Ch. 19 - Professional Ethics and liabilities of Auditor

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

(2) NOCLAR (Non-Compliance with laws and regulations)

CA ⟷ Employer / Client

(Employee / Practice)

Employer / Client →
- Business laws
- Corporate "
- Taxation "
- Foreign Exchange laws.
- Environmental
- PMLA, etc.

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CA identified instances of non-compliance with L&R

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- Obtain understanding of the matter → Discuss Matter with immediate Senior

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Seeking Advice →
- Internally
- Legal Counsel
- ICAI

Determine further action needed ← Seeking Advice

Ex: (a) Informing to Parent Entity

(b) Disclosure to appropriate authorities

(c) Consider resignation

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Imminent Breach → Documentation:

that causes substantial harm to investors, creditors, employees or general public

Documentation:

(a) How Mngt / TCWG responded

(b) Course of action / Judgments

(c) Fulfilment of responsibility of public interest.

(i) Meaning of NOCLAR: Acts of Omission or Comission, intentional or unintentional, which are contrary to prevailing laws and regulations, committed by :

(a) client / Employing Organisation;

(b) TCWG / Mngt. of client / Employing organisation;

(c) Other Individuals working for client / Employing Organisation.

Imp.

(ii) Applicability:

(a) Audit assignments ↓ of Listed Entities in India having NW ≥ 250 Cr.

(b) Senior Professional Accountants (KMP) ↓ Employees of Listed Entities

Note: NOCLAR will be applicable if a professional accountant is made aware of non-compliance or suspected non-compliance in the course of professional services to the client / Employing organisation. He is not required to investigate and non responsible for ensuring compliance of laws and regulations.

(iii) Responsibilities of Senior Professional Accountant:

(1) Obtain an understanding of the matter.

(2) Address the matter by discussing with immediate superior, if any.

(3) Determine what further action is needed.

Examples: - Informing to mngt. of Parent Entity, if any

- Disclosing the matter to appropriate authorities

- Resign from the Employing Organisation.

(4) Seeking advice - (a) Internally (b) from legal Counsel (c) from ICAI.

(5) Determine whether to disclose to appropriate authorities

(6) Imminent Breach

(7) Documentation

(iv) NOCLAR vs. SA 250:

	NOCLAR	SA 250
(A) Applicability →	Professional Services rendered by Professional Accountants in Service and in Practice	Applicable only on Audit Assignments (of F.S.)
(B) Scope :	NOCLAR consider non-compliance that may affect the F.S. as well as those which may cause substantial harm to investors, Creditors, employees, general public in financial as well as non-financial terms.	Deals with auditor's responsibility for : (a) Laws having direct effect on determination of amount and disclosures in F.S. ; and (b) Other laws that are fundamental to operating aspects of business.
(C) Coverage:	NOCLAR is related to effect of non-compliance on investors, Creditors, employees and general public as well.	SA 250 is related to effect of non-compliance on F.S ; it does not define stakeholders.

(v) **Documentation:** Professional accountants are required to document the following:

(a) How Mngt./TCWG has responded to the matter.

(b) Course of action considered, Judgments made and decision taken.

(c) How accountant satisfies that responsibilities of public interest has been fulfilled.

(3) Provisions of CA Act, 1949:

(A). Membership of the Institute:

(a) Types of Membership (Sec.5): 2 types
- Associate
- Fellow

(b) Particulars to be Entered in RoM (Sec.19):

(i) Full name, DoB, Domicile, residential and professional address

(ii) Date of Entry

(iii) Qualifications

(iv) Whether holds CoP

(c) Disabilities (Sec.8):

(i) Age < 21 years;

(ii) Unsound Mind;

(iii) Undischarged insolvent;

(iv) Discharged insolvent, but certificate from Court not obtained as to the fact that insolvency was caused due to misfortune, not due to any misconduct on his part;

(v) Convicted by a Court of an offence involving moral turpitude or an offence of non technical nature, unless pardon received from Central Government.

(vi) Removed from membership due to professional or other misconduct.

