



Revision

**CA Final
May 2021**

FINAL CA

**ADVANCED AUDITING
AND PROFESSIONAL
ETHICS**

Head Office

**Shraddha, 4th Floor, Old Nagardas Road,
Near Chinai College, Andheri (E), Mumbai - 400 069.**

 **022 - 2683 66 66**



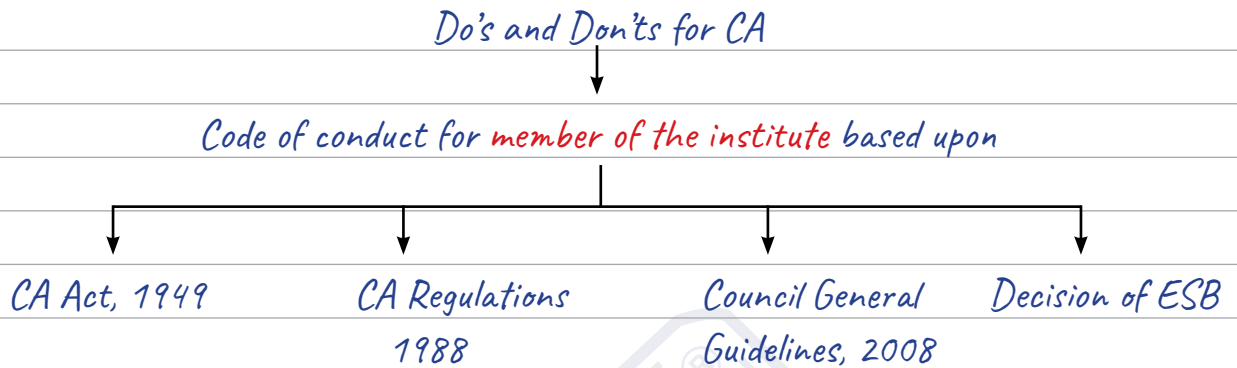
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PROFESSIONAL ETHICS

I - INTRODUCTION:



BASIC CONCEPTS

1. Who is a member of the Institute?

Cleared Final Exam+
Completed prescribed training

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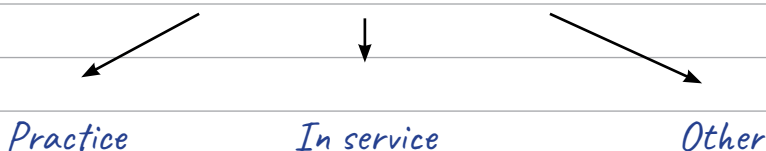
Name in Register of Member



2. Who are disqualified from having name in ROM?
(MR. ICU)

- M - Minor (< 21 years)
- R- Removed by ICAI due to misconduct
- I- Insolvent
- C-Convicted by court
- U- Unsound mind

3. STATUS AFTER BECOMING CA



Who is deemed to be in Practice?

(HARAM)

H- Holds himself in practice of accountancy

A- Engages himself in practice of accountancy

R- Renders professional service or assistance in accounting procedure

A- Performs Audit/ other related services

M- Renders Management consultancy services



What's new? #Aaj Kuch Naya ho jaye!

Members who are deemed to be in practice [section 2 (2)]

Pursuant to above clause the Council has resolved that "Other Services" include "Management consultancy & other service"

The expression Management Consultancy & Other Services shall not include the function of statutory or periodical audit, tax (both direct taxes & indirect taxes) representation or advice concerning tax matters or acting as liquidator, trustee, executor, administrator, arbitrator or receiver, but shall include the following:

- ↪ Financial management planning & financial policy determination*
- ↪ Capital structure planning & advice regarding raising finance*
- ↪ Working capital management
- ↪ Preparing project reports & feasibility studies
- ↪ (Consideration of "Tax implication" while rendering the above services will be considered as part of "Management Consultancy & other services")
- ↪ Preparing cash budget, cash flow statements, profitability statements, statements of sources & application of funds etc.
- ↪ Budgeting including capital budgets & revenue budgets.
- ↪ Inventory management, material handling & storage.
- ↪ Market research & demand studies.
- ↪ Price-fixation & other management decision making
- ↪ Control methods & management information & reporting.
- ↪ Personnel recruitment & selection.
- ↪ Setting up executive incentive plans, wage incentive plans etc.
- ↪ Management & operational audits.
- ↪ Valuation of shares & business & advice regarding amalgamation, merger & acquisition.

- ↪ Acting as Registered Valuer under the Companies Act, 2013 read with the Companies (Registered Valuers & Valuation) Rules, 2017.
- ↪ Business Policy, corporate planning, organization development, growth & diversification.
- ↪ Organization structure & behaviour, development of human resources including design & conduct of training programmes, work study, job-description, Job evaluation & evaluation of workloads.
- ↪ Systems analysis & design, & computer related services including selection of hardware & development of software in all areas of services which can otherwise be rendered by a CA in practice & also to carry out any other professional services relating to EDP.
- ↪ Acting as advisor or consultant to an issue, including such matters as-
 - (a) Drafting of prospectus & memorandum containing salient features of prospectus. Drafting & filing of listing agreement & completing formalities with Stock Exchanges, Registrar of Companies & SEBI
 - (b) Preparation of publicity budget, advice regarding arrangements for selection of (i) ad-media, (ii) centres for holding conference of brokers, investors, etc. (iii) bankers to issue (iv) collection centres, (v) brokers to issue, (vi) underwriters & the underwriting arrangement, distribution of publicity & issue material including application form, prospectus & brochure & 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 & advertising agencies.
 - (d) Advice on the post issue activities, e.g. follow up steps which include listing of instruments & dispatch of certificates & refunds, with the various agencies connected with the work.

Explanation – For removal of doubts, it is hereby clarified that the activities of broking, underwriting & portfolio management are not permitted.

- ☞ Investment counseling
- ☞ Acting as registrar to an issue & for transfer of shares / other securities.
- ☞ Quality Audit.
- ☞ Environment Audit.
- ☞ Energy Audit
- ☞ Acting as recovery Consultant in the Banking Sector.
- ☞ Insurance Financial Advisory Services including insurance Brokerage.

- ☞ Acting as insolvency professional in terms of insolvency & Bankruptcy Code, 2016.
- ☞ Administrative Services. Administrative Services involve assisting clients with their routing or mechanical tasks within the normal course of operations. Such services require little to no professional judgement & are clerical in nature. Examples of administrative services include
 - (a) Word processing services.
 - (b) Preparing administrative or statutory forms for client approval.
 - (c) Submitting such forms as instructed by the client
 - (d) Monitoring statutory filing dates, & advising as audit client of those dates.

For example, the functions of GST practitioner as specified under rule 83(8) of Central Goods & Services Tax Rules, 2017-

- ☞ Furnish the details of outward & inward supplied
- ☞ Furnish monthly, quarterly, annual or final return
- ☞ Making deposit for credit into the electronic cash ledger
- ☞ file a claim for refund
- ☞ file an application for amendment or cancellation of registration
- ☞ furnish information for generation of e-way bill
- ☞ furnish details of challan in form GST ITC – 04
- ☞ file an application for amendment or cancellation enrolment under rule 58 &
- ☞ file an intimation to pay tax under the composition scheme or withdraw from the said scheme.
- ☞ Pursuant to Section 2(2) (iv) of the CA Act, 1949, read with Regulation 191 of CA Regulations, 1988 a member shall be deemed to be in practice if he, in his professional capacity & neither in his personal capacity nor in his capacity as an employee,
- ☞ Act 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 CG or a SG or a court of law or any other legal authority or
- ☞ acts as a Secretary unless his employment is on a salary-cum-full-time basis.

**A CA in service may appear as tax representative before tax authorities on behalf of his employer, but not on behalf of other employees of the employer.*

It is necessary to note that person is deemed to be in practice not only when he is actually engaged in the practice of accountancy but also when he offers to render accounting services whether or not he in fact does so. The act of setting up of establishment offering to perform accounting services would tantamount to being in practice even though no client has been served.

A member of the institute is deemed to be in practice during the period he renders 'service with armed forces'.

The above provisions need to be correlated with provisions of section 144 of the Companies Act, 2013 which prohibits an auditor of the company from rendering certain services.

4. TYPES OF MISCONDUCT

Professional Misconduct

Other Misconduct

FIRST SCHEDULE	SECOND / BOTH SCHEDULE
Place the matter before Board of Discipline	Place matter before Disciplinary / Committee
If found guilty, it can	If found guilty, it can
<ul style="list-style-type: none"> ◆ Reprimand member ◆ Remove the name of member upto a period of 3 months ◆ Impose fine upto 1,00,000 	<ul style="list-style-type: none"> ◆ Reprimand member ◆ Remove the name of member permanently or for any duration ◆ Impose fine upto 5,00,000

II - SCHEDULES OF CA Act, 1949:

FIRST SCHEDULE

SECOND SCHEDULE

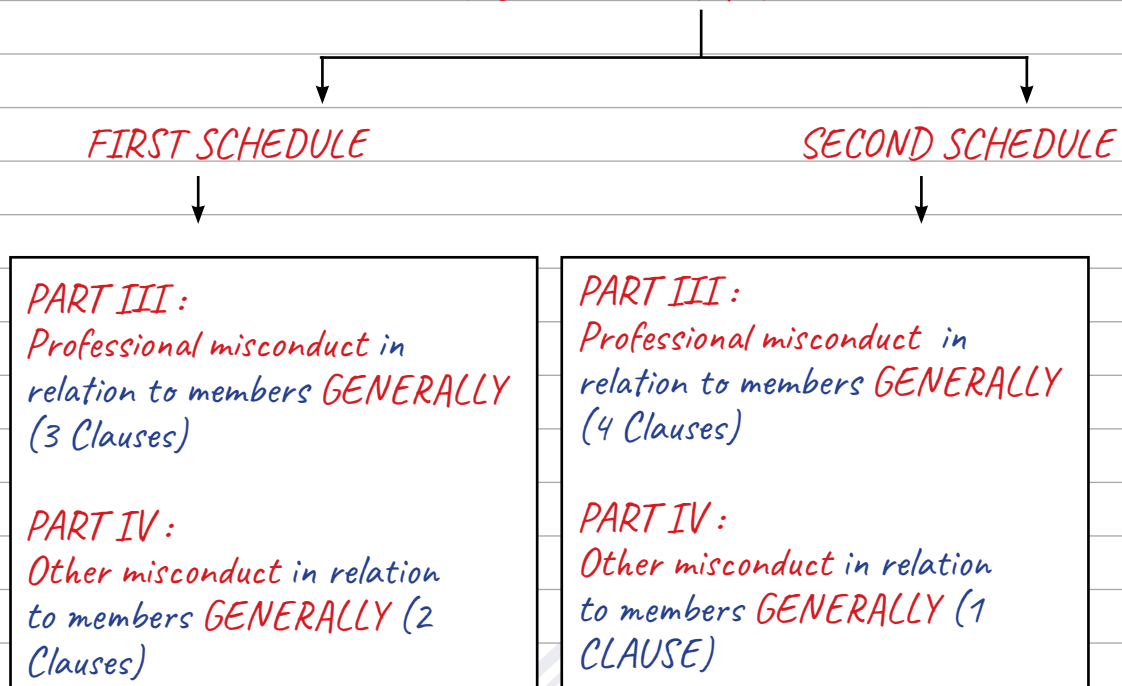
PART I:
Professional misconduct in relation to members in PRACTICE (12 Clause)

PART II:
Professional misconduct in relation to members in SERVICE (2 Clauses)

PART I:
Professional misconduct in relation to members in PRACTICE (10 Clause)

X

II – SCHEDULES OF CA Act, 1949:



III – FORMAT OF ANSWER :

As per clause of Part schedule of chartered Accountants Act, 1949 a CA in is deemed to be guilty of misconduct if he.....

In this case,

..Conclusion.

IV – SCHEDULES TO THE ACT :

FIRST SCHEDULE :

**PART I : PROFESSIONAL MISCONDUCT IN
RELATION TO MEMBERS IN PRACTICE**

- CLAUSE 1 :**
- ◆ Allows any person to practice in his name as a CA,
 - ◆ Unless such a person is also a CA in practice, and
 - ◆ Is in partnership with, or
 - ◆ Employed by himself.

