

## Chapter - 19 "PE and liabilities of Auditor"

### ⑦ Other Misconduct:

#### (A) Part IV of First Schedule

A member of ICAI, whether in practice or not, is deemed to be guilty of other Misconduct, if he

Clause-1: is held guilty of any offence by any Civil or Criminal Court, which is punishable with imprisonment for a term upto 6 Months.

Clause-2: brings disrepute to the profession of the Institute, as a result of his conduct, whether or not related to his professional work.

#### For Example:

- (i) Using Coercive method to obtain loan.
- (ii) Using services of Artides for Personal work.
- (iii) Non replying within a reasonable time and without good cause to public authorities.
- (iv) Dishonour of cheques due to insufficient funds.
- (v) Misappropriation of funds of regional councils by elected members to the Council.

#### (B) Part III of Second Schedule

A member of ICAI, whether in practice or not shall be deemed to be guilty of other misconduct, if he

Clause-1: is held guilty of any offence by any Civil or Criminal Court, which is punishable with imprisonment exceeding 6 Months.

## First Schedule

### Part I (PM-Practising CA)

1. Restriction on use of Name
2. Sharing of Profits with others
3. " " Other's Profit
4. Partnership with others
5. Securing Professional work from Others
6. Solicitation of client / Professional work
7. Advt. of Professional attainments
8. Prior Communication with Predecessor auditor.
9. Non-Compliance of Sec. 139/140
10. Charging fees on %age Basis
11. Engaging into occupations other than that of C.A.
12. Allowing others to sign the reports and A.S.

### Part II (PM-Members in Service)

- (1) Sharing emoluments of Employment with others
- (2) Commission / Gratification - CA, Lawyer, Agent or Customer of Employer.

### Part - III (Professional Misconduct - Generally)

- (1) Acting as FCA
- (2) Non supplying info - ICAI - .....
- (3) Providing false info while advt. for professional work or responding to tenders

### Part - IV (Other Misconduct - Generally)

- (1) - Guilty - offence - Imprisonment  $\leq$  6 months
- (2) - Bringing disrepute to the profession

## ⑧ Second Schedule, Part-I (Professional Misconduct - Members in Practice):

✓ A member in practice is deemed to be guilty of Professional misconduct, if he:

Clause - 1: Discloses the information acquired in the course of professional work to any other person, other than his client

- without consent of the client or
- otherwise than as required by law.

Breach of Confidentiality

for Ex: Informing violations of corporate laws to ROC without any statutory obligation.

for Ex: Sharing client's information to elaborate a subject matter during any Seminar/Lecture.

Clause - 2: Certify or submits in his name or firm's name, a Report of an examination of financial statements

↓ unless

Examination of such statements and related records has been made by him, his partners or employee or another practicing CA.

(e.g. Branch Auditor)

Clause - 3: permits his name or firm's name, to be used in connection with an estimate of earnings, which is contingent upon future transactions, in a manner

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which leads to belief that he vouches for the accuracy of the forecast.

Note: In this reference, practicing CA must ensure compliance of requirements of SAE 3400 "The Examination of Prospective Financial Information".

As per SAE-3400, prep<sup>n</sup> of PFI is the responsibility of management and while preparing PFI, following need to be disclosed: (a) Source of Information; (b) Basis of forecast; and (c) Assumptions used.

If a practicing CA is engaged to examine PFI, he needs to ensure the disclosures required and state that no Vouching done for the accuracy of the forecast.

(Further details will be covered in chapter-11).

Clause-4: expresses an opinion on financial statements of an entity, in which he, his partner or firm is having substantial interest.

Council Recommendation: From Book

Note: A member should not accept audit assignment of a company for a period of two years from date of completion of tenure as director or resignation as director of that company.

Ex: Mr. X (Practicing CA) is also a director of ABC Ltd. He resigned from directorship on 15.09.2021. On 14.08.2023, ABC Ltd. appoint Mr. X as his statutory auditor for a period of 5 years. Comment, whether Mr. X can accept the audit

Sol.: No.

Clause 5: Fails to disclose a Material fact

Known to him

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which is not disclosed in f.s.

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but disclosure of which is necessary  
to make the f.s. not misleading

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When the member is associated  
with the f.s. in Professional  
Capacity. (Accountant / Auditor)

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Clause 6: Fails to report a material

misstatement, Known to him

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to appear in financial  
statements

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with which he is associated  
in a Professional Capacity  
(Accountant / Auditor)

Note. Auditor's duties of disclosure of significant facts is towards  
stakeholders. It will not be sufficient to inform significant  
facts only to Managing Committee.

Clause 7: Failure to exercise due diligence:

(a) does not exercise due diligence; OR

(b) is grossly negligent in performance of his duties -

(Total ignorance)

Clause-8: (a) Fails to obtain sufficient information which is necessary  
for the expression of opinion; OR (i.e. Evidences not obtained)

(b) its exceptions are sufficiently material so as to negate  
the expression of opinion. (i.e. opinion not expressed)

Disclaimer of opinion

Combined study of Clause 5, 7, 8:  
(- Certification without Examination)  
(- Grossly Negligence; fails to obtain suff. info.)

clause 9 - fails to invite attention to material departure from generally accepted auditing practice/procedures.

Recommendations on clause 9 : - from book -

clause 10 -