

PEER REVIEW-COMPLIANCE WITH ETHICAL STANDARDS

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WHAT IS PEER REVIEW

- As per Clause 2 (14) of the Peer Review Guideline, 2022
- Peer Review - means an examination and review of the systems and procedures to determine whether the same have been put in place by the Practice Unit for ensuring the quality of assurance services as envisaged by the Technical, Professional and Ethical Standards as applicable including Audit Quality Maturity Model wherever applicable or any other regulatory requirements as may be prescribed by the Council or any Committee and whether the same were consistently applied during the period under review



DEFINITION

- Examination and review -----
 - Of the **systems and procedures**
 - To determine -----
 - whether such **systems and procedures** have been put in place by the Practice Unit (and also to see that such systems and procedures are **adhered and working properly**)
 - To ensure
 - the **Quality of the assurance services**

Quality to be examined with what

 - Various Technical Standards (as applicable)
 - Various Professional Standards (as applicable)
 - Ethical Standards (as applicable)
 - Audit Quality Maturity Model (AQMM) (wherever applicable)
 - Digital Competency Maturity Model (DCMM) (optional-but very much effective,)
 - Other regulatory requirements as may be prescribed by the
 - Council of ICAI or
 - Committee of ICAI
- Whether the same (above) were consistently applied during the period under review



- The main objective of Peer Review is to ensure that in carrying out the assurance service assignments, the members of the Institute –
 - a) comply with Technical, Professional and Ethical Standards as applicable including other regulatory requirements thereto and
 - b) have in place proper systems including documentation thereof, to amply demonstrate the quality of the assurance services. [Clause 3(3)]
- It is important to note that Peer Review does not seek to redefine the scope and authority of any of the Technical, Professional and Ethical Standards but only seeks to ensure that they **are implemented, both in letter and spirit.**
- Therefore, the objective is to maintain and enhance the quality of assurance services by **providing appropriate guidance** rather than simply pointing out deficiencies of the Practice Unit.

THE ESSENCE OF ETHICS IN CA PROFESSION

- **Public Trust:** The foundation of the Chartered Accountancy profession rests on public trust. Ethical conduct is paramount to maintaining this trust.
- **Professional Integrity:** Adherence to ethical standards ensures integrity, objectivity, and independence in professional services.
- **Regulatory Framework:** The ICAI, through the Chartered Accountants Act, 1949, its Regulations, and various pronouncements, establishes a robust ethical framework.
- **Peer Review:** A mechanism to ensure compliance with technical, professional, and ethical standards, thereby enhancing the quality of assurance services.

OBJECTIVES OF THE SEMINAR

- To understand the fundamental principles of ethics as enshrined by ICAI.
- To delve into the provisions of Schedule I & II of the ICAI Act, 1949, related to professional misconduct.
- To explain how the Peer Review process monitors and ensures compliance with ethical standards by Practicing Units (PUs).
- To highlight key areas of non-compliance and best practices for ethical adherence.

FUNDAMENTAL PRINCIPLES OF ETHICAL STANDARDS (ICAI CODE OF ETHICS)

- The ICAI's Code of Ethics is largely aligned with the IESBA Code of Ethics and is built on five fundamental principles:
- **Integrity:** To be straightforward and honest in all professional and business relationships.
- **Objectivity:** To not allow bias, conflict of interest, or undue influence of others to override professional or business judgments.
- **Professional Competence and Due Care:** To maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service, and to act diligently in accordance with applicable technical and professional standards.
- **Confidentiality:** To respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, 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.
- **Professional Behavior:** To comply with relevant laws and regulations and avoid any conduct that the professional accountant knows or should know might discredit the profession.