IV – SCHEDULES TO THE ACT:

FIRST SCHEDULE :

**PART I : PROFESSIONAL MISCONDUCT IN
RELATION TO MEMBERS IN PRACTICE**

CLAUSE 1 : OFU

Non - CA	(X)
CA (Not in Practice)	(X)
CA in Practice - Employed	(X)
CA in Practice - Partner	(✓)
CA in Practice - neither	(✓)
Partner nor employed	(X)

QUESTIONS ASKED IN PAST/RTP/MOCK TEST

Question 1:

CA Sant, a newly qualified professional with certificate of practice, approached CA Pant, the auditor of his father's company M/s Max Ltd., to allow him to have some practical and professional knowledge and experience in his firm before he can set up his own professional practice. CA Pant allowed him to sit in his office for 6 months and allotted a small chamber with other office infrastructure facility. In the course of his association with CA Pant's office, he used to provide tax consultancy independently to the client of the firm and also filed few IT and GST return and represented himself before various tax authorities on behalf of the firm although no documents were signed by him. During his association an CA Pant's office he did not get any salary or share of profit or commission but only reimbursement of usual expenses like conveyance, telephone etc. was made to him. After the end of the agreed period, he was given a lump sum amount of Rs. 3,00,000 by CA Pant for his association out of gratitude

Answer:

Mr. Pant will be guilty of professional misconduct by Virtue of clause 1 of Part I of First Schedule as he allows another person to practice in his firm name, whereas other person (Mr. Sant) is neither a partner nor an employee.

CLAUSE 2 :

- ❖ Pay or allows or agrees to pay or allow,
- ❖ Directly or Indirectly,

- ❖ Any share, commission or brokerage in
- ❖ Fees or Profits of his professional business
- ❖ to any person other than
 - ◆ A member of the institute, or
 - ◆ Partner, or
 - ◆ Retired partner, or
 - ◆ Legal representative of deceased partner, or
 - ◆ Member of any other professional bodies*, or

- ❖ With such other persons having prescribed qualifications**
- ❖ For the purpose of rendering such professional services from time to time in or outside India.



- ❖ Professional bodies [Regulation 53A]:
- ICSI, ICWAI, Bar council of India, India Institute of Architects, institute of Actuaries of India.

- ❖ Person with prescribed qualifications. [Regulation 53A]
- CS, CWA, Actuary, B.E. Bachelor in Technology, Bachelor in Architecture, Bachelor in Law and MBA.

EXCEPTION 1:

Sharing of profits by widow or legal representatives of deceased partner.
Provided agreement provides the same.

EXCEPTION 2:

Sharing % of Fees with the Govt. – Audit of Co-operative Societies

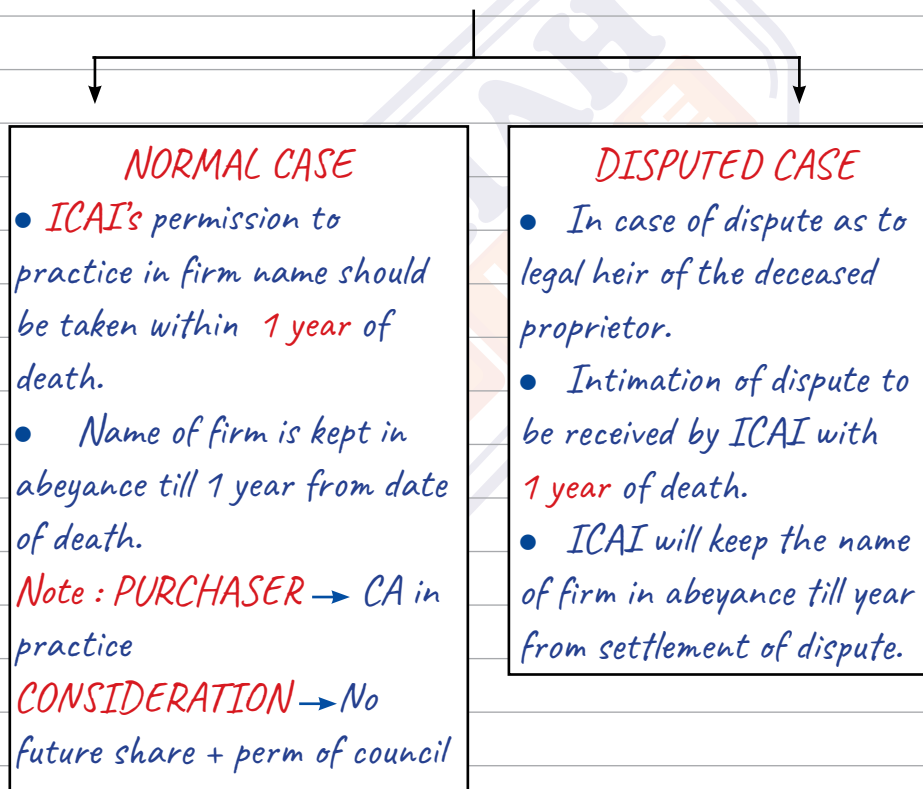


What's new? #Aaj Kuch Naya ho jaye!

- The Institute came across certain circulars/orders issued by the registrars of various state co-operative societies wherein it has been mentioned that certain amount of audit fee is payable to the concerned SG & the auditor has to deposit a percentage of his audit fee in the state treasury by a prescribed challan within a prescribed time of the receipt of audit fee.
- The council decided that as such there is no bar in the code of ethics to accept such assignment

EXCEPTION 3:

SALE OF GOODWILL IN CASE OF DEATH OF SOLE PROPRIETOR



Questions asked in past/rtp/mock test

Question 2:

A CA obtained a loan from a finance company for purchase of office building agreeing to pay interest at 6% p.a. and 10% of his gross professional receipts till the loan is repaid

Answer:

Professional misconduct by virtue of Clause 2, Part 1 of First Schedule.

Question 3:

K, a practicing Chartered Accountant gave 50% of the audit fees received by him to L, who was not a Chartered Accountant, under the nomenclature of *office allowance* and such an arrangement continued for a number of years.

Answer:

Mr. K will be deemed to be guilty of professional misconduct under Clause 2 of Part I of First Schedule

Question 4: (FAQ)

- Mr. X who passed his CA examination of ICAI on 18th July, 2018 and started his practice from August 15, 2018.
- On 16th August 2018, one female candidate approached him for articleship.
- In addition to monthly stipend, Mr. X also offered her 1% profits of his CA firm.
- She agreed to take both 1% profits of the CA firm and stipend as per the rate prescribed by the ICAI.
- The Institute of Chartered Accountants of India sent a letter to Mr. X objecting the payment of 1% profits.
- Mr. X replies to the ICAI stating that he is paying 1% profits of his firm over and above the stipend to help the articled clerk as the financial position of the articled clerk is very weak.
- Is Mr. X liable to professional misconduct

Answer:

Mr. X will be guilty of professional misconduct in terms of Clause 2 of Part I-of First Schedule and reply of Mr. X that he is paying 1% profits over and above the stipend to help the article clerk is not tenable.

Question 5:

A-Chartered Accountant who was in practice since last 20 years died in a road accident. His widow sold the practice to another Chartered Accountant in practice for 30 lakhs. The price also included the right to use the firm name

Answer:

Widow of deceased member can sell the goodwill provided sale is completed within one year from the death of member and permission of ICAI is obtained

- CLAUSE 3:**
- Accepts or agrees to accept
 - Any part of the profit of the professional work
 - Of a person who is not a member of the institute.

EXCEPTIONS:

- Member of any other professional bodies [as per clause 2]
- Person having prescribed qualifications [as per clause 2]



What's new? #Aaj Kuch Naya ho jaye!

- 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.

Question 6:

Mr. X is a practicing Chartered Accountant. Mr. Y is a practicing Advocate representing matters in the court of Law. X and Y decided to help each other in the matters involving their professional expertise, Accordingly, Mr. X recommends Mr. Y in all litigation matters in the court of law and Y consults X in all matters relating to finance and other related matters, which comes to him in arguing various cases. Consequently they started sharing profits of their professional work. Is Mr, X liable for professional misconduct?

Answer:

Mr. X will not be deemed to be guilty of professional misconduct as Clauses 2 & 3 permits a CA in practice for profit sharing with members of any other professional bodies or with such other persons having prescribed qualifications and advocates are prescribed under **Regulation 53A**.

CLAUSE 4 :

- Enter into partnership in or outside India.
- With any person other than
 - CA in practice
 - Member of any other professional body having prescribed qualifications, or
 - A person, who but his residence abroad would be entitled to be registered as member under clause (V) of Sec 4(1) or
 - A person whose qualifications are recognized by CG or council for the purpose of permitting such partnerships.

Questions asked in past/rtp/mock test**Question 7:**

Mr. P, a Chartered Accountant in practice entered into a partnership with Mr. L, an advocate for sharing of fees for work sent by one to the other. However, due to some disputes, the partnership was dissolved after 1 month without any fees having been received.

Answer:

Mr. P will not be deemed to be guilty of professional misconduct as clause 4 permits a CA in practice for entering into partnership with members of any other professional bodies or with such other persons having prescribed qualifications and members of bar council of India and persons having Bachelor of Law are prescribed.

CLAUSE 5 :

- Secures any professional business
- Through the service of a 'Person' who is not an employee or not his partner or
- By means which are not open to a CA
- Nothing contained in clause 5 shall be construed as prohibiting any arrangement permitted in clauses (2), (3) and (4)

CLAUSE 6 :

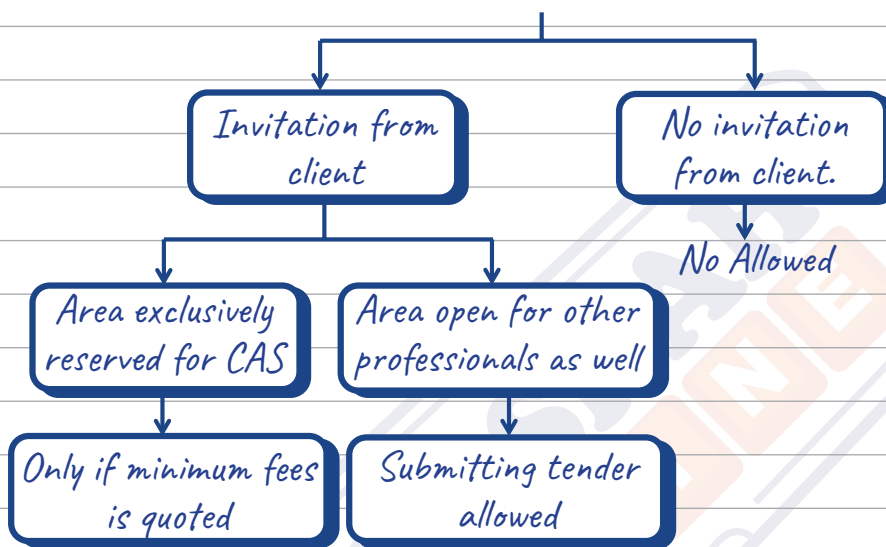
- Solicits clients or professional work
- Either directly or indirectly
- By circular, advertisement, personal communication or interview or by any other means.
- Provided that nothing here in contained shall be construed as preventing or prohibiting.
 - (i) Any CA from applying or requesting for or inviting or securing professional work from another* CA in practice, or

(ii) A Member from responding to tenders^{**} or enquiries issued by various user of professional service or organization from time to time and securing professional work as a consequence.

❖ *Requesting another CA in practice to provide work :*

- Should not claim *superiority* over another firm.
- Should *not disclose name of clients* in write up.

❖ *Submitting Tenders :*



COUNCIL GUIDELINES W.R.T PERMITTED AND PROHIBITED FORMS OF SOLICITATION :

[H₂ T E C₂ O P₂ I]

H → *Issuing hand bills*

- No hand bills to persons other than client in matters such as change in tax laws.

A₁ → *Advertisement and note in press:*

- Change in partnership, address and telephone (Only bare statement of facts and no. of insertions should be Limited]
- Classified adv. In journal / news letter of institute for sharing professional work or seeking partnership or salaried employment (it contains CA's name, address, telephone No. Fax or Email Address)

A1 → Advertisement Under Box Numbers (X)

T₁ → Publication of name or firm name in telephone / other directories.

- *In section → 'Chartered Accountant'*
- *In City / Town to which member belongs*
- *Bold / Abnormal type letter or in a box*
- *Order of entries → Alphabetically and logical*
- *Payment → Not unreasonable*
- *Open to all CA in City / Town*
- *Should not give impression of Publicity or advertisement.*

E → Empanelment for allotment of audit / professional work.

- *Free to write to the concerned organization with a request to place his name on the panel.*
- *Cannot make roving enquiries about existence of the panel.*
- *Allowed to quote fees on enquiries being received from such bodies.*
- *Printed or Xerox copies of scale of fees in reply to such enquiries is not permitted.*

C → 140(4) of companies Act, 2013

- *Wordings of his representation*
 - *No Publicity*
 - *Does not solicit for his continuance.*

C₂ → Advertisement for coaching activities.

- *Advertising of their association with coaching / teaching activities through hoardings, posters, banners and by any other means. (X)*
- *May put outside their coaching premises, sign board mentioning the name of coaching / teaching institute contact details and subjects taught there in only. (✓)*

O → Acceptance of original professional work :

- *The council has decided that a member should not accept the original professional work emanating from a client introduced to him by another member.*
- *If any professional work of such client comes to him directly, it should be his duty to ask the client that he should come through the other member dealing generally with his original work.*

P → Publication of books or Articles

- Indicate in a book or an article, published by him, the association with any firm of CA. (x)
- Mention nature of services and other designations. (x)
- Highlight academic achievements and degrees. (✓)



What's new? #Aaj Kuch Naya ho jaye!

