a CA takes on a role representing a client' or pushing the client's interest in another context.

For Example – A CA may be asked to promote client's securities as part of IPO. The CA should not make false or misleading statements or present judgement as fact, thus avoiding advocacy threat.

Familiarity Threat & Intimidation Threat

- ***Familiarity threat*** is created where, due to relationship, client is in a position to influence the work of CA

For Example - The spouse of the CA (auditor) is the CEO in the client company. A familiarity threat to fundamental principle of objectivity is created as the opinion expressed by the CA may be biased due to personal relations.

- ***Intimidation threat*** created where someone can exercise disproportionate pressure by being in a position of power and influence.

For Example - An large audit client indicates that it will not award planned non-attest services to the audit firm if the latter continues to disagree with client's accounting treatment for a particular transaction

Safeguards

- Threats have to be eliminated or reduced to an acceptable level by applying appropriate safeguards if the professional accountant continues with the engagement.

For example – Where a CA holds shares in proposed client company , he should dispose off the holding before auditing the books of accounts of the company.

Professional Appointment – Client Acceptance

- Before accepting a new client a CA should obtain good knowledge and understanding of the client and its officers, evaluate the financial reporting practices adopted by the client .
- The KYC Guidelines have also been issued by ICAI

Conflict of Interest

- A CA should not perform services for a client where there is a conflict of interest with the client
- or example – A CA has an arrangement with a major competitor of the client for whom some non–attest services are provided. The CA should not perform audit work for such client since there may be a conflict of interest due to relations with the competitor of the client.

Second Opinions

- CA may provide second opinion on the accounting, auditing, reporting or other standards/principles being applied by a company or entity other than an existing client.

Fee

- Fee deemed appropriate to the work may be quoted.

Marketing Professional Services

- Marketing of professional services through advertising may create threats to compliance with fundamental principles.

Gifts and Hospitality

- Gifts and hospitality, other than those that are insignificant, should not be accepted
- For example – An auditor should not receive a gift like great holiday deal from a client (being a travel agency).

Custody of client assets

- CA can assume custody of client monies or other assets only when permitted by law or when complying with additional legal duties.

For example - a CA receives money from the client for payment of expenses to be incurred on behalf of the client, such as – payment of statutory fees. The CA should keep such money in a separate bank account and at all times should be ready to provide an account for the money received and spent for payment of expenses.

Objectivity – All Services

- Threats to objectivity may arise from interests in or relationships with, a client or directors or employees

Example – A CA holds majority equity shares in a company and as a result can exercise control / influence over the company. The CA should not audit the accounts of such company as the opinion expressed by such CA on books of accounts of the company will be biased. This creates a threat to the fundamental principle of objectivity.

Independence of Mind & Independence of Appearance

- *Independence of Mind* - A CA should not accept an audit assignment where he cannot proceed with independence of mind.
- *Independence of Appearance* - A CA should not perform an audit assignment where he does not appear to be independent to third parties.

Long association

A CA may be involved in providing assurance services to the client for a long time. This gives rise to familiarity threats and intimidation threats.

For Example – A CA in practice for 15 years may have audit clients for more than 10 years. Acting for the same client creates familiarity threats. The CA need not give up the audits but should give careful consideration to impairment of objectivity and independence. Alternative safeguards to be applied – like internal quality review. Also document the fact of long association with the client in the audit file.

Fee & Pricing

When the total fees generated from an assurance client represent a large proportion of a firm's total fees, the dependence on that client or client group and concern about the possibility of losing the client may create a self-interest threat.

Potential Conflict

There may be situations where the responsibilities to an employing organisation and the professional obligations to comply with the fundamental principles are in conflict.

For Example – A CA may face pressure from Board of directors to be associated with a report on a legal compliance wherein the facts are materially misstated. The CA should bring this fact to the knowledge of the audit committee and avoid potential conflicts.

Acting with Sufficient Expertise

CA to act with sufficient expertise.

For Example – A CA is asked to prepare a statement of value of inventory (in this case precious stones) as on a particular date. The CA should undertake the work only if he has sufficient experience, training and education of the methods of valuation of precious stones . If not, CA should utilize the work of an expert.

Inducements

CA may be offered inducements like gifts, hospitality, preferential treatment and inappropriate appeals to friendship or loyalty.