THE CHARTERED ACCOUNTANTS ACT, 1949 - DISCIPLINARY MECHANISM

- The CA Act, 1949, establishes the disciplinary mechanism for professional misconduct.
- **Section 22** defines "Professional Misconduct" to include any act or omission specified in the Schedules.
- The Act provides for the constitution of a **Board of Discipline** (for First Schedule cases) and a **Disciplinary Committee** (for Second Schedule cases) to deal with complaints of misconduct.



CODE OF ETHICS

(Clause by Clause-Sch I & II)



How Many schedules and how many Sections in The Chartered Accountants Act, 1949?

- There are Two Schedules- First Schedule and Second Schedule depending on the gravity of offence and quantum of punishment.
- There are 32 Sections in The Chartered Accountants Act, 1949

Q: Whether the offences are confined to Two schedules to Chartered Accountants Act only?

No, Section 8(v) and Chapter VII of the Chartered Accountants Act having Sections 24, 24A, 25 to 28 also provides for penalties under various circumstances.

Section 132(4) of the Companies Act, 2013 provides for penalty where professional or other misconduct is proved.

Professional or other misconduct defined

‘22. For the purposes of this Act, the expression “professional or other misconduct” shall be

- deemed to include **any act or omission**, on the part of any member of the **Institute either in his individual capacity or as partner or owner of a firm**, as mentioned 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 such member or firm, under any other circumstances.’.

Misconduct

1) MISCONDUCT can be broadly divided into two categories

- a) Professional Misconduct
- b) Other misconduct.

2) Broadly 35 items of Misconduct are there in the Schedules

- a) First schedule-in Four Parts has 19 items (Rationale behind dividing schedules I Parts)
- b) Second Schedule-in three parts has 16 items

Professional or other misconduct defined (contd..)

The definition is not exhaustive but **inclusive one**, as such may include many more criteria.

Any act or omission on the part of the member as mentioned in any of the schedules. (presently First and Second Schedule)

Misconduct may either in his individual capacity

Misconduct may be **as a partner** of the firm

Misconduct may be **as a proprietor** of the Firm

Professional or other misconduct defined Contd

However, the Director (Discipline) **has vast power** and duty to inquire into the conduct of the

- >member or

- >Firm or

- >Member and firm

Under any other circumstances also (i.e. in addition to circumstances stated in schedules)

This Section **cannot limit or curtail, in any way, the power or duty** conferred to the Directorate.

What constitutes `misconduct

- under any other circumstances' has to be determined on case to case basis
- keeping in view the facts of the circumstances of each case.
- Fraud, intention to deceive and committing an act which affects the public or society at large could be in the ambit of such misconduct.

SCHEDULES TO THE ACT :

Types of Schedules

First Schedule

Part I:
Professional misconduct in relation to Chartered Accountants in practice

**No. of
Clauses: 12**

Part II:
Professional misconduct in relation to Members of the Institute in service

**No. of
Clauses: 2**

Part III:
Professional misconduct in relation to Members of the Institute generally

**No. of
Clauses: 3**

Part IV: Other misconduct in relation to Members of the Institute generally

**No. of
Clauses: 2**

Second Schedule

Part I:
Professional misconduct in relation to Chartered Accountants in practice

**No. of
Clauses: 10**

Part II:
Professional misconduct in relation to Members of the Institute generally

**No of
Clauses 5**

Part III: Other misconduct in relation to Members of the Institute generally

**No. of
Clause: 1**

WHAT IS THE RATIONAL BEHIND DIVIDING SCHEDULES INTO PARTS?

First Schedule

Part I- 12 Clauses-Professional misconduct-members in Practice

Part II- 2 Clauses - Professional misconduct-members in Service

Part III-3 Clauses – Professional misconduct -generally (all members)

Part IV-2 Clauses- other misconduct -generally (all members)

WHAT IS THE RATIONALE BEHIND DIVIDING SCHEDULES INTO PARTS? Contd....