- It is not permissible for a member to mention in a book or an article published by him, or a presentation made by him, *any professional attainments*, whether of the member or the firm of CAs, with which he is associated.
- However, he may indicate in a book, article or presentation the *designation "CA"* as well as the *name of the firm*

COUNCIL GUIDELINES W.R.T PERMITTED AND PROHIBITED FORMS OF SOLICITATION :

[HATE C₂OP₂I]

P → Publication of books or Articles

- Indicate in a book or an article, published by him, the association with any firm of CA. (x)
- Mention nature of services and other designations. (x)
- Highlight academic achievements and degrees. (✓)

P → Public Interview

- Result in publicity (x)
- Handover his profile & ask the presenter to read profile. (x)
- Highlight academic achievements and degrees. (x)

P → Issue of greeting cards or invitations

- Designation 'CA' and name of firm (✓)
- Cards sent only to clients, relatives and close friends (✓)



What's new? #Aaj Kuch Naya ho jaye!

Advertisement for silver, golden, platinum or centenary celebration

- It is *not permitted to advertise* the events organized by a firm of CAs

- However, considering the need of interpersonal socialization/relationship of the members through such get together occasions, the advertisement for silver, golden, diamond, platinum or Centenary celebrations of the CAs firm maybe published in *newspaper or newsletter*

Sponsoring activities

- A member in practice or a firm of CAs *is not permitted* to sponsor an event.
- However, such member or firm may sponsor an event conducted by a programme organizing unit (PoU) of the ICAI, provided such event has the prior approval of Continuing Professional Education (CPE) Directorate of the ICAI
- Members sponsoring activities relating to corporate social responsibility may mention their name with the prefix CA.
- However, the mention of *firm name or CA logo* is not permitted.

Sharing Firm Profile with Prospective Client

- It is not permitted to share firm profile with a prospective client *unless it is in response to a proposed client's specific query & otherwise not prohibited to be used by the client*

Television or movie clients

- While sharing name of the member or firm of CAs for *inclusion in television or movie credits* it must be taken care of that *exhibition of name is not made differently as compared to others as entries in the credit*

Educational videos

- While the videos of educational nature *maybe uploaded on the internet* by member, no reference should be made of the CAs firm wherein the member is a partner/proprietor.
- Further, it should *not contain any contact detail or website address.*

Questions asked in past/rtp/mock test

Question 8:

Z, a Chartered Accountant wrote several letters to Government Department, pointing out seniority of his firm, sending his life sketch and stating that he had a glorious record of service to the country as well as to the organisation of accountancy profession with a view to get the audit work.

Answer:

Guilty of professional misconduct by virtue of Clause 6 of Part I of First Schedule which prohibits, member in practice to solicit professional work by means of advertisement, circular, personal - communication or roving enquiries, etc.

Question 9:

Mr. S, a Chartered Accountant published a book and gave his personal details as the author. These details also mentioned his professional experience and his present association as partner with M/s RST, a firm.

Answer:

Mr. S has violated the restriction imposed under Clause 6 of Part I of First Schedule and hence held to be guilty of professional misconduct

Question 10:

M/s LMN, a firm of Chartered Accountants, responded to a tender from a State Government for (computerization of land revenue records. For this purpose, the firm also paid Rs.50,000 as earnest deposit, as part of the terms of the tender.

Answer:

In the present case, since computerisation of property records does not fall within exclusive areas for CAs, M/s. LMN can respond to tenders as well as deposit Rs.50,000 as earnest deposit and shall not have committed any professional misconduct.

Question 11:

CA. S and CA. M are two partners of the CA firm 'SM & Co. Being very pious, CA. S organised a religious ceremony at his home for which he instructed his printing agent to add his designation "Chartered Accountant" with his name in the invitation cards. Later on, the invitations were distributed to only the relatives, close friends and clients of both the partners

Answer:

Using the designation "Chartered Accountant" in invitation cards is permitted under Guidelines-issued in Clause 6 of Part 1 of First Schedule provided cards are distributed to relatives, close friends and clients of the concerned member. In the present: case, invitations are also given to relatives, close friends and clients of partner also; hence misconduct arises on part of CA. S.

Question 12:

A special notice has been issued for a resolution at AGM of F Ltd. providing expressly that CA. S shall not be re-appointed as an auditor of the company. Consequently, CA. S submitted a representation in writing to the company, as provided under section 140(4) (iii) of the Companies Act, 2013. In the representation, CA. S incorporated his independent working as a professional throughout the term of office and also indicated his willingness to continue as an auditor if reappointed by the shareholders of the Company.

Answer:

There is no misconduct on Part of CA. S as guidelines issued under Clause 6 of Part I of First-Schedule allows a CA in practice to make the representation u/s 140(4) of Companies Act, 2013 which is not used by the auditor to secure needless publicity.

Question 13:

CA. N, in practice, started project consultancy work as a part of his practice and to advance the same, sent email to all the CAs in the country Informing them of his services and for securing professional work.

Answer:

There is no misconduct on Part of CA. N as exceptions to Clause 6 of Part 1 of First Schedule allows a CA in practice to secure professional work from another CA in practice.

Question 14:

M/s LMN & Associates, a firm of Chartered Accountants responded to a tender issued exclusively for Chartered Accountants by an organisation in the area of tax audit. However, no minimum fee was prescribed in the tender document.

Answer:

LMN & Associates shall be guilty of professional misconduct as responding to tenders in exclusive area in which minimum fee, is not prescribed amounts to solicitation of work.

Question 15:

An advertisement was published in a Newspaper containing the photograph of Mr. X, a member of the institute wherein he was congratulated on the occasion of the opening ceremony of his office.

Answer:

Mr. X would be guilty under Clause 6 of Part I of the First Schedule to the Chartered Accountants Act, 1949 as advertisement in the newspaper amount to solicitation

Question 16:

Mr. X, a Chartered Accountant and the proprietor of X & Co., wrote several letters to the Assistant Registrar of Co-operative Societies stating that though his firm was on the panel of auditors, no audit work was allotted to the firm and further requested him to look into the matter.

Answer:

Mr. X would be held guilty under clause 6 of Part I of the Act, as roving inquiries for solicitation of work is not allowed.

Question 17:

Mr. Sodhi, a Chartered Accountant in practice, who is proposed to be removed as the auditor of a company makes unsubstantiated and derogatory remarks against the management of the company in his representation u/s 140 of the Companies Act, 2013.

Answer:

In the present case, Mr. Sodhi is guilty of professional misconduct as he makes derogatory 'remarks against the management of the company

Question 18:

A letter is sent by a Chartered Accountant in practice to the Ministry of Finance inquiring whether a panel of auditors is being maintained by the Ministry and if so to include his name in the panel

Answer:

The member is guilty of nil conduct in terms of the Clause 6, Part 1 of First Schedule as he has solicited professional work by making roving inquiries as to existence of panel.

Question 19:

M, a practicing Chartered Accountant sent a letter to another firm of Chartered Accountants, claiming himself to be a pioneer in liaising with Central Government Ministries and its allied Departments for getting various Government clearances for which he had claimed to have expertise and had given a list of his existing clients and details of his staff etc.

Answer:

Mr. M was guilty of professional misconduct as per clause 6 of part I of First Schedule of the Chartered Accountants Act, 1949

Question 20:

Mr. Honest, a Chartered Accountant in practice, wrote two letters to M/s XY Chartered Accountants a firm of CA's; requesting them to allot him some professional work. As he did not have a significant practice or clients he also wrote a letter to M/s ABC, a firm of Chartered Accountants for securing professional work. Mr. Clever, an another CA, informed ICAI regarding Mr. Honest's approach to secure the professional work. Is Mr Honest wrong in soliciting professional work?

Answer:

Mr. Honest is not wrong in soliciting professional work from another CA, hence there is no professional misconduct.

Question 21:

During the opening ceremony of a new branch office of CA. Young, his friend CA, Old introduced to CA. Young, his friend and client Mr. Rich, the owner of an Export House whose accounts had been audited by CA. Old for more than 15 years. After few days, Mr. Rich approached CA. Young and offered a certification work which hitherto had been done by CA. Old CA. Young undertook the work for a fee which was not less than fee charged by CA. Old in earlier period. Comment whether CA. Young had done any professional misconduct

Answer:

Acceptance of original professional work emanating from a client introduced by another member is not permitted. Mr. Young will be deemed guilty of professional misconduct under clause 6, Part. 1 of First Schedule

Website:

PERMITTED FEATURES :

- 1) CA / CA firm are free to create website.
- 2) It can be in any format, colour.
- 3) CA can mention website address on professional stationery.
- 4) Website should run on PULL MODE and not on push mode.

PERMITTED INFORMATION :

- 1) Name of member / firm
- 2) Member / Firms Address / Telephone No. / Fax / Email Id (Branch as well as Ho's)
- 3) Partner's name and their qualifications, year of qualification Home Address, Telephone No. E-mail ID. (i.e Biodata of Partner)
- 4) Employee's name and their qualification
- 5) Job vacancies including article ship
- 6) Articles etc. of professional int. such as budget highlights.
- 7) Bulletin board
- 8) Date upto which website is updated.
- 9) Chat room between client and CA or among CA's
However confidentiality should be maintained.

PROHIBITED INFORMATION : [POLAR]

P → No Photograph other than passport size photo



What's new? #Aaj Kuch Naya ho jaye!

P → No Photograph other than passport size style photo

O → No reference of any other website other than :

- ICAI
- Its regional councils and branches
- Government/ Government Department / Regulatory Authorities
- Other professional bodies, such as, American institute of certified public Accountants [AICPA], the institute of chartered Accountants of England and Wales [ICAEW] and the Canadian institute of chartered Accountants. [CICA]

L → Logo other than that prescribed by ICAI.

A → No Advertisement

R → Reference of clients and fee charged.

Note: As per amendment in August 2015, disclosure of names of clients and / or fees charged, on the website is permissible only where it is required by a regular, whether or not constituted under a statute, in India or outside India, provided that such disclosure is only to the extent of requirement of the regulator.

OTHER POINTS:

1. SPECIFIC PULL REQUEST

- Nature of services rendered
- Nature of assignments handled
- Area of expertise of partners and employees
- No. of articled clerks
- Year of establishment.

2. Address of website:

- In name of CA / CA firm. It maybe different from firm / CA name but should be as near as possible to their name.
- Address should not result in soliciting client.

3. SEARCH ENGINE:

- Allowed, but it should be non criteria such as CA, Indian CPA.

4. INTIMATION TO ICAI:

- CA's required to information website address to ICAI, while submitting annual membership fee and form. (As per old provision, it was required to intimate ICAI within 30 days of setting up website.)



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- Can provide link of its page on **social networking site**. However, the members should not solicit people to visit or like their respective page (s) on such social media
- Can provide **on line advice** to their clients who specifically request for the advice whether free of charge or on payment

ONLINE THIRD PARTY PLATFORMS

- ☞ A number of *non-CA's firms*, corporates including banks, finance Companies & newspapers have set up their own Websites providing advisory services on taxation & other areas where CAs are rendering professional service.
- ☞ Some of such Websites may request CAs or CAs' firms to provide consultation & advice through such websites. No other services, besides consultancy & advice can be rendered through such websites.
- ☞ This would be permitted subject to the condition that on the Website, *contact address* of the CA concerned is not provided nor such Website will contain any material which advertises professional achievements or status of such *CA except* making a statement that they are CAs.
- ☞ The name of CAs' firm with suffix "CAs" would not be permitted

APPLICATION BASED SERVICE PROVIDER AGGREGATORS

- ☞ It is *not permissible* for members to list themselves with online application based service provider Aggregators, wherein other categories like businessmen, technicians, maintenance workers, event organizers etc. are also listed

SPECIALISED DIRECTORIES FOR LIMITED CIRCULATION

- ☞ The name, description & address of member (or firm) may appear in any directory or list of members of particular body in which the names are listed alphabetically. For a specialized directory or a publication such as a "Who's Who" (including those compiled on purely local basis), a member should use his discretion in supplying information, bearing in mind the nature & purpose of the publications

Questions asked in past/rtp/mock test

Question 22:

M/s XYZ, a firm of Chartered Accountants created a website "www.xyzindia.com". The website besides containing details of the firm and bio-data of the partners also contains the photographs of all the partners of the firm.

Answer:

M/s XYZ, had complied with all the guidelines and there does not appear any violation of the Chartered Accountants Act, 1949 and its Regulations.

Question 23:

XYZ & Associates, a firm with 5 partners developed a website www.xyzassociates.com. The website also contained a link to "All India Chartered Accountants Association", a voluntary association where X, a partner of the firm is currently the Vice-president

Answer:

As per guidelines issued by ICAI for development and contents of website, a website may provide a link to website of ICAI, its regional councils, branches and government departments and other professional bodies like AICPA, ICAEVV etc. In the present case, website provide a link to the "All India Chartered Accountants Association" which is not permitted. Hence the firm is guilty of professional misconduct by virtue of Clause 6 of Part I of First Schedule.