(d) Removal of name from RoM (Sec.20):

(i) Death

(ii) On receipt of request from the member

(iii) Non-payment of annual membership fees

(iv) Misrepresentation of facts while applying membership u/s 8.

(e) Restoration of Membership (Regulation 19):

(If membership cancelled due to non-payment of annual fees)

- If arrear of fees, along with entrance fees and additional fees, if any, prescribed by Council, paid on or before end of Relevant financial year
  → Membership will be restored from date of Cancellation.
- If arrear of fees, entrance fees and additional fees, not paid on or before end of relevant financial year
  → membership will be restored on date of application for restoration (along with payments)

Example: Membership of Mr. Rajat cancelled on 01.10.2025, due to non-payment of annual fees for FY 25-26.
He applied for restoration (along with payment of fees.

- on or before 31.03.2026
  → Membership restore from date of cancellation (i.e. 01.10.2025)
- after 31.03.2026
  → Membership restored from date of application.

(f) Penalty for false claiming to be a member (Sec 24):

(1) First Conviction: Fine upto ₹ 1,000.

(2) Subsequent Conviction: Fine upto ₹ 5000
or
Imprisonment upto 6 months
or BOTH

(B) Certificate of Practice: (Sec. 6)

No member of ICAI, whether in India or Outside India, shall be entitled to practice without holding Certificate of Practice (CoP).

Notes: (1) Members of ICAI, cannot accept any work prescribed for practicing CA, in his Capacity as a member of ICAI, unless he holds CoP.

(2) If a member surrenders his CoP due to any misconduct, for a specific period, he cannot accept any work in his Capacity as a Member of ICAI.
However, for that specific period, work, in any other Capacity like as Advocate, GST consultant, Registered Valuer, Insolvency Professional can be accepted.

Cancellation of CoP (Reg. 10) → Self-Study (from book)
Restoration of CoP (Reg. 11)

(e) Members deemed to be in practice [Sec. 2(2)]:

A member of the Institute, shall be deemed to be in practice, when individually or in partnership with another CA in practice,

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for a consideration

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engages himself in prescribed activities #

(i) # - Accountancy work;

(ii) - Auditing / Verification / Certification;

(iii) - Assistance in accounting practices; or

(iv) - Management Consultancy and Other Services as prescribed for CA in practice.

Notes: (i) Sec. 2(2)(iv) of CA Act, 1949 provides that a member shall be deemed to in practice, if he renders such services, as in the opinion of the Council, can be rendered by a CA in practice.

(ii) Council of ICAI has passed a resolution mentioning therein the entire range of management consultancy and other services which a CA in practice can render.

(iii) Accordingly, a practicing CA can render multiple services as specified in the resolution, including:

(a) Personnel recruitment and selection

(b) Advisor or Consultant to an Issue

(c) Acting as registered valuer for shares and business

(d) " " Insolvency Professional in terms of IBC, 2016.

(e) Assisting client in routine tasks etc.

(iv) However, it is specifically prescribed that a CA in practice cannot render (a) Broking;

(b) underwriting; and

(c) Portfolio management.

(v) A member shall be deemed to be in practice, if he, in professional capacity (not in personal capacity or capacity as employee) acts as liquidator, Trustee, Arbitrator, Executor, administrator, advisor, receiver or representative for costing, taxation or financial matters

Or

takes up an appointment by C.G. or S.G. or Court or acts as a Secretary

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unless his employment is on a [Salary cum full time basis]

(D) Using designation as "Chartered Accountant" (Sec.7):

Recognised

- Qualification : B.Com, M.Com, M.B.A., LLb
- Membership : ACA, FCA, ACS, FCS
- Prefix : CA., CS, Dr. [Ar. Er.]
- Designation : · Tax consultant
  - · Corporate law consultant
  - · Tax Manager
  - · Chartered Accountant
  - – Cost Accountant
  - – Company Secretary
  - – Tax Expert

Permitted

(A) Members in Practice

- Recognised Qualifications
- " Membership
- Chartered Accountant Only

(B) Members in Service

- Recognised Qualification.
- " Membership
- May use "Chartered Accountant"

(E) Branch Office (Sec. 27):

OFFICE: A place where name board of firm is affixed and a place which is described as office on office documents.