Second Schedule

Part I- 10 clauses-Professional misconduct-members in Practice

Part II-5 clauses - Professional misconduct- generally (all members)

Part III-1 Clause -other misconduct -generally (all members)

FIRST SCHEDULE

PART I- PROFESSIONAL MISCONDUCT-MEMBERS IN PRACTICE

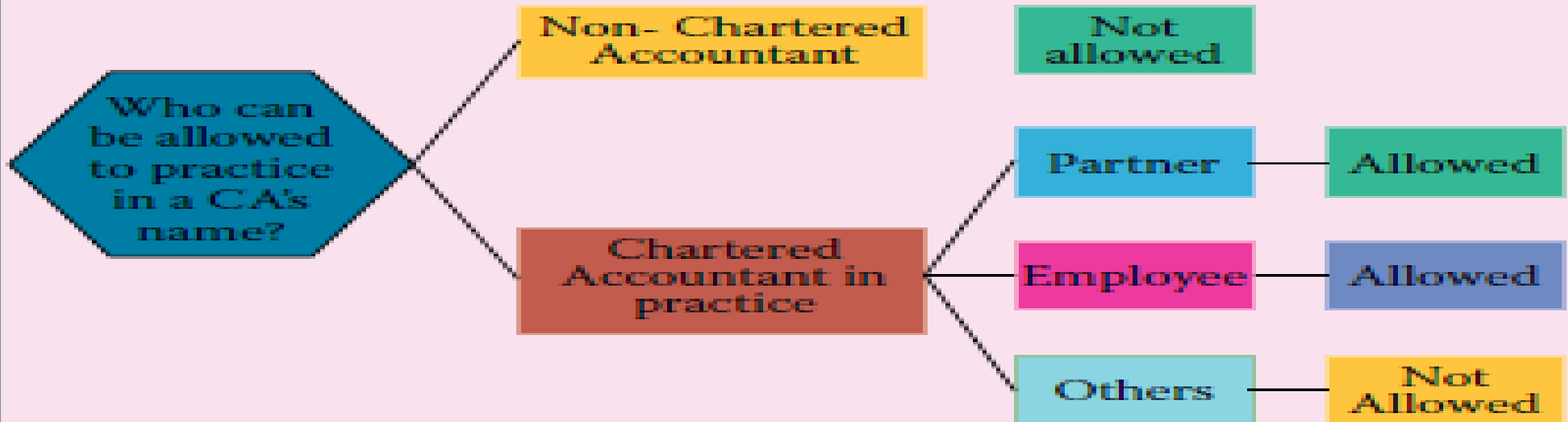


Sch I-Part I
Clause I

Clause I -Practice by non-CA

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

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



FIRST SCHEDULE

PART I- PROFESSIONAL MISCONDUCT-MEMBERS IN PRACTICE



Sch I-Part I
Clause 2

Clause 2 –Sharing Fees with Non- Member, directly,

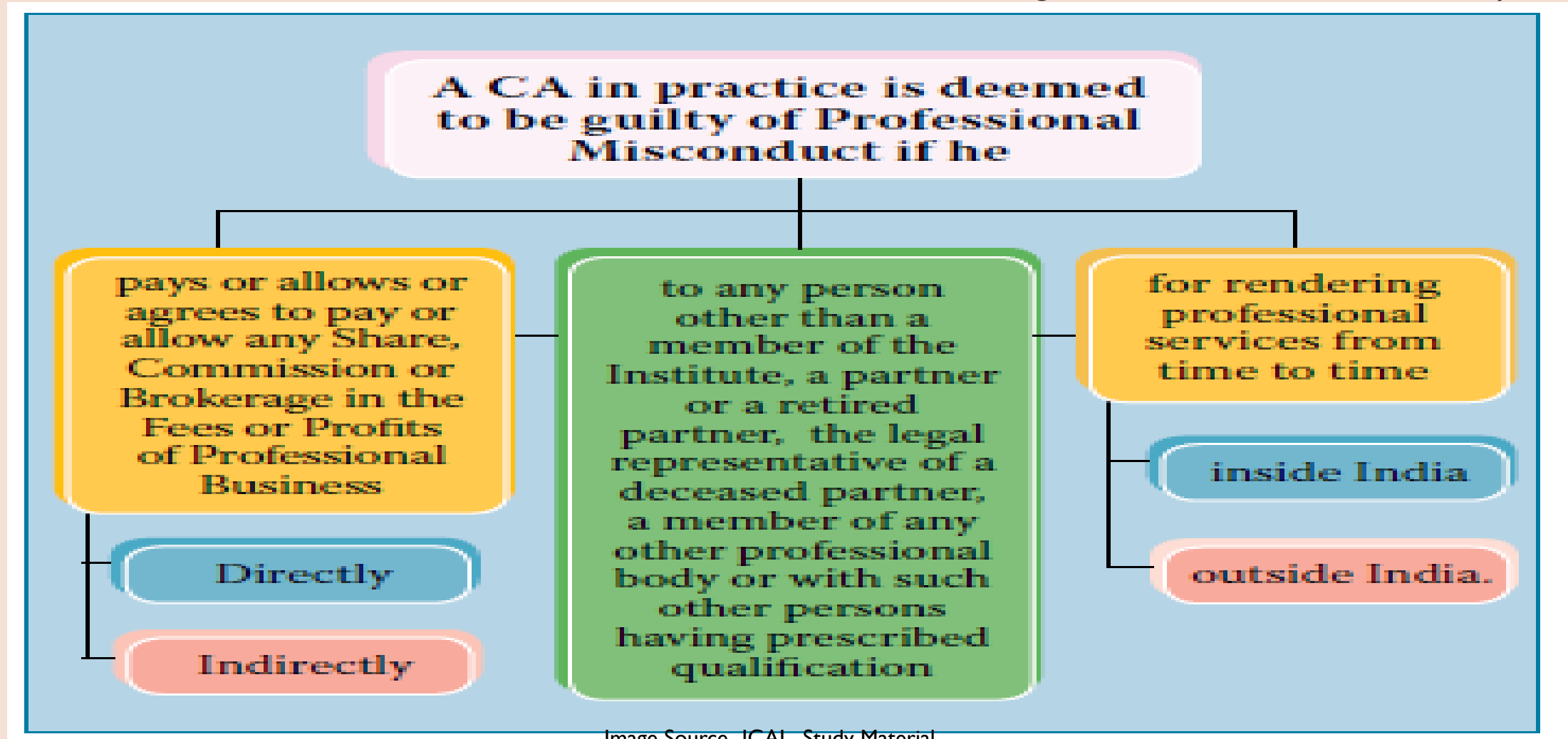


Image Source- ICAI –Study Material



Clause 3 –Accepts Fees from NON MEMBERS

Clause (3)

A CA in practice is deemed to be guilty of Professional Misconduct if he

accepts or

agrees to accept

any part of the profits of the
professional work

of a person who is not a
member of the Institute.

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

Multidisciplinary – an
Exception



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

A Chartered Accountant in practice is not permitted to enter into partnership with any person other than a Chartered Accountant in practice or such other persons as may be prescribed by the Council from time to time. The members may, however, take note of the fact that they cannot form Multi-Disciplinary partnerships till such time that Regulators of such other professionals also permit partnership with chartered accountants, and guidelines in this regard are issued by the Council.



Clause (5) Secures either through the services of a person who is not an employee of such Chartered Accountant or who is not his partner or by means which are not open to a Chartered Accountant, any professional business.
Provided that nothing herein contained shall be construed as prohibiting any agreement permitted in terms of item (2), (3) and (4) of this part.

It may further be noted that the acts of partners and employees of the firm towards securing professional work are subject to the provisions of Clauses (6) and (7) of Part-I of First Schedule of Chartered Accountants Act, 1949.