Question 24:

A CA in practice created his own website in attractive format and colours and circulated information contained in the website through E-mail.

Answer:

Member would be held guilty of professional misconduct as circulation of information contained in the website through e-mail would amount to solicitation. However no misconduct arises on his part towards failure to intimate the website address to the institute.

Question 25:

Mr. X, a CA in practice, provides part-time tutorship under the coaching organization of the Institute. On 30th June, 2019, he was awarded 'Best Faculty of the year' as gratitude from the Institute. Later on, he posted his framed photograph on his website wherein he was receiving the said award from the Institute.

Answer:

Mr. X will be guilty of professional misconduct as the guidelines for the website issued under Clause 6 of Part I of First Schedule, no photograph of any sort (except passport size photograph of member) is permitted to be displayed on website

Question 26:

M/s XYZ a firm in practice develops a website "XYZ. com". The colour chosen for the website was a very bright green and the website was to run on a "push" technology where the name of the partners of the firm and the major clients were to be displayed on the web site without any disclosure obligation from any regulation.

Answer:

As per guidelines of ICAI in relation to development of website, there is no restriction on

the use of colours. However, the website is required to run on a "Pull" technology and not on "push" technology; and the name of clients and fees charged from them is not permitted to be appearing on the website unless required by any regulator. Hence the firm would be liable for professional misconduct

Question 27:

PQR & Associates, Chartered Accountants have their website and on the letterhead of the firm it is mentioned that "Visit our website: www.pqr.com". In the website the nature of assignments handled, names of prominent 'clients and fees charged is also displayed.

Answer:

PQR & Associates will be held guilty of Professional Misconduct under Clause 6 of Part I of First Schedule to the Chartered Accountants Act, 1949. The name of clients and fees charged from them is not permitted to be appearing on the website unless required by any regulator.

CLAUSE 7 :

- 1) Advertises his professional attainment or services, or
- 2) Uses any designation or expressions other than the CA
- 3) On professional documents, visiting cards, letter heads or sign boards.
- 4) Unless it be a degree of a university established by law in India or recognized by CG or
- 5) A title indicating membership of ICAI or
- 6) Of any other institution that has been recognized by CG or maybe recognized by the council.
- 7) Provided that a member in practice may advertise through a write up,
- 8) Setting out the services provided by him or his firm
- 9) And particulars of his firm subject to such guidelines as maybe issued by the council.
- 10) [TAPAD₂ - SL₂AP₂]

(D₁) DESIGNATION :

<i>CA in Practice</i>	<i>CA not in Practice</i>
<ul style="list-style-type: none"> • Must use designation 'Chartered Accountant' • Cannot use any other designation. • Can mention degrees from universities recognized by law in India or recognized by CG [insolvency professional] • Any other letter or description indicating membership of body approved by council [eg. CISA ie. Certified info system auditor] • For Lawyers : Advocacy → Cannot use CA other matter → CA 	<ul style="list-style-type: none"> • Can use any designation provided they are not using "Chartered Accountant" as designation • Can use any designation provided they are not using a "Chartered Accountant" as designation

(D₂) Date of establishment () Except website*

T → Training course and seminars :

*Allowed but undue prominence should not be given to the name of CA. **

A → Advertisement in Press

Not allowed except → Recruiting staff in own office
→ On behalf of client to recruit / acquire / dispose property
→ Sale of business / Proportion when CA is acting as trustee, liquidator or receiver

P → Photograph and brief particulars of CA in magazine

Allowed provided → No payment for such
→ No mention of professional attainments

A → Appearance on TV / Films / Radios / Press / Seminars

Allowed provided → No reference to Name / Address / Services of firm
→ Not say anything to promote himself
→ Even host should not say

S → Sign Board

- Cannot use glow sign boards or large size boards
- At residence, name of board of himself is allowed but not that of firm.

L → Logo

Only prescribed by ICAI



What's new? #Aaj Kuch Naya ho jaye!

COMMON CA LOGO

- ☞ To promote the brand of CA profession & responding to the long felt need to have a symbol of CA Profession in India, ICAI came up with a unique logo which could be used by all members, whether in practice or not.
- ☞ The Council has decided that use of CA logo in the stamp is permissible, subject to CA logo guidelines.

CHAPTER XVI LOGO GUIDELINES

- ☞ The logo consists of letter 'CA' tick mark inside a rounded rectangle with white background.
- ☞ The letters CA have been put in blue, the corporate colour which not only stands out on the background but also denotes creativity, innovativeness, knowledge, integrity, trust, truth, stability & depth.
- ☞ The upside down tick mark typically used by CAs, has been used to symbolize the wisdom & value of the professional.
- ☞ Members are encouraged to use the new logo, as published here as it is
- ☞ Do not change the design & colours, including the white background.
- ☞ Refrain from *rotating or tilting* the logo.

L₂ → Publicity for appointment of position of local / national importance.

- May mention member of ICAI
- No mention of firm name

A → Advertisement by Listing in directory or list of members of particular body.

- Allowed
- But cant provide name of clients and services offered by his firm.

Eg. In list of members of IT Appellate Tribunal, when CA is a member of ITAT

P_2 → Prospectus of co in which CA is director

- No firm name
- No Advertisement of professional achievements

P_2 → Press note on success of a candidate in exam. May contain

- His name and address and his background
- His success details
- Name and firm of his principal
- But no undesirable publicity of article / principal / firm



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ICAI CLARIFICATIONS

Insolvency Professional / Registered Valuer

- ☞ A member empaneled as Insolvency Professional or Registered Valuer can mention "Insolvency Professional" or "Registered Valuer" respectively on **his visiting card & letter head.**
- ☞ The reports & certificates issued by a CA bring him to the notice of the public in a greater or lesser degree.

Reports & Certificates

- ☞ The members may however note that they should use letterhead of their Firm for issuing reports & certificates

Appearance of Chartered Accountants on Electronic Media (including Internet)

- ☞ Members may appear on television, films & Internet & agree to broadcast in the Radio or give lectures at forums & may give their names & describe themselves as CAs.
- ☞ Special qualifications or specialized knowledge directly relevant to the subject matter of the programme may also be given.
- ☞ Firm name may also be mentioned, however, any exaggerated claim or any kind of comparison is not permissible. What he may say or write must not be promotional of him or his firm but must be an objective professional view of the topic under consideration.

- ☞ *Publicity is permitted for appointments to positions of local or national importance or for the views of members on matters of similar importance. Mention of the membership of the institute is desirable in such cases. What should be aimed at is to achieve suitable publicity for the institute & its members generally.*
- ☞ *Members giving talks or lectures or attending conference may describe themselves as CAs only when they are acting in their capacity as CAs.*
- ☞ *However, reference to the professional firm of the member should not be given.*

Writing Articles or letters to the press

- ☞ *Members writing articles or letters to the Press on subjects connected with profession may give their names & use the description CAs.*

Size of Sign Board

- ☞ *With regard to the size of sign board for his office that a member can put up, it matter in which the members should exercise their own discretion & good take while keeping in mind the appropriate visibility & illumination (limited to The sake of visibility).*
- ☞ *However, use of glow signs or lights on large-sized boards as is used by traders shop-keepers is not permissible.*
- ☞ *A member can have a name plate or name board at the place of his residence with the designation of a CA, provided it is name plate or name board of an individual member & not the firm.*

Public Announcement with details of Directors

- ☞ *The Council's attention has been drawn to the fact that more & more Companies a appointing CAs as Directors on their Boards. The prospectus or public announcements issued by these Companies often publish descriptions about the CA's expertise, specialization & knowledge in any particular field or add application or adjective to their names. Attention of the members in this context is invited the provisions of Clause (6) & (7) of Part I of the First Schedule to the CA Act.*
- ☞ *The members should take necessary steps to ensure that such prospectus or public announcements or public communications do not advertise his professional attainment and also do not directly or indirectly amount to solicitation of clients for professional work by the member.*

- ☞ *It is advisable for a member that as soon as he is appointed as a director on the Board of Company, he should invite the attention of Management to the aforesaid provisions & should request that before any such prospectus or public announcements or public communication mentioning the name of the member concerned, is issued, the material pertaining to the member concerned should, as far as practicable be got approved by him.*
- ☞ *The use of the expression 'CA' is permissible. However, the member must ensure that descriptions about his expertise, specialization & knowledge in any particular field or other appellations or adjectives are not published with his name. Particulars about directorships held by the member in other Companies can, however, be given but the name of the firm of CAs in which the member is a partner, should not be given.*

Network Firms & Networking Guidelines

- ☞ *The Council has permitted Network amongst the Firms registered with the Institute. A member of the Network may advertise to the extent permitted by the Advertisement Guidelines issued by institute.*

GUIDELINES FOR WRITE UP

- ☞ *The Members may advertise through a write up setting out their particulars or of their firms & services provided by them subject to the following Guidelines & must be presented in such a manner as to maintain the profession's good reputation, dignity & its ability to serve the public interest*
- ☞ *The Member(s)/ Firm (s) should ensure that the contents of the write up are true to the best of their knowledge & belief & are in conformity with these Guidelines & be aware that the Institute of Chartered Accountants of India will neither approve a propose write-up, nor owns any responsibility whatsoever for such contents or claims by the writer Member(s)/Firm (s)*

- ☞ The write-up shall comply with the following conditions :
- It shall be honest & truthful.
 - There shall be no exaggerated claims for the services offered by the member or the Firm, or the qualifications or experience of the member or any of the partners or any other person associated with the Firm.
 - It must not make any disparaging references or unsubstantiated comparisons to the work of others.
 - It should not be of a nature that may bring the profession into disrepute.
 - It should not contain testimonials or endorsements concerning Member(s) name of clients (both the past & present) or the fees charged.
 - It should not contain any information about achievements/awards (except the awards given by the Central or State Governments or Regulatory bodies) or any other position held, or accreditation(s) granted by any organization.
 - Monogram of any kind or use of any kind of catch words is not permissible.
 - The Membership No./FRN (as may be applicable) is mandatory to be mentioned in the write
 - It should not be of font size exceeding 14.
 - It must not be violative of any provisions of CA Act, 1949, CA Regulations, 1988, Code of ethic or any Guideline of the Council.

Questions asked in past/rtp/mock test

Question 28:

Mr. Adnan a Chartered Accountant in practice, is a partner of 4 firms. While printing his personal letter heads, Mr. Adnan gave the names of all the firms in which he is a partner.

Comment.

Answer:

There is no restriction as to mentioning of firm's name on personal letter heads under Clause 7 of Part 1 of First Schedule, hence Mr. B (Adnan) is not guilty of any professional misconduct.

Question 29:

Mr. B, a practicing Chartered Accountant as well as a qualified lawyer, was permitted by the bar council to practice as a lawyer also. He printed his visiting card where he mentioned his designation as Chartered Accountant and Advocate.

Answer:

Mr. B is guilty of professional misconduct due to simultaneous use of designation as Chartered Accountant and Advocate.

Question 30:

Mr. Nigal, a Chartered Accountant, in practice, delivered a speech in the national conference organized by the Ministry of Textiles. While delivering the speech, he told to the audience that he is a management expert and his firm provides services of taxation and audit at reasonable rates. He also requested the audience to approach his firm of chartered accountants for these services and at the request of audience he also distributed his business cards and telephone number of his firm to those in the audience. Comment.

Answer:

Mr. Nigal will be held guilty of professional misconduct under Clauses 6 & 7 of Part I of First Schedule to the CA Act 1949, due to solicitation of professional work and advertisement of services rendered by his firm.

Question 31:

Mr. SP, a Chartered Accountant obtains registration as category IV merchant banker under the SEBI's Rules and Regulations and act as Advisor to a capital issue of MB Co. Ltd. He designated himself under the caption "Merchant banker" in client offer documents and 'Advisor to issue' in his own letterheads, visiting cards and professional documents.

Answer:

Guilty of Professional Misconduct under Clause 7 of Part I of First Schedule due to use of designation other than Chartered Accountant.

Question 32:

Mr. M, a chartered accountant in practice, has printed visiting cards which besides other details also carries a Quick Response (QR) code. The visiting card as well the QR code contains his name, office and residential address, contact details, e-mail id and name of the firm s website. Comment.

Answer:

No misconduct arises on part of Mr. M in getting the visiting cards printed which contains his name address, contact details, e-mail id and name of the firm website. Also, no misconduct arises in printing QR code on visiting card if it does not contain any information that is not otherwise permissibly to be printed on visiting card.

Question 33:

R, a practicing Chartered Accountant, Is a Director in X Ltd.; a Public Company. The prospectus of X Ltd. mentions the name of Mr. R as a director along with his various professional attainments, his areas of specialization and expertise in the fields of international taxation.

