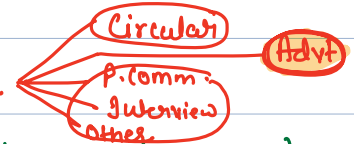


Chapter - 19 "P.E. and Liabilities of Auditors"

(4) Schedules to CA Act, 1949: - First Schedule, Part I, Professional Misconduct for a Member in Practice

- Clause - 1 Restriction on allowing use of name or firm's name to others
(Exception - Practising Member + Partner/Employer)
- Clause - 2 Sharing of Profits of Professional work with others
(Exception - Member / Partner / Retired Partner / Legal Rep. of deceased Partner
Reg. 53A - Qualifications and Memberships)
- Clause - 3 Sharing of Profits of Professional work of others
(Exception - Member / Reg. 53A - Q + M)
- Clause - 4 Partnership with others
(Exception - Member in Practice / Reg. 53A - Q / Reg. 53B - M)
- Clause - 5 Securing Professional work through services of others
(Exception - Partner / Employer)
- Clause - 6 Solicitation of client or Professional work
(Exceptions - Another Member in Practice / Responding to tenders)
- Clause - 7 Restrictions on advertisement of Professional attainments and using designation other than "Chartered Accountant".
- Clause - 8 Prior Communication with predecessor auditor.



Clause - 9 - Compliance of Sec. 139 and 140 of Companies Act, 2013:

A CA in practice is deemed to be guilty of professional misconduct if he accepts an appointment as auditor of a company



without first ascertaining the compliance of Sec. 139 and 140 of Companies Act, 2013 (read with sec. 141).

- ✓ Sec. 139 - Appointment of Auditor (First / Subsequent / Govt / NonGovt)
- ✓ Sec. 140 - Removal, Resignation and Requirement of Special Notice
- ✓ Sec. 141 - Eligibility, Qualification and Disqualifications of Auditor.

Combined Applicability of clause 8 and clause 9 (Before acceptance)

	Prior Communication	Compliance of Sec. 139/140	<u>Misconduct</u>
Situation - I	✓	✓	No Misconduct
- II	✓	X	Misconduct u/c - 9
- III	X	✓	Misconduct u/c - 8
- IV	X	X	Misconduct u/c - 8 & 9

Clause - 10: Restriction on charging fees on %age Basis:

A CA in practice is deemed to be guilty of professional misconduct,



If he charges or offers to charge or accept or offers to accept



in respect of professional work, fees which is based on:

- %age of profits; or
- Contingent upon findings; or
- result of such engagement.



except as permitted under Reg. 192

Note: Fees which is fixed on %age basis or contingent upon findings, based on any criteria prescribed by Court, Govt. or Regulator, is permitted.

Reg. 192: Exceptions:

- (a) Receiver or liquidator: % age of _____.
- (b) Cooperative Society: % age of _____.
- (c) Valuer for direct taxes: % age of _____.
- (d) Mngt. Consultancy Services: % age of _____.
- (e) Fund Raising Services: % age of _____.
- (f) Debt Recovery " : % age of _____.
- (g) Cost Optimisation " : % age of _____.
- (h) Other Prescribed " :

(Involuntary Resolution Professional; or
Non-Assurance Services to Non-Audit clients)

Clause - 11: Restriction on Engaging into Other Occupation: →

A CA in practice is deemed to be guilty of professional misconduct if he



engages into any business or occupation other than that of profession of Chartered Accountancy, unless permitted.

Note: A Practising CA may become director of a company, provided he or any of his partners is not the auditor of that company. (Simplistic Director)

However, to become a MD/IWTD, prior permission from Council is required.

Situation I Director of H Ltd. Auditor of M Ltd. ✓

" II " " H Ltd. Auditor of H Ltd. ✗

" III " " H Ltd. " " S Ltd. Though not specifically prohibited but should not be accepted.

H and S are Holding / subsidiary

Note: Reg. 190A provides a list of occupations in which a practicing CA may be engaged generally or with prior approval of Council of ICAI.
- list to be covered from book -

Clause 12: Signing of Reports and financial statements:

A CA in practice is deemed to be guilty of professional misconduct



If he allow a person, not being a member in practice OR a member not being his partner



[Member + Practice + Partner]

to sign on his behalf or on behalf of his firm, any report or f.s.

Note: (A) Sec. 145 of Companies Act, 2013: Only the partner who is a CA, is authorised to act and sign on behalf of the firm.

(B) Sec. 26 of CA Act, 1949: Unqualified persons are not authorised to sign on behalf of Chartered Accountants.

(C) Power to sign routine documents on which a professional opinion or authentication is not required, may be delegated.

For Examples: Letter forwarding draft observations;

Issue of Questionnaires;

Asking for Information;

Issue of Audit Queries;

Initiating and stamping of Vouchers;

Attending a tax representation case etc.

⑤ First Schedule to CA Act, 1949: (Part II)

Professional Misconduct for Members in Service

A member in service, is deemed to be guilty of professional misconduct, if he:

Clause - 1: pay or allow or agree to pay, directly or indirectly



to any person, any share in emoluments of employment (remuneration) undertaken by him.

For Ex: Mr. X agree to pay his first month salary to Manpower Consultancy Ltd. as consideration for arranging employment for him.

Clause - 2: accept or agree to accept, any part of fees, profits or gains from a lawyer^①, CA^②, or Broker^③ engaged by Company, firm or other person (Employer)

Or

Agent^④ or customer^⑤ of such company, firm or other person (Employer)



by way of Commission or Gratification.

For Ex: CA. Suneet (Finance Manager) of RML Ltd. ask for 25% share in "Internal Audit fees", as a consideration for referring name of Mr. Mohit as internal auditor to his company.

⑥ Part III of First Schedule to CA Act, 1949: (Professional Misconduct - Generally)

A member of ICAI, whether in practice or not, is deemed to be guilty of professional misconduct, if he:

Clause - 1: not being a fellow member, but acting as a fellow member.

Clause - 2: does not supply the information called for; or
" " comply the requirements asked for



by ICAI, its Council, Committees, Director Discipline, Board of Discipline, Disciplinary Committee, Appellate Authority or Quality Review Board.

Note: Providing false information to ICAI, -----, will amount to professional misconduct under Clause 3, Part II of Second Schedule.

✓ Clause - 3: while inviting professional work from another CA; or responding to tenders; or advertises his professional work as per permitted means



Under clauses 6 and 7 of Part I of First Schedule



provides the information, knowing it to be false.