Clause 6 –Solicits professional work

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

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

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

Further, keeping in view the broad purview of Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, an advertisement of Coaching/teaching activities by a member in practice may amount to indirect solicitation, as well as solicitation by any other means, and may therefore be violative of the provisions of Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.



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

**Advertisement and note in the press -
The exceptions to the above rule are:**

Member may request another Chartered Accountant in practice for professional work.

Member may advertise changes in partnerships or dissolution of a firm, or of any change in address of practice and telephone numbers.

Member is permitted to issue a classified advertisement in the journal/newsletter of the Institute intended to give information for sharing professional work on assignment basis or for seeking partnership or salaried employment of an accountancy nature,

Announcements should be limited to a bare statement of facts & consideration given to the appropriateness of the area of distribution of the newspaper/magazine & number of insertions.

Provided it only contains the accountant's name, address or telephone number, fax number, e-mail address and address(es) of social Networking sites of members.

Mere factual position of experience and area of specialisation, relevant to seek response to the advertisement, are permissible.



Clause 7 –Advertises professional attainment

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

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

FIRST SCHEDULE .. In brief (CONTD)



Sch I-
Part I

a) Part I- 12 items-Professional misconduct-members in Practice... contd....

Clause 8

Fails to communicate with outgoing auditor – Refer New FAQ by ICAI-clarifying certain aspects

- Professional courtesy is not only sole reason
- Opportunity to know reason and safe guard own interest
- Reasons for non acceptance- non-payment of undisputed fees, non compliance of Sec 139 to 141 of Co.Act'
- Qualified Report

FIRST SCHEDULE .. In brief (CONTD)



Sch I-
Part I

a) Part I- 12 items-Professional misconduct-members in Practice... contd....

Clause 9.

Non compliance of Sec 139 to 141 of Co Act, 2013

- The incoming Auditor should ensure that appropriate procedure has been followed for his appointment(so that applicable law is complied and also, at a later stage no objection is raised by any one)
- The procedure may vary for first appointment, casual vacancy, joint audit,
- **Clause 10**

Charging/**offering to charge, Accept/ offers to accept-** fees based on percentage/ contingency (refer Regulation 192 for exceptions)

FIRST SCHEDULE .. In brief (CONTD)



Sch I-
Part I

a) Part I- 12 items-Professional misconduct-members in Practice

Clause 11

Engages in any other occupation (director simplicitor but he/partner not auditor; Regulation 190A (General or specific permission) and Regulation 191 may be referred for relaxations/conditions)

Clause 12

Allows non - Member/non-partner to sign documents on his/ firm's behalf.
(except routine documents on which a professional opinion or authentication is not required)



Clause I

Shares his emoluments with others

- Pays or allows
- Or agrees to pay
- Directly or indirectly

Clause 2

Accepts commission or gratification from a lawyer, CA, broker etc engaged by the employee.

- accepts or
- Agrees to accept
- Read with clause (2) and (3) of Part I of First sch. As applicable to Practicing members.

FIRST SCHEDULE .. In brief (CONTD)



Sch I-
Part III

c. Part III- 3 items – Professional misconduct -generally (all members)

Clause 1

Not being a FCA, **acts falsely as FCA** (whether in practice or not)

Clause 2

1) Does not supply information to the Institute and/or its other functionaries or comply requirements asked for.

➤ Non supply of Information etc falls in First Schedule but supplying of false information etc triggers Second Schedule

Clause 3

3) Gives false information knowing it to be false, while inviting professional work from another CA, responding to tenders or enquiry, advertising through write up or anything as provided under Clause (6) and (7) of the First Schedule

FIRST SCHEDULE .. In brief (CONTD)



Sch I-
Part IV

d. Part IV- 2 items - other misconduct -generally (all members)

1. Becomes guilty of any offence punishable with imprisonment upto 6 months, either in civil or criminal case
 - If held guilty
 - By an Civil or Criminal court
 - For offence which is punishable with imprisonment upto six month.
2. Bring **disrepute** to the profession/Institute as a result of his action.
 - The Council is empowered to opine on **any** action of its member
 - Such action may or **may not** relate to professional work
 - Director (Discipline) can inquire into the conduct of any member of ICAI under any other circumstances.