Answer:

Name of CA acting as director in the company is permissible to appear in the prospectus of the company, however descriptions regarding his expertise, specialisation and knowledge in any particular field is not permitted. Hence Mr. R will be deemed to be guilty of professional misconduct under Clause 7, Part 1 of First Schedule.

CLAUSE 8 :

- Accept a position a auditor
- Previously held by another CA or certified auditor without
- 1st communicating with him
- In writing

NOTES :

1) For all types of audit where previous auditor is a CA.

2) Previous Auditor



Before accepting

Send a written communication

Proposed Auditor



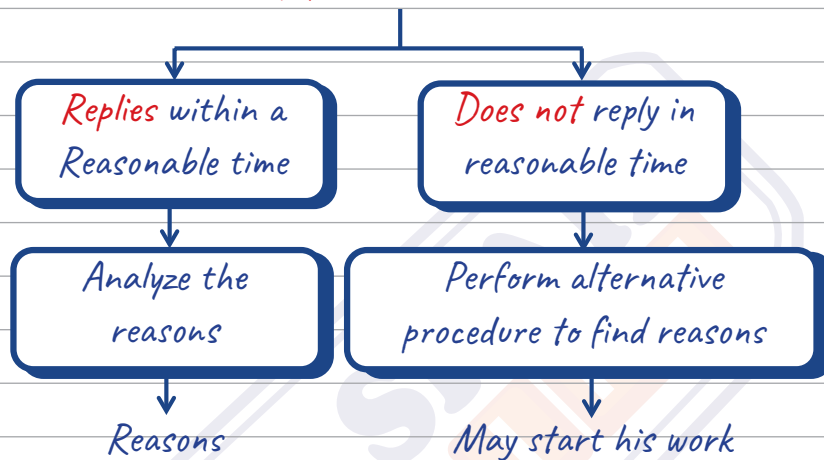
NOTES :

- *By Registered post Acknowledgement due or*
- *By hand against acknowledgement in writing*
- *NOT under certificate of posting as he must have positive evidence that the letter had reached the previous auditor*
- *Secondary communication can be in email form.*

NOTES :

3)

Reply of previous Auditor



NOTES :**Reasons :**

- i) Non compliance of provisions of sec 139 of company Act. (x)
- ii) Non payment of undisputed audit fee (except sick unit) → CGG 2008 (x)
(In case of disputed fees incoming partner shall use his influence in favour of predecessor to have dispute settled)
- iii) Issuance of qualified report **May**
- iv) Under cutting of fees **Accept**

NOTES :**4) Conditional Acceptance :**

In case of lack of time, the incoming auditor may give conditional acceptance and commence the work which needs to be attended immediately.





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ICAI CLARIFICATIONS

Previous auditor not available for accepting undisputed audit fees

- ☞ Where the previous Auditor is not available for accepting payment of undisputed audit fees, & it is not otherwise possible to transfer the payment accepting to him electronically, the Incoming Auditor may advise the client to purchase Demand Draft of the amount equivalent to undisputed Audit Fees of retiring fees auditor, & may accept the Audit assignment after verifying the same.
- ☞ It will be the duty of the Incoming auditor to ensure the payment of undisputed Audit Fees of the retiring auditor at the earliest possibility.

Client wants to change auditor

- ☞ There being two persons involved, the Company & the old auditor, the former should be asked whether the retiring auditor had been informed of the intention to change. If the answer is in the affirmative, then a communication should be addressed to the retiring auditor.
- ☞ If, however, it is learnt that the old auditor **has not been informed**, & the client is not willing to make the first move, it would be necessary to ask him the reason for the proposed change. If there is no valid reason for a change, it would be healthy practice not to accept the audit. If he decides to accept the audit, he should address a communication to the retiring auditor.

Incoming auditor to ascertain circumstances for change in auditor

- ☞ The object of the incoming auditor, in communicating with the retiring ascertain auditor is to ascertain from him whether there are any circumstances which circumstances for warrant him not to accept the appointment.

Positive Evidence of Delivery

Members should therefore communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the delivery of the communication to the addressee.

In the opinion of the Council, the following would in the normal course provide such evidence:-

- ☞ Communication by a letter sent through "Registered Acknowledgement due", or
- ☞ By hand against a written acknowledgement, or
- ☞ Acknowledgement of the communication from retiring auditor's vide email address registered with the Institute or his last known official email, address, or

☞ Unique Identification Number (UDIN) generated on UDIN portal.

Premises found Locked

☞ The communication received back by the Incoming Auditor with "Office found locked" written on the Acknowledgement Due shall be deemed as having been delivered to the retiring auditor

Firm not found at the given Registered address

☞ If the Communication sent by the Incoming auditor is received back with remarks "No such office exists at this address", & the address of communication is the same as registered with the Institute on the date of dispatch, the letter will be deemed to be delivered, unless the auditor proves that it was not really served & that he was not responsible such non-service.

☞ As a matter of professional courtesy & professional obligation it is necessary for the new auditor appointed to act jointly with the earlier auditor & to communicate with such earlier auditor.

Special Audit under Income Tax Act, 1961

☞ It would be a healthy practice if a Tax Auditor appointed for conducting special audit under the Income Tax Act, 1961 communicates with the member who has conducted the Statutory Audit.

Questions asked in past/rtp/mock test

Question 34:

MR. X a chartered Accountant accepted his appointment as tax auditor of a firm under Sec. 44AB of the Income Tax Act and commenced the tax audit within two days of his appointment since the client was in a hurry to file return of income before the due date. After commencing the audit, Mr. X realised his mistake of accepting this tax audit without sending any communication to the previous tax auditor. In order to rectify his mistake, before signing the tax audit report, he sent a registered post to the previous auditor and obtained the postal acknowledgement. Will; Mr. X be held guilty under the CA Act?

Answer:

Guilty by virtue of clause 8 of Par 11 of First Schedule as communication to previous auditor is required before commencement of audit.

Question 35:

Can a practicing Chartered Accountant be held guilty of professional misconduct under the following circumstance: W, a chartered Accountant has sent letters under certificate of posting to the previous auditor informing him about his appointment as an auditor before the commencement of audit by him.

Answer:

Guilty of professional misconduct by virtue of clause 8 of Part 1 of First Schedule in accordance with which communication need to be sent "Registered Post Acknowledgement Due (RPAD)" or by "hand against a written acknowledgement".

Question 36:

M/s CD & Co., a firm of Chartered Accountants, accepted an assignment for audit under State level VAT Act and communicated the same over phone to the previous auditor, M/s AB & Co., Chartered Accountants. Comment.

Answer:

Guilty of professional misconduct by virtue of clause 8 of Part 1 of First Schedule, as incoming auditor is required to send his communication by RPAD or by hand against an acknowledgement in writing. Mere communication over phone is not sufficient to establish written communication.

Question 37:

CA. T, in practice, was appointed to carry out internal audit of a stock broker, listed with BSE. However, he failed to intimate his appointment to the statutory auditors of the company. The statutory auditor feels this is violation of professional ethics.

Answer:

There is no violation of professional ethics as Clause 8 of Part 1 of First schedule applies in case of replacement positions and not in case of parallel positions.

CLAUSE 9 :

- Accepts an appointment as auditor of a company
- Without ascertaining* whether requirements of sec 139, 140, 141, 142 of companies Act, 2013
- In respect of such appointment have been duly complied with.

❖ To ascertain means to find out for certain. i.e. it is not sufficient to accept compliance certificate from management. He may verify Board resolutions, General meeting resolutions; etc.

Questions asked in past/rtp/mock test

Question 38:

P, a Chartered Accountant had accepted appointment as an auditor of QRS Company limited without ascertaining from the company whether the requirements of Secs. 139 and 140 of the Companies Act, 2013 had been complied with. However, he realised this defect only after acceptance.

Answer:

P will be held to be guilty of professional misconduct under clause 9 of Part 1 of First Schedule to the Chartered Accountants Act, 1949. Realisation of defect subsequent to acceptance of audit is immaterial.

Question 39:

CA X was appointed as the Auditor of ABC Ltd. for 2018-19, Since he declined to accept the appointment, the Board of Directors appointed CA Y as the auditor in the place of CA X, which was also accepted by CA Y.

Answer:

CA, Y is guilty of professional misconduct as per Clause 9 of Part 1 of the First Schedule as he accepted the appointment without verification of statutory requirements of Sec. 139 of Companies Act, 2013.

CLAUSE 10 :

- Charges or offers to charge,
- Accepts or offers to accept
- In respect of any professional employment
- Fees which is based on a % of profits or,
- Which are contingent upon findings, or results of such employment.
- Except as permitted under regulations*

Regulation 192 : [LCM FOD2]

- | | | |
|--|---|---|
| 1) Liquidator | → | % of realized value |
| 2) Co-operative society | → | % paid up capital / working cap
/ Gross or net profit. |
| 3) Cost optimization | → | % of benefit derived |
| 4) Management consultancy service | → | % of result / as considered suitable |
| 5) Fund raising service | → | % of fund raised. |
| 6) Other service as may be decided by council. | | |

- 7) Debt recovery service → % of debt recovered
- 8) Direct taxes → % of value (For eg: He can charge fees based on % value of G/W for determining value of gift under Gift tax as gift tax is a direct tax)

Questions asked in past/rtp/mock test

Question 40:

CA D, a Chartered Accountant prepared a project 'report for one of his clients to obtain bank finance (long-term) of Rs. 50 lakhs from a Commercial Bank. Consequent to the sanction of the loan by the bank CA. D raised a bill for his services @ 2% of the loan sanctioned.

Answer:

Charging fees on a % basis amounts to misconduct under Clause 10 of Part I of First Schedule except as permitted under regulation 192. Charging fees on % of fund raised is covered under regulation 192. Hence no misconduct arises on part of Mr. D.

Question 41:

An auditor of a co-operative society has agreed to charge fees @ 5% of the profits of the society.

Answer:

Audit of co-operative society is included in the exceptions stated in regulation 192, the auditor is not guilty of any professional misconduct.

Question 42:

PQR Pvt. Ltd. approached CA. Y, a Chartered Accountant in Practice, for debt recovery services. CA Y accepted the work and insisted for fees to be based on 2% of the debt recovered.

Answer:

No misconduct arises as charging fees in case of debt recovery services on the basis of percentage of the debt recovered is permitted under regulation 192.

Question 43:

Mr. P a practicing chartered accountant acting as liquidator of AB & Co. charged his professional fees on percentage of the realization of assets.

Answer:

No Misconduct on part of Mr. P under Clause 10 as charging fees as a percentage of realisation of assets while acting as a liquidator is permitted by Regulation 192.

Question 44:

Efficient Ltd. is running into losses and in order to optimize resource utilization and cost reduction, approaches you to carry out the assignment and offers a fee of 5% of benefits derived from the suggestions made by you.

Answer:

No Misconduct arises under Clause 10 as charging fees as a percentage of benefits received in case of cost optimisation services is permitted by Regulation 192.

CLAUSE 11 :

- *Engages in any business or occupation*
- *Other than profession of CA*
- *Unless permitted by council so to engage.*
- *Provided that nothing contained herein shall disentitle a CA*
- *From being a director of a company unless he or any of his partner is interested in such company as an auditor (Not MD or whole time director)*



GAITONDE

Regulation 190A:

General Resolution → No Specific permission

[SLAP₄ – RE₂HANA]

S → Acting as surveyor and loss assessor under insurance Act, 1938

- L* → Holding *Life insurance agency* for *Limited purpose* of getting renewal commission
- A* → *Authorship* of books and articles
- P₁* → *Private tutorship*
- P₂* → Holding of *Public elective* office such as M.P, M.L.A
- P₃* → Valuation of *papers*, acting as paper – setter, head-examiner or a moderator, for any examination
- P₄* → *Part – Time* tutorship under the coaching organization of the *institute*
- R* → Acting as *recovery consultant* in the banking sector
- E₁* → *Employment* under CA in practice
- E₂* → *Editorship* of professional journals
- H* → *Honorary* office leadership of charitable – educational or other non-commercial organizations.
- A* → *Attending classes* and appearing for any examination.
- N* → Acting as *Notary Public*, justice of the peace, special executive magistrate and the like.
- A* → *Owing agricultural* and carrying out agricultural activity
- P₁* → *Part time / Full time* employment in business concern provided that member or his relative do not hold substantial interest in such concerns.
- P₂* → *Part time / Full time* employment in non-business concern
- P₃* → *Part time / Full time* lectureship for course other than those relating to institute's examination conducted

P₄ → Part time / Full time tutorship under any educational other than the coaching organization of the Institute

R → Any other business which requires permission

I₁ → Interest in family business

I₂ → Interest in educational institution

M → Managing director or a whole time director of a body corporate. (Auditor of subsidiary can't be director of holding)

E → Editorship of journal other than professional journals.

