Chapter 19 - PE and Liabilities of Auditors

Topics Covered:

(1) Overview of Code of Ethics, Fundamental Principles, Threats and Safeguards.

(2) NOCLAR

(3) Relevant Provisions of CA Act, 1949

(4) Schedules to CA Act, 1949:

First Schedule, Part I - Professional Misconduct for a Member in Practice:

Clause-1: Restrictions on allowing use of name to others:

A member in practice is deemed to be guilty of professional misconduct, if he allow a person to practice in his name as a Chartered Accountant, unless such other person is also a $\boxed{\text{Practicing CA}}$ $\boxed{\text{and}}$ $\boxed{\text{Partner / Employee}}$.

Example: Ms. Parul (Practicing CA) allow Ms. Jyoti to practice in name of Ms. Parul.

- Member of ICAI
  - Hold CoP
    - Partner / Employee of Ms. Parul → No Misconduct
    - Not a partner / Employee → Misconduct
  - No CoP → Misconduct
- Not a Member of ICAI → Misconduct

Parul

Clause - 2 : Sharing of Profits with others:

A member in practice is deemed to be guilty of professional misconduct, if he pay or allow or agree to pay or allow, directly or indirectly,

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any share, commission or brokerage in profit of professional work with others.

Note: However, this restriction is not applicable if profits are shared with:

(a) A Member of Institute
(b) Partner
(c) Retired Partner
(d) Legal representative of deceased Partner
(If provided in Partnership Deed)
(e) Members of recognised professional bodies.
[Reg. 53A – ICSI, ICWAI, IAI, IIA and Bar Council]
(f) Persons having prescribed Qualifications.
[Reg. 53A – CS, Cost Accountant, B.Tech, B.E, B.Arch, Actuary, LLb, MBA]

Sale of Goodwill: Council of ICAI permits the legal rep. of deceased proprietor to sell the Goodwill of proprietorship firm.

| subject to conditions

(A) No Dispute among legal Rep.	(B) Dispute exists among legal rep.
- ICAI permission is to be obtained within One year of date of death of prop.	- ICAI permission is to be obtained within One year of date of death.
- ICAI will keep in Abeyance the firm's name for One year from date of death.	- ICAI will keep in Abeyance the firm name for One year from date of settlement of dispute.

Notes: (i) Consideration should be determined in lumpsum, though may be payable in installments.

(ii) Consideration as a %age of future realisation is not permissible.

(iii) Similar provisions also applicable in case of partnership firm, if all partners die at same time.

Clause-3: Restrictions of sharing of other's profit:

A member in practice is deemed to be guilty of professional misconduct, if he accept or agree to accept

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any profit of professional work of a person who is not a member of ICAI.

Note: Sharing with persons covered under Reg. 53A is permitted.

Clause-4: Restriction on Partnership with others:

A CA in practice is deemed to be guilty of professional misconduct, if he enters into partnership with persons other than:

(a) Another Member in Practice;

(b) Persons having Prescribed Qualifications.

S8 [Reg. 53A - CS, Cost Accountant, B.E, B.Tech, B.Arch, MBA, LLb, Actuary]

(c) Members of Recognised Professional Bodies.

[Reg. 53B - Members of ICSI, ICWAI, IAI, IIA, Bar Council, and Members of Professional Bodies outside India, whose qualifications of accountancy are recognised by Council of ICAI].

(d) Persons, who but for his residence abroad, are entitled for Membership of ICAI.

	Regulation 53A	Regulation 53B
Clause 2 →	Qualification / Membership	—
Clause 3 →	" "	—
Clause 4 →	Qualification	Membership

Summary of Clause 1, 2, 3, 4

		Permitted
Clause - 1 :	Restriction on use of Name	Another Practicing CA + Partner / Employee
Clause - 2 :	" " Sharing of Profits	→ Partner / Retired Partner / Legal Rep. of D.P. Another Member / 53A-Q / 53A-M
Clause - 3 :	" " Sharing of Other's Profit	→ Another Member / 53A-Q / 53A-M
Clause - 4 :	" " Partnership	Member in Practice / 53A-Q / 53B-M

Clause - 5 : Restriction on securing professional work through the services of Others :

A member in practice is deemed to be guilty of professional misconduct, if he secured professional work

through

- the services of persons Other than Partner or Employee

or

- the means which are not open to a CA.

Clause - 6 : Restrictions on Solicitation of client or professional work:

A CA in practice shall deemed to be guilty of professional misconduct if he solicits clients or Professional work, directly or indirectly by
(a) Circular (b) Advertisement (c) Personal Communication
(d) Interview or (e) any other means. (e.g. website)

Exceptions:

(i) Securing professional work from another CA in practice.

(ii) Responding to tenders:

(A) Exclusive Area (e.g. Statutory Audit by a CA)
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Respond to tender is permitted, provided minimum fees is prescribed in tender itself.

(B) Non-Exclusive Area (e.g. Internal audit, Computerisation of Records)
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Permitted

Note: Earnest Money Deposit (EMD) / Caution Money required while responding to tenders is permitted.

- Council Guidelines w.r.t. Prohibited and Permitted forms of Solicitation
- " " w.r.t. Development of website. (H.W. Summary)

—— To be Covered from book ——