SECOND SCHEDULE .. In brief



Sch II-
Part I

a. Part I- 10 items - Professional misconduct-members in Practice

1. **Discloses** information acquired **without Client's consent**.

- Exceptions- as required by law; in performance of professional duty; with incoming auditor; provide information or allow extract from working paper to HO/Parent Co Auditor:

2. **Certifies**/submits report **without examining** the related records

- The underlying documents must have been examined either by himself, or his Partner, or his employee or by another practicing Chartered Accountant.

SECOND SCHEDULE .. In brief



Sch II-
Part I

a. Part I- 10 items - Professional misconduct-members in Practice

3. He or his firm permits to use its name for vouching the accuracy of **future contingent earnings**.

- The report on the Profit forecast or Financial forecast must be in accordance SAE 3400 with full disclosures
- In case of Prospectus, the applicable SEBI Regulations needs to be followed.
- It may be noted that not following the requirements of SAE/SAs in the report/certificates being issued and by just merely giving certain disclaimer or disclosure or caveat(s) like “**we are giving the information and explanations herewith purely based on estimate basis and have no relation with the actual figures and to avail the bank loan.**”
- is also NOT going to absolve the member from his responsibility as was observed by Calcutta High Court in the case of Binod Kumar Agarwala vs CIT.

SECOND SCHEDULE .. In brief



Sch II-
Part I

a. Part I- 10 items - Professional misconduct-members in Practice

3. (contd) The Hon'ble High Court in its judgement dated 21st June 2018 endorsed the view of ITAT that "A Chartered Accountant is governed by certain discipline and he has to conduct audit in accordance with the provisions and rules of the Chartered Accountants Act. Schedule II and part I holds a chartered accountant guilty of professional misconduct if he permits his name or name of his firm to be used in connection with the audit based on estimate." Hon'ble High Court construed the conduct of the Audit Firm seriously and directed the matter to be forwarded to the Institute of Chartered Accountants of India to take appropriate steps against the said Audit firm.

4. Opines on Financial Statement or issue Certificate where substantial interest involved.

- His; his firm; his Partner or their relatives not to have substantial interest.
- Appendix "H" to COE Vol II defines "substantial interest," relative'

SECOND SCHEDULE .. In brief (Contd)



Sch II-
Part I

a. Part I- 10 items - Professional misconduct-members in Practice

5. Fails to disclose any **material** fact known to him in Financial Statements.
(Financial Statement = Reports as well as Certificates)
 - the **undisclosed fact** must be **material** (materiality aspect-either Profit or significant for Balance sheet)and
 - **disclosure** of such fact is **necessary** in preparing the FS
6. Fails to report a known **material misstatement** appearing in Financial Statements.
 - The member need to point out in his Report, the material misstatement in the FS and he has knowledge of such misstatement.

SECOND SCHEDULE .. In brief (Contd)



Sch II-
Part I

a. Part I- 10 items - Professional misconduct-members in Practice

7. Performs professional duties without **due diligence** or is **grossly negligent**.

- Diligence encompasses the responsibility to act in accordance with the requirements of an assignment carefully and thoroughly
- negligence' covers a wide field and extends from the frontiers of fraud to collateral and minor negligence

8. Fails to obtain sufficient information for expressing an opinion.

- The chartered accountant should not express an opinion before obtaining the required data and information
- if the auditor has not seen any evidence of the existence and/or valuation of the investment which constitute the only asset of a Company, he should not say that:-
“Subject to the verification of the existence and value of the investments the Balance Sheet shows a true and fair view.....etc.”