Questions asked in past/rtp/mock test

Question 45:

Mr. J started his practice as Chartered Accountant in 2013. During 2019, he got an offer for the post of Chief Accountant of a Software Development Company, as a full time employee for a salary of Rs. 60,000 p.m. On accepting the offer, Mr. J converted his practice into a partnership firm by taking fresh Chartered Accountant as his partner. Mr. J neither intimated the institute nor obtained permission from the Institute about his employment. Will Mr. J be held guilty under the CA Act?

Answer:

Guilty of professional misconduct by virtue of Clause 11 as he has accepted the employment in addition to the practice without obtaining permission of the Institute.

Question 46:

M, a Chartered Accountant in practice, is the Statutory Auditor of S Ltd. for the year ended 31st March 2019. In January 2019, he was appointed as a Director in H Ltd., which is the holding Company of S Ltd.

Answer:

Auditor of a subsidiary should not accept the position as a director in holding company as it might affect his independence.

Question 47:

Mr. A, a Chartered Accountant in practice has been appointed editor of a monthly journal which analyses performance of the Stock Market and Mutual Fund Schemes.

Answer:

Clause 11 permits editorship of **professional journals**, but in the instant case journal related to performance analysis of stock market and mutual fund schemes cannot be treated as professional journal hence, Mr. A would be held guilty of professional misconduct by virtue of Clause 11.

Question 48:

CA. Preeti is a leading Income Tax Practitioner in Delhi. She is very much fond of cooking. Due to this passion of her, she also wrote a cookery book "Delight your tummy" during the year. But, she didn't take any permission from the Council of the Institute for engaging herself into authorship of such book. Comment.

Answer:

Clause 11 permits authorship of any book, hence no misconduct arises on part of CA Preeti.

Question 49:

CA Z, is a leading income tax practitioner and consultant for derivative products. He resides in Mumbai near to the ABC commodity stock exchange and does trading in commodity derivatives. Every day, he invests nearly 50% of his time settle the commodity transactions. Is CA Z liable for professional misconduct?

Answer:

If Mr. Z, has, obtained specific permission of the council; then there is no misconduct, otherwise he will be deemed to be guilty of professional misconduct under clause 11

Question 50:

A Chartered Accountant having COP entered into partnership with persons, who are not the members of the institute, for the purpose of carrying on business. The share of the Chartered Accountant in the profit and losses was 25%. He was to take part in the business and was entitled to represent the firm before Govt, authorities etc. he was operating the bank account of the firm was receiving moneys from the customers and was also looking after the affairs of the partnership.

Answer:

Guilty of Professional Misconduct by virtue of clauses -4 & 11 of Part 1 of First Schedule due to entering into partnership with persons other than prescribed under Clause 4 and carrying

on a business without obtaining permission from Council of ICAI.

Question 51:

CA Raghu is practicing in the field of income-tax over a period of 12 years. He has gained experience in this domain over others.

Sam, a student of Chartered Accountancy Course is very much impressed with the knowledge of CA Raghu. He approached CA Raghu to take guidance on some topics of Income-tax related to his course. CA Raghu, on request decided to spare time and started providing private tutorship to Sam and some of his friends along with. However, he forgot to take specific permission from the ICAI, for such private tutorship.

Is CA Raghu, professionally liable for misconduct ?

Answer:

Mr. Raghu will not be liable for professional misconduct as for imparting private tutorship no specific permission is required to be obtained from Council of ICAI as provided under Regulation 190A.

CLAUSE 12 :

- A person not being a member of the institute in practice or
- A member not being his partner
- To sign on his behalf or on behalf of his firm,
- Any BS, Profit and Loss, Report or FS

Note 1 : FS means FS and Reports finalized and submitted

Note 2 : Council has clarified that power to sign routine documents on which a professional opinion or authentication is not required maybe delegated.

Questions asked in past/rtp/mock test

Question 52:

S. a practicing Chartered accountant gives power of attorney to an employee Chartered accountant to sign reports and financial statements, on his behalf.

Answer:

S is guilty of professional misconduct under clause 12

Question 53:

Mr. 'A' is a practicing Chartered Accountant working as proprietor of M/s A & Co. He went abroad for 3 months. He delegated the authority to Mr. 'Y' a Chartered Accountant his employee for taking care of routine matters of his office. During his absence Mr. 'Y' has conducted the undermentioned jobs in the name of M/s A & Co.

- i) He issued the audit queries to client which were raised during the course of audit.
- ii) He issued production certificate to a client under GST Laws.
- iii) He attended the Income Tax proceedings for a client as authorized representative before Income-Tax Authorities.
Comment on eligibility of Mr. 'Y' for conducting such jobs in name of M/s A & Co. and liability of Mr. 'A' under the Chartered Accountants Act, 1949.

ANSWER

- i) Issuing audit queries during the course of audit falls under routine work, which can be delegated by the auditor. Therefore, there is no misconduct in this case.
- ii) Issuance of production certificate to a client under GST Laws, by Mr. "Y" is not a routine work and it is outside his authorities. Thus, CA 'A' is guilty of professional misconduct under clause 12 of Part I of First Schedule of the Chartered Accountants Act, 1949.
- iii) Attending Income tax proceedings for a client as authorized representative before Income Tax Authorities falls under routine work, hence Mr. Y, the employee of M/s A & Co. can attend to routine matter in tax practice. Therefore there is no misconduct in this case.

SECOND SCHEDULE :

PART I : Professional Misconduct in relation members in practice

CLAUSE 1 :

- Discloses the information
- Acquired in the course of his professional engagement
- To any person other than his client so engaging him
- Without any consent of his client or
- Otherwise than as required by any law for the time being in force.

NOTE 1 :

WHO CAN GIVE CONSENT

Proprietor : Proprietor himself or his representative

Partnership Firm : Any of the partner

Company : MD can give only if he is authorized or BOD

NOTE 2 :

WORKING PAPERS

Auditor Working Paper Branch Subsidiary Holding

NOTE 3 :

DUTY IN RELATION TO ANY UNLAWFUL ACTS BY CLIENTS

- No duty to inform tax authorities about tax frauds by clients
- Also no duty of CA to shield him from consequences of fraud.
- His responsibility is to advise client in persuasive way not to involve in tax frauds by impressing upon him that :

- Disclosure by client may entail only penalties but non-disclosure may result even in imprisonment
- If CA informs tax authorities about his disassociation from matters, authorities may start the investigation.
- In case of genuine mistake client will himself disclose

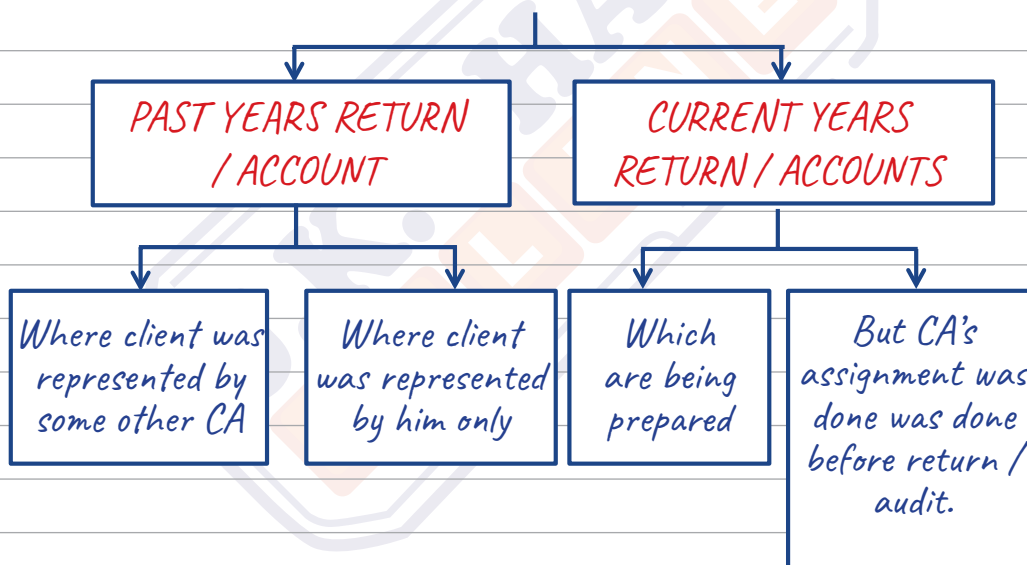
NOTE 4 :

SUMMONS

- If tax authorities summon CA for examining him on oath or for production of BOA, he should take legal expert opinion.

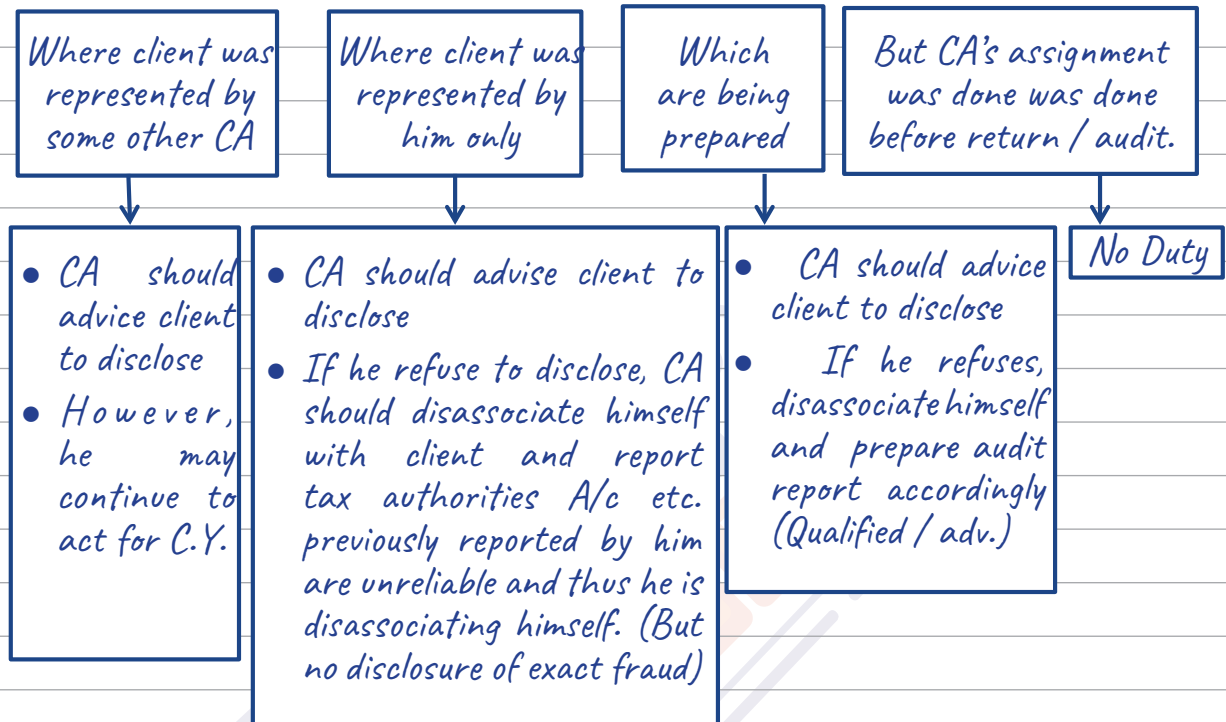
NOTE 5 : FRAUD → CG 143(12)

FRAUD RELATES TO



NOTE 5 :

FRAUD → CG 143(12)



Questions asked in past/rtp/mock test

Question 62:

A CA in practice was engaged by a businessman to represent him before the tax authorities on current matters and in the course of such "employment he came across Certain documents pointing of tax frauds in the preceding years for which tire client was not represented by him. Is the member liable to disclose the existence and contents of the documents to tax authorities?

Answer:

In respect of such matters, the code of conduct recommends that "If. the fraud discovered by the member, relates to the accounts; or-tax matters of the client for past year(s) for which the client was not represented by the member the client should be advised to make a disclosure. The member may however, continue to act for the client in respect of current matter, but is tinder no obligation so to continue.

Question 63:

XYZ Ltd Co. Ltd. has applied to a bank for loan facilities. The bank on studying the financial statements of the company notices that you are the auditor and requests you to call at the bank for a discussion. In the course of discussions, the bank asks for your opinion regarding the company and also asks for detailed information regarding few items in the financial statements. The information is available in your working paper file. What should be your response and why?

Answer:

There is no requirement compelling the auditor to divulge information obtained in the course of audit and included in the working paper- to any outside agency except as and when required by any law or permitted by the client.

Question 64:

Mr. C, a practicing Chartered Accountant, in the course of the audit of a listed company discovered serious violations of the provisions of the Companies Act, 2013, informed the registrar of companies out of public interest

Answer:

Mr. C will be guilty of professional misconduct covered by clause 1 of Part I of Second Schedule

Question 65:

Mr. Z, a Chartered Accountant was invited by the Chamber of Commerce to present a paper in a symposium on the issues facing Indian Leather Industry. During the course of his presentation he shared some of the vital information of his client's business under the impression that it will help the Nation to compete with other countries at international level.