Note: - Name Board of the firm cannot be affixed at the residence.

- Member may place / affix name plate at residence. (Individual name)

Branch office: A member in practice or a firm of CAs can open any number of offices in India, provided every such office shall have a separate incharge [who shall be a Member of ICAI; may or may not hold COP; Associated either as Partner / Employee]

Note: Incharge shall be actively associated with the office. (i.e. ≥ 182 days residence in the city where office is situated or office attendance)

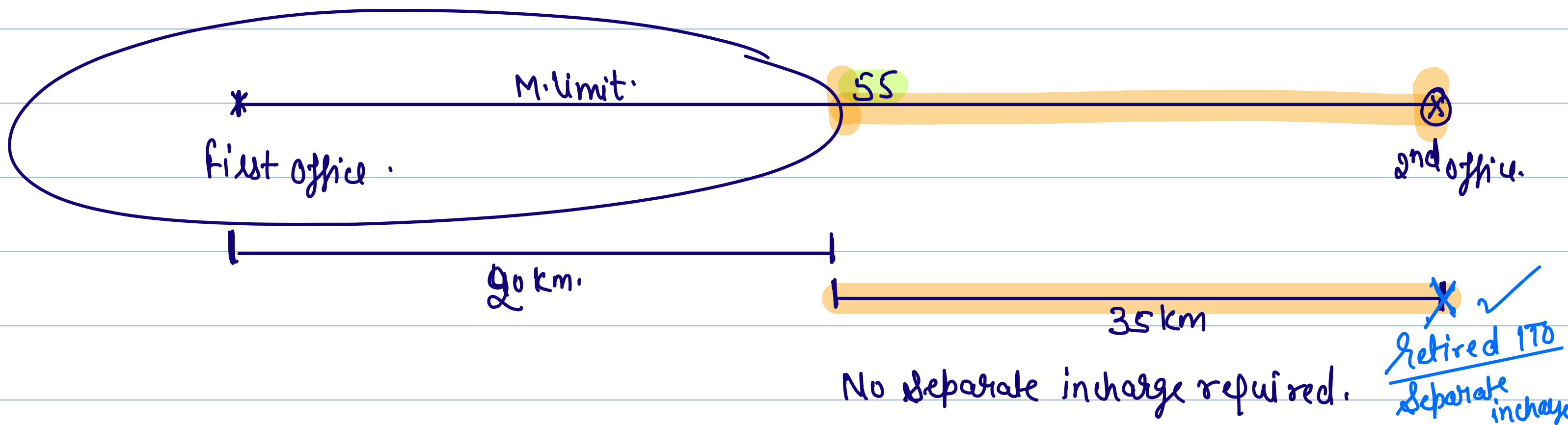
Exceptions to Requirement of separate incharge: 2 Exceptions

(i) **Second Office:** Separate incharge is not required if second office is located:

(a) in same premises;

(b) in same city;

(c) within 50 kms from municipal limits of first office.



No separate incharge required.

(ii) Temporary office in Plain Area for members practicing in Hilly Area:

Members practicing in hilly area can open a temporary office in plain area during winter season, without separate incharge, if following conditions satisfied:

(a) Name Board of the firm shall be displayed at temporary office for three months only.

(b) Temporary office can be opened for 3 months only during winter season.

(c) Principal office in Hilly Area need not be closed during these three months.

(d) Temporary office should not be mentioned as place of business on office documents.

(e) Intimation to be given to ICAI:
   (i) before commencement of winter; and
   (ii) after closing of office in plain area.

Note: As per Regulation 189, intimation to be given to ICAI, within one month of opening or closing of any branch office.

(F) KYC Norms: – From Book –

(G) Disciplinary Mechanism: (Noting – H.W.)