SECOND SCHEDULE .. In brief (Contd)



Sch II-
Part I

a. Part I- 10 items - Professional misconduct-members in Practice

9. Fails to invite attention to any **material departure** from the generally accepted procedure of audit (GAAP) applicable to the circumstances
 - the audit should be performed in accordance with “generally accepted procedure of audit applicable to the circumstances” and if for any reason the auditor has not been able to perform the audit in accordance with such procedure, his report should draw attention to the material departures from such procedures
10. Keeps client's money without opening separate bank account.
 - a member may be entrusted with moneys belonging to his client (other than fees or remuneration or money meant to be expended). If he should receive such funds, it would be his duty to deposit them in a separate banking account, and to utilise such funds only in accordance with the instructions of the client or for the purposes intended by the client within a reasonable time.

SECOND SCHEDULE (Contd)



Sch II-
Part II

b. Part II- 5 items - Professional misconduct- generally (all members)

1. **Contravenes any of the provisions of the Chartered Accountants Act/Regulations & Guidelines issued by the Council.(Brahmastra)**

- The Council is empowered to issue guidelines in exercise of the power conferred by clause (1) of this Part.
- It is an authority for the Council to issue guidelines for **extending** the scope of misconduct to cover acts or omissions **not already dealt** with in the various clauses of the two schedules

2. Being an employee, **discloses** employer's **confidential information** (acquired in course of employment) without permission or except as and when required by law or permitted by employer.

- The confidential information cannot be disclosed by member even after cessation of his employment.

SECOND SCHEDULE (Contd)



Sch II-
Part II

b. Part II- 5 items - Professional misconduct- generally (all members)

3. Provides false information to the Institute and its different authorities.

- the member should not furnish any particulars knowing them to be false in any information, statement, return or form to be submitted
- to the Institute or Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority



SECOND SCHEDULE (Contd)

b. Part II- 5 items - Professional misconduct- generally (all members)

4. Defalcates/embezzles money received in professional capacity.
5. acts as an auditor of the company in contravention of the provisions of the Companies Act, 2013.
 - This clause was newly inserted vide amendment dated 18th April, 2022.
 - Contravention of **any** of the provisions of Companies Act, 2013 by the member of ICAI may trigger this clause.

SECOND SCHEDULE .. In brief (CONTD)



Sch II-
Part III

d. Part III- I item - other misconduct -generally (all members)

- I. Becomes guilty of any offence punishable with imprisonment EXCEEDING 6 months, either in civil or criminal case
 - If held guilty
 - By an Civil or Criminal court
 - For offence which is punishable with imprisonment exceeding six month.
 - If the punishment with imprisonment is upto six month, it will trigger First Schedule.

BEST PRACTICES FOR ETHICAL COMPLIANCE

- **Strong Ethical Culture:** Promote a culture of integrity and ethical conduct within the firm.
- **Regular Training:** Conduct periodic training sessions on the Code of Ethics, ICAI Act, and Peer Review requirements for all staff.
- **Internal Quality Control:** Implement robust internal quality control policies and procedures, including independent reviews of engagements.
- **Documentation:** Maintain thorough documentation of all ethical considerations, judgments made, and safeguards applied.
- **Consultation:** Encourage consultation on ethical dilemmas with senior partners or the Ethical Standards Board of ICAI.
- **Monitoring and Review:** Periodically review and update internal policies to align with changes in ethical standards and regulatory pronouncements.

CONCLUSION - UPHOLDING THE DIGNITY OF THE PROFESSION

- Compliance with ethical standards is not merely a regulatory obligation but a fundamental professional responsibility.
- The Peer Review mechanism plays a crucial role in enhancing the quality of professional services and ensuring adherence to ethical principles.
- Every practicing unit and individual member has a duty to uphold the highest standards of ethics to safeguard the reputation and integrity of the Chartered Accountancy profession.
- **"Pride of Service in preference to personal gain."**

Thank You