Answer:

Disclosing the client's information without obtaining consent of client amounts to professional misconduct under Clause 1 of Part 1 of Second Schedule

CLAUSE 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

NOTE : Not applicable for Joint auditor

Questions asked in past/rtp/mock test

Question 66:

Mr. L, a Chartered Accountant Issued a certificate of consumption which did not reflect correct factual position.

Certificate was given on the basis of minutes of BOD meeting.

Answer:

Mr. L will be guilty of professional misconduct.

CLAUSE 3 :

- *Permits his name or the name of his firm*
- *To be used in connection with an estimate of earnings*
- *Contingent upon future transactions*
- *In manner which may lead to the belief that he vouches for the accuracy of the forecast*

NOTE : SAE 3400 "The examination of Prospective financial information."

As per SAE 3400 on prospective financial info CA can participate in preparation of financial forecasts and their review. He should clearly indicate in his report. (SAzB)



S → Source of information

A₁ → Major assumptions

A₂ → Not vouch for accuracy of forecast

B → Basis of forecasts

Questions asked in past/rtp/mock test

Question 67:

CA. Q certifies financial forecast of client and same was forwarded to bank by client. Based on the certification loan was sanctioned.

Answer:

Mr. Q will be not be guilty of professional misconduct.

Question 68:

Mr. N, a practicing Chartered Accountant was requested by client to prepare projections & report for next 5 years. He stated in his report the sources of info, basis of forecast & major assumptions made to arrive at forecasts & does not vouch for accuracy of the forecast. Comment.

Answer:

Mr. N will not be guilty of professional misconduct.

Question 69:

D, a practicing Chartered Accountant examined and reported on the prospective financial statements for one of his clients to obtain a cash credit facility of Rs.75 lakhs from a Private Bank. The bank has sanctioned the cash credit facility for Rs. 60 lakhs to his client. Consequent to the sanction of loan by Bank, he charged a fees of Rs. 60,000 based on 1% of the credit facility-sanctioned.

Answer:

Mr. D is allowed to examine the prospective financial information of the clients provided conditions as stated in SAE are being fulfilled. Assuming that conditions stated in SAE 3400 are being fulfilled, no misconduct arises on part of Mr. D under Clause 3 of Part 1 of Second Schedule. However, charging fees on a % age basis amounts to misconduct under Clause 10 of Part 1 of First Schedule except as permitted under regulation 192. Charging fees on % age of fund raised is covered under Regulation 192. Hence no misconduct arises on part of Mr. D.

CLAUSE 4 :

- Expresses his opinion
- On FS of any business or enterprise
- In which he, his firm or a partner in his firm has a substantial interest.

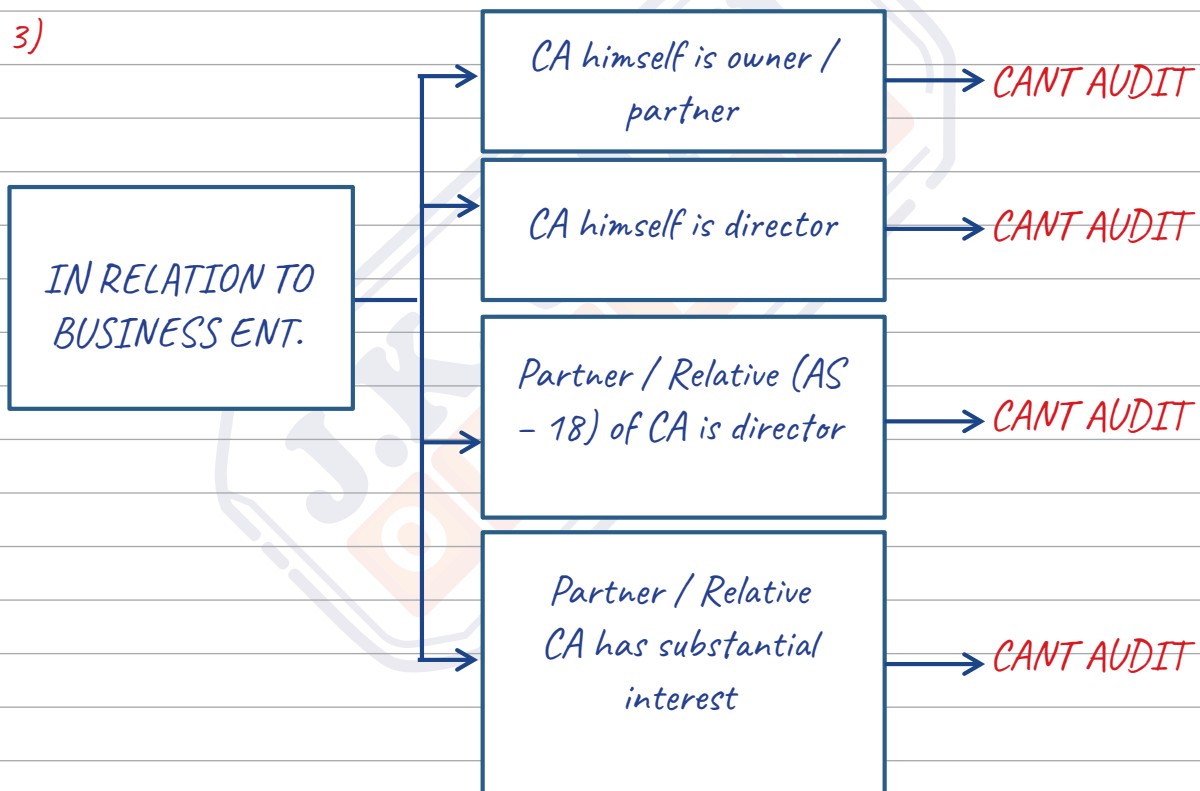
NOTE :

1. Council Guidelines No. 1CA(7)/02/2008 dated 8th August, 2008. The said guidelines state that a member of the Institute shall not express his opinion on financial statements of any business or enterprise in which one or more persons, who are his "relatives" within the meaning of AS-18

2. Many new areas of professional work have been added ,e.g. Tax audit, Concurrent Audit of Banks, Concurrent Audit of borrowers of Financial institution, audit of non-corporate borrowers of bank and financial institution, audit of stock exchange, brokers, etc. Clause 4 are equally applicable to all types of attest function by members

NOTE :

3)



NOTE :

- | | | |
|--|---|---|
| 4) IF CA is employee of concern | → | He cannot audit FS of employer |
| CA is a part time lecturer in college | → | He cannot accept auditorship of college |
| CA is appointed as liquidator | → | Cannot audit of that company |
| A partner of CA is trustee of trust | → | Cannot audit FS of trust |
| Writing books of accounts | → | Cannot audit |
| CA is internal auditor | → | Cannot be statutory auditor |

NOTE :

- 5). This clause is meant for *report* as well as for *certificates* which are to be submitted to any *outside* authority, but *not where* statements are prepared by members in employment for their employers.
- 6). The council has clarified that the members are not permitted to *write books* of their audit clients



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Requirements of Clause applicable to all Attest Functions

The requirements of Clause (4) are equally applicable while performing all types of Clause applicable attest functions by the members. e.g., Tax Audit, GST Audit, Concurrent Audit of Banks, Concurrent Audit of Borrowers of Financial institutions, Audit of non-corporate borrowers of Banks & Financial Institutions, Audit of Stock Exchange, Brokers, etc.

Tax Consultant

An accountant is expected to be no less independent in the discharge of his duties as a tax consultant or as a financial adviser than as auditor. In fact, it is necessary that he should bear the same degree of integrity & independence of mind in all spheres of his work.

Statutory auditor not to be the Internal Auditor simultaneously

An Auditor appointed by an entity under the Companies Act or any other statute not to be the shall not be the internal Auditor of the same entity.

Internal Auditor not to be the Tax auditor simultaneously

An Internal Auditor an assessee, whether working with the organization or an independently practicing CA irrespective of being an individual CA or a firm of CAs cannot be appointed as its Tax Auditor,

Internal Auditor not to be the GST Auditor Simultaneously

The Internal Auditor of an entity cannot undertake GST Audit of the same entity.

Cooling off period after completion of tenure as Director

A member shall not accept the assignment of audit of a Company for a period of 2 years from the date of completion of his tenure as Director, or resignation as tenure as Director.

*Questions asked in past/rtp/mock test**Question 70:*

AP & Co., a firm of Chartered Accountants, was appointed by D Ltd., to evaluate the cost of a new product manufactured by it for their information system and fixation of fair market price. Partner 'P' of the CA firm is a non-executive director of the Company. Comment with reference to Chartered Accountants Act, 1949 and Regulations thereto.

Answer:

There is no professional misconduct in evaluating the costs of a company in which one of the partners of firm is a non-executive director.

Question 71:

Mr. W, is appointed as statutory auditor of Pvt Ltd co in which Spouse's sisters husband holds 75% ownership.

Answer:

There is no professional misconduct

CLAUSE 5 :

- Falls to disclose **material fact**
- Known to him
- Which is not disclosed in a FS
- But disclosure of which is necessary
- In making such FS not misleading
- Where he is concerned with that FS in a professional capacity

NOTE 1 :

FS would cover both **report + Certificates**

NOTE 2 :

Materially should be judged in relation to both Profit and Loss and Balance sheet. An item can be material from point of view of profit and Loss but may not be material from point of view of Balance sheet.

The determination of materiality has been provided in **SA 320** "Materiality In planning & performing Audit."

Questions asked in past/rtp/mock test

Question 72:

Mr. A was appointed by H Ltd. to audit the PF trust maintained by the company. While conducting the audit he noticed that large number of loans have been given out of the trust to the employer company in contravention of the rules of the PF Trust. He disclosed the irregularities to the trustees and to the company but not to the individual subscribers of the PF. When queried on his omission to disclose, he explained that he owed no duty to the individual members.

Answer:

Guilty by virtue of Clause 5 of Part 1 of Second Schedule as he was required to disclose the facts to beneficiaries of the fund just like he gives his report to the shareholders of the company.

Question 73:

Mr. J, a Chartered Accountant has identified that ABC Ltd. has taken a loan of Rs.15 lakhs from Provident Fund Account, during the course of audit. The said loan was not reflected in the books of account and statements were prepared ignoring the same.

Answer:

If Mr. J fails to disclose the fact in his report, he will be attracted by the professions of professional misconduct under Clause (5) of Part 1 of Second Schedule. However, if he discloses the fact in his report, there will not be any misconduct.

Question 74:

The superannuation-cum-pension fund for the employees of a company was under a separate 'trust'. Both the company and the trust were under the same management. The auditor, who was auditing the accounts of the company as well as the trust noted some irregularities in the operation of the trust and commented upon these irregularities in the confidential report given to the trustees, but did not mention about these irregularities in his report on the Annual accounts of the Trust.

Answer:

The Chartered Accountant is guilty of professional misconduct if the amount of irregularities is proved material for not disclosing the facts in his report.

CLAUSE 6 :

- Fails to report a **material misstatement**
- To appear in FS
- With which he is concerned in a professional capacity

Questions asked in past/rtp/mock test

Question 75:

Mr. X partner of X & Co. Chartered Accountants, has compiled and signed the balance sheet of False Ltd. for submission to the bankers of the said company. Mr. X has also compiled and signed at the request of the company another balance sheet inflating the value of assets by 20%, for submission to a term lending institution. Both the Balance Sheets were not in conformity with the books of account maintained by the company as they were not up-to-date. Comment on Mr. X liability.

Answer:

Mr. X would be held guilty under Clauses 5 and 6 of Part 1 of Second Schedule as Mr. X had compiled the two different BS for the same date without reference to the actual books of account, but on instructions of the client. As per clause 5 he has failed to disclose material fact known to him & as per clause 6 he has also failed to report a material misstatement known to him.

Question 76:

A practicing Chartered Accountant was appointed to represent a company before the tax authorities. He submitted on behalf of his clients certain information and explanations to the authorities, which were found to be false and misleading

Answer:

The CA would not be held liable as he was not being engaged for examination of any information and he had only submitted the information acting on the instruction of the client as authorised representatives.

CLAUSE 7 :

- Does not exercise due diligence, or
 - Is grossly negligent
 - In the conduct of his professional duties
-
- **Due diligence** means careful and thorough work or effort. Mere non-performance or defective performance of a duty may be considered as failure to exercise due diligence.
 - **Gross negligent** implies negligence of high degree, either arising out of recklessness or deliberate failure to act honestly and reasonably on a material matter.

NOTE :

- 1) If a CA is appointed to carry out a audit and later an internal auditor detected irregularities at a branch which is not detected by auditor. He is not guilty as he is not required to check the matters relating to branch in dept.
- 2) He is a watchdog but not bloodhound. If there is anything to excite his suspicion he should probe it to bottom, but in the absence of anything of that kind he is only bound to be reasonably cautious and careful.