For Example – A CA may be offered inducements by competitors of client to disclose confidential client information in possession of the CA. The CA should refuse to accept such inducements.

Two Schedules to the CA Act

- The CA Act has two Schedules: First & Second .
- The two Schedules are distinguished on the basis of gravity of misconduct and quantum of punishment for the misconduct, the Second Schedule pertaining to comparably more grave misconduct and higher punishment.



Code of Ethics – Part B : Approach

The First Schedule

- **PART I**
Professional misconduct in relation to chartered accountants in practice
- **PART II**
Professional misconduct in relation to members of the Institute in service
- **PART III**
Professional misconduct in relation to members of the Institute generally
- **PART IV**
Other misconduct in relation to members of the Institute generally

First Schedule Part-I

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

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

'X' , an unqualified accountant, is practicing as a partner of 'Y', a qualified CA . Y is guilty of misconduct under this Item.

First Schedule Part-I

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

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

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

'X', a CA, enters into an agreement whereby he agrees to pay the share in profits of his professional business to 'Y' and 'Z' (not the members of the Institute). Held, 'X' was guilty of professional misconduct under this Item .

First Schedule Part-I

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

- (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;

'X' , a CA , accepts part of profits of professional work of 'Y' , a non – member (not covered in the categories mentioned in the proviso) . 'X' is guilty of misconduct under this Item.

First Schedule Part-I

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

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

'X', a CA , wrote various letters to officers of different Army Canteens giving details about him and his experience, his partner & office and the norms for charging audit fees. 'X' was held guilty for violation under this Item .

First Schedule Part-I

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

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

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

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

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

'X' , a member, had issued a circular letter highlighting his attainments and offering his professional services. 'X' was found guilty in terms of this Item.

First Schedule Part-I

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

- (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 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;

'X', a CA, used the designation 'Industrial and Management Consultant' in addition to the designation 'CA' on printed circular sent to a stranger. Held, 'X' was guilty of professional misconduct under this item.

First Schedule Part-I

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

- (8) 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;

'X', a CA, commenced the audit within five days of the date of his appointment without sending any communication to 'Y', the previous auditor. 'Y' also denied the receipt of any communication - Held, 'X' was guilty of professional misconduct under this Item.

First Schedule Part-III

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

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;

'X', a CA, is asked by the Ethical Standards Board of ICAI to submit copy of acknowledgement of the delivery of communication to the outgoing auditor of an entity. 'X' fails to do so. He is guilty under this Item.

First Schedule Part-III

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

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.

'X', a CA , while inviting professional work from another CA, deliberately exaggerates his experience . 'X' is guilty under this Item.

First Schedule Part-IV

- 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.

'X', a CA, retains books and documents of the client and fails to return these to the client on request without a reasonable cause. He is liable under this Item.

Second Schedule Part-I

A CA 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;

'X', a CA, conducted the audit of accounts of a college 'ABC' besides working in the same college as Vice-Principal. Held, 'X' was guilty of professional misconduct under this Item.

Second Schedule Part-I

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

'X', a CA, failed to examine how debts became bad and were written off . Held , he was guilty under this Item.

Second Schedule Part-I

A CA 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;

'X' , a CA, failed to indicate the mode of valuation of investments in shares as required by the Companies Act and also to draw attention to the inclusion of mistakes in the depreciation account. Held, 'X' was guilty under this Item.

Second Schedule Part-I

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

- 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;

'X', a CA, issued a certificate of circulation of a periodical without going into the most elementary details of how the circulation of a periodical was being maintained. Held, 'X' was guilty under this Item.

Second Schedule Part-II

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

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

'X', a CA, took loan from a firm in which the articled clerk and his father were both interested, against the provisions of the CA Regulations, 1988 which prohibit taking of loan or deposit etc. from the articled clerk. Held, 'X' was guilty of professional misconduct under this Item.

Second Schedule Part-II

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—
-defalcates or embezzles moneys received in his professional capacity.

'X', a member while working as a financial advisor misappropriated the funds of his client by way of converting a Savings Bank account in his individual name to that of joint account with the client without his consent and fraudulently discharged 3 FDRs in the client's name. Held, guilty under this Item.

Second Schedule Part-III

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.

'X', a CA, is held guilty for 'dishonestly making false claim in Court' (punishable u/s 209 of IPC upto two years imprisonment). 'X' is also liable under this Item.



Thank You