EXAMPLES :

- 1) CA gave clean exports whereas the reports on the special Audit conducted subsequently revealed irregularities which amounted to failure to examine passbook and to verify cash balance.
- 2) A CA adopted arbitrary valuation of closing stock and no verification was done by him.
- 3) Failure to point out contravention of requirements of schedule III of companies Act.
- 4) Failure to detect fraud committed by accountant which could have been detected if he had properly checked cash book.
- 5) A CA relied upon IC without satisfying himself about the propriety and surrendered to the pressure of management and certified the accounts without examining.
- 6) Where CA in practice have signed 2 Balance sheet on 2 different dates for the same financial year, the 1st one with a clean report and 2nd one with a qualified report. Because he later on issued a clean report and did not refer the fact of having previously issued a qualified report, in lieu of which a clean report was being issued.
- 7) Included order still under negotiation as sales to reflect better financial position. .
- 8) Cashier absconded with proceeds of sales, the auditor failed to discover it and an investigation afterwards indicated that he did not exercise proper skill and care.

Questions asked in past/rtp/mock test

Question 77:

Mr. Fair a practicing CA, was appointed to carry out a Balance sheet Audit of a Non-profit Organisation. The Internal Auditors detected certain irregularities at one of the branches of the organization which Mr. Fair had failed to detect.

Answer:

Mr. Fair is not guilty as he was appointed to carry out the Balance Sheet Audit, hence he is not required to check matters relating to branch in depth.

Question 78:

A search under section 132 of Income Tax Act in the premises of a leading merchant led to the discovery of two sets of account books - one set to record all the income correctly and second to record only limited income. A CA has issued audit report on the basis of second set of books. What would be your answer if the first set of account books carried evidence of checking by the CA?

Answer:

In the first case, he would not be deemed to be guilty of misconduct. But in the second case, he would be deemed to be guilty of misconduct.

Question 79:

Mr. X, a CA in practice and statutory auditor of True Ltd., advised the Managing Director of the company to include in sales, "Orders under negotiation" to reflect a better financial position for obtaining bank loan. Mr.X, thereafter, gave clean reports on the balance sheet prepared accordingly without examining the accounts

Answer:

Guilty of misconduct under Clauses 2 & 7 of Part 1, Second Schedule to the CA Act, 1949, as he issued the report without examining the accounts and has acted in a negligent manner.

He will also be deemed guilty of other misconduct under Clause (2) of part IV of First Schedule for advising unethical practice to the client.

Question 80:

- The Cashier of a company committed a fraud and absconded with the proceeds thereof. This happened during the course of the accounting year. The Chief Accountant of the Company also did not know about fraud.
- In the course of the audit, at the end of the year, he auditor failed to discover the fraud. After the audit was completed, however, the fraud was discovered by the Chief

Accountant. Investigation made at that time indicate that the auditor did not exercise proper skill and care and performed his work in a desultory and haphazard manner. With this background, the Directors of the company intend to file disciplinary proceedings against the auditor. Discuss.

Answer:

The auditor has been grossly negligent in performing his duties which constitutes professional misconduct. Thus, such instances require reference to Disciplinary Committee of the Council of the Institute.

Question 81:

Mr. B a practicing CA expressed his opinion on the financial statements of M/s ABC Ltd. for the year ended on 31st March 2018. It was later found that the closing stock was valued arbitrarily by Management which was accepted by him without verification and large amount of revenue expenditure was capitalized.

Answer:

Mr. B is guilty of gross negligence by virtue of Clause 7 of Part 1 of Second Schedule

Question 82:

Mr. D, a practicing Chartered Accountant, did not complete his work relating to the audit of the accounts of a company and had not submitted his audit report in due time to enable the company to comply with the statutory requirements.

Answer:

Mr. D is guilty of professional misconduct by virtue of Clause 7 of Part I of Second Schedule to the CA Act, 1949.

CLAUSE 8 :

- Fails to obtain sufficient information
- Which is necessary for expression of an opinion or
- Its exceptions are sufficient material to negate the expression of an opinion.

NOTE :

- 1) A CA should express his opinion about fairness of statements of accounts only after obtaining required data and information. He has to determine extent to which information is required.
- 2) In case of inadequacy of information of data he should clearly express his **disclaimer**.

Questions asked in past/rtp/mock test

Question 83:

CA Z who conducted ABC audit of a Marathi daily 'New Era' certified the circulation figures based on Management information System Report (M.I.S. Report) without examining the books of Account.

Answer:

CA Z is guilty of professional misconduct as per Clauses 2, 7 and 8 of Part 1 of Second Schedule as he certificate is issued without examination of related records, failed to exercise due diligence and failed to obtain necessary information.

Question 84:

Mr. A, a CA was the auditor of 'A Ltd'. During the financial year 2010-19, the investment appeared in the Balance Sheet of the company of Rs. 10 lakhs and was the same amount as in the last year. Later on, it was found that the company's investments were only Rs. 25,000, but the value of investments was inflated for the purpose of obtaining higher amount of Bank loan.

Answer:

Mr. A, will be held liable for professional misconduct under Clauses (2), (7) and (8) of Part 1 of the Second Schedule

CLAUSE 9 :

- Fails to invite attention to any material departure.
- From the **generally accepted procedure of audit** applicable to the circumstances.

NOTE 1 :

If he fails to perform the audit as per such procedures, his report should draw attention to the material departure from such procedures.

NOTE 2 :

Failure to perform certain statutory functions and duties is not excused by giving a qualification or reservation in auditors report, on failure he should clearly indicate reasons for failure to perform audit as per generally accepted procedures and standards.

CLAUSE 10 :

- Fails to keep money of his client
- Other than fees or remuneration or money meant to be expended,
- In a **separate banking account** or
- To use such money for purpose for which they are intended within a reasonable time*

❖ Reasonable Time would depend upon circumstance of each case.

NOTE 1 :

An advance received by a CA Against services to be rendered does not fall under clause (10) of Part I of 2nd schedule.

NOTE 2 :

Money received for expenses to be incurred, for example, Payment of prescribe statutory fees, purchase of stamp paper, etc. Which are intended to be spent within a reasonably short time need not be put in a separate bank account.

NOTE 3 :

Money received by a CA, in his capacity as the trustee, executor etc., must be put in a separate bank account immediately.

*Questions asked in past/rtp/mock test**Question 85:*

A charitable institution entrusted Rs 10 lakhs with its auditors M/s Ram and Co., a Chartered Accountant firm, to invest in a specified securities. The auditors pending investment of the money deposited it in their Savings bank account and no investment was made in the next three months.

Answer:

M/s Ram & Co. will be held guilty of professional misconduct as he deposited the client money in his saving bank account.

Question 86:

Mr. Ram, a CA in practice, received Rs. 15,00,000 on 15th December, 2018 on behalf of one of his clients, who has gone to USA. Mr. Ram deposited the said amount in his saving bank account. As per instruction of the client, the said amount is to be returned to the client on March 31, 2019 when he will return to India. On the occasion of birthday of his wife Sita, Mr. Ram withdrew Rs. 5,00,000 and spent on Birthday party. He re-deposited Rs. 5,00,000 in the said SB account on 25th March, 2019 and then returned the entire amount of Rs. 15,00,000 to the client on March 31, 2019.

Answer:

Mr. Ram will be guilty of professional misconduct under Clause 10 of Part 1 to Second Schedule due to utilisation of Rs. 5 Lacs for personal purposes.

Question 87:

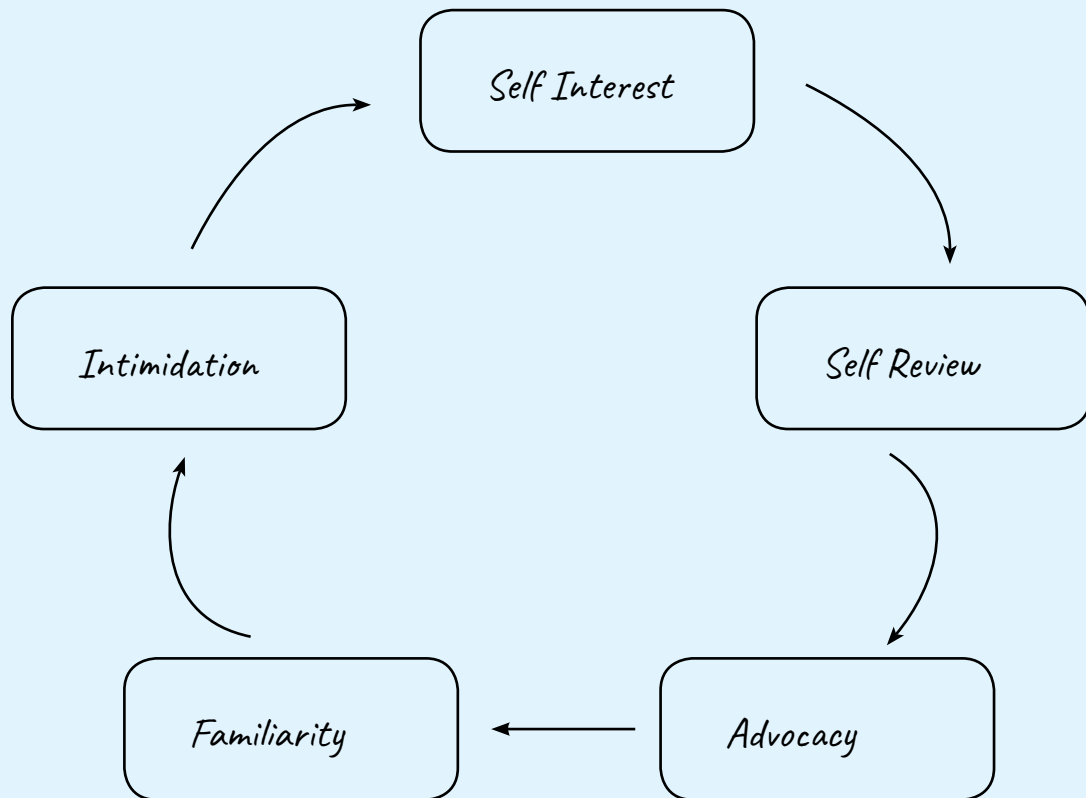
Mr. Z, a practicing Chartered Accountant received a sum of Rs. 1 lac on 01.09.2018 from a client who intends to leave abroad for a period of year, with a request that his advance tax liabilities to be paid over the three instalments, on 15th Sept., 2018, 15th Dec. 2018 and 15.03.2019. After remitting the 1st instalment of advance tax on 15.09.2018, Z did not keep the money in a separate bank account and he is of the opinion that he will remit the money within reasonable time as per schedule of advance tax

Answer:

Mr. Z is guilty of professional misconduct as per Clause 10 of Part 1 of Second Schedule of the Chartered Accountants Act, 1949.



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Evaluation of threats

Acceptable level

- ⇒ *The conditions, policies & procedures described above might impact the evaluation of whether a threat to compliance with the fundamental principles is at an acceptable level.*
- ⇒ *An acceptable level is a level at which a professional accountant using the reasonable & informed third party test would likely conclude that the accountant complies with the fundamental principles.*

Reasonable & Informed Third Party (RITP)

- ☞ The *reasonable & informed third party* test is a consideration by the professional accountant about whether the same conclusions would likely be reached by another party.
- ☞ Such consideration is made from the perspective of a *reasonable & informed third party*, who weighs all the relevant *facts & circumstances* that the conclusions know, or could reasonably be expected to know, at the time the conclusions are made.
- ☞ The *reasonable & informed third party* does not need to be an accountant but would possess the relevant *knowledge & experience to understand & evaluate* the appropriateness of the accountant's conclusions in an *impartial manner*.

If the professional accountant determines that the identified threats to compliance with the fundamental principles are not at an acceptable level, the accountant shall address the threats by eliminating them or reducing them to an acceptable level. The accountant shall do so by

- ☞ Eliminating the circumstances, including interests or relationships, that are creating the threats;
- ☞ Applying safeguards, where available & capable of being applied to reduce the threats to an acceptable level; or
- ☞ Declining or ending the specific professional activity.

ADDRESSING THREATS

Actions to Eliminate Threats

- ☞ Depending on the facts & circumstances, a threat might be addressed by eliminating the circumstance creating the threat.
- ☞ However, there are some situations in which threats can only be addressed by declining or ending the specific professional activity.

↪ This is because the circumstances that created the threats cannot be eliminated & safeguards are not capable of being applied to reduce the threat to an acceptable level.

Safeguards are actions individually or in combination that the accountant takes that effectively reduce threats to an acceptable level. Examples of actions that in certain circumstances might be safeguards to address threats include:

- ✍ Assigning additional time & qualified personnel to required tasks when an engagement has been accepted might address a self-interest threat.
- ✍ Separating teams when dealing with matters of a confidential nature might address a self-interest threat.
- ✍ Having an appropriate reviewer, who was not a member of the team, review the work performed or advise as necessary might address a self-review threat.
- ✍ Using different partners & engagement teams with separate reporting lines for the provision of non assurance services to an assurance client might address self-review, advocacy or familiarity threats.
- ✍ Involving another firm to perform or re-perform part of the engagement might address self-interest self-review, advocacy, familiarity or intimidation threats.