

Ch. 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 and Regulations

(4) First Schedule to CA Act, 1949: Four Parts

Part I : Professional Misconduct (Practicing CA)

Part II : " " (Members in Service)

Part III : " " (Members Generally)

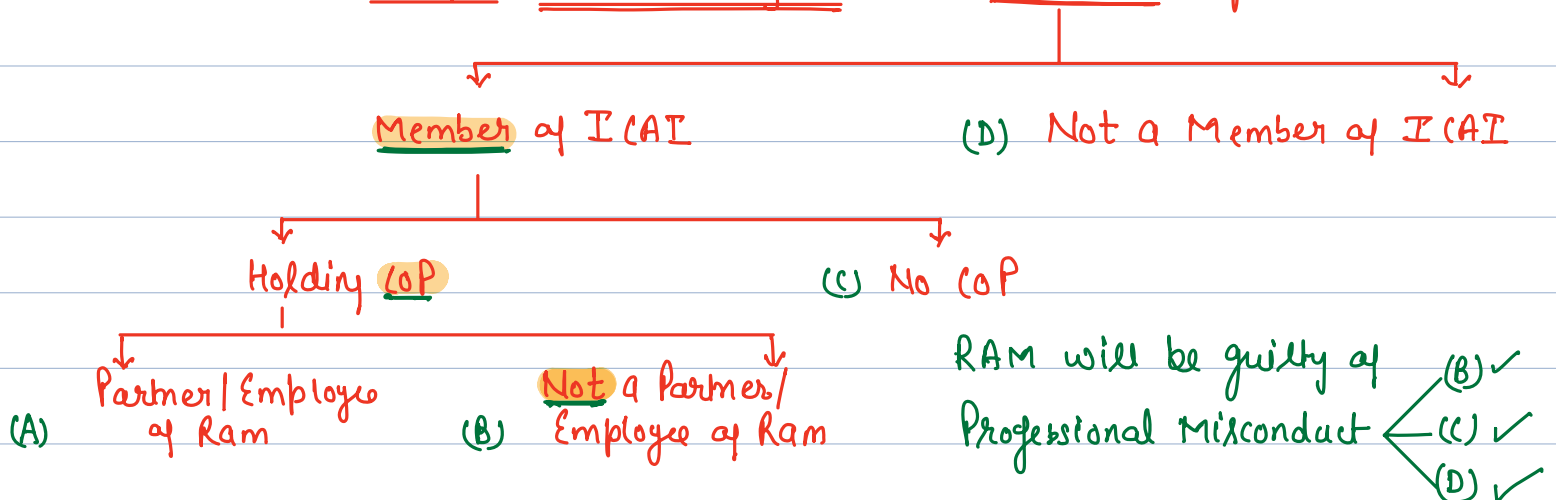
Part IV : Other " (" ")

Part I, First Schedule to CA Act, 1949: (Professional Misconduct for practicing CA)

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

A member in practice shall be deemed to be guilty of professional misconduct, if he allow a person to practice in his name or firm's name, as a Chartered Accountant, unless such other person is also a practicing CA and Partner/Employee.

Example: Ram (Practicing CA) allow Mr. Rahim to practice in Ram's Name



Clause - 2: Sharing of Profits with Others:

- A member in practice shall be 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 profits of professional work with others

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

(a) a Member of the Institute;

(b) Partner;

(c) Retired Partner;

(d) Legal representative of deceased partner
(If provided in partnership deed)

(e) Members of recognised professional bodies (5)

[Reg. 53A - ICSI, ICAT (ICWAI); IAT, IIA, Bar Council]

(f) Persons having prescribed Qualifications (8)

[Reg. 53A - CS, Cost Accountant, Actuarial, Architects, B.Tech
(B.Arch.)
LLb, B.E. and MBA from a University
established by law or Institution recognised by
All India Council for Technical Education]

Note: Accepting the assignment wherein a %age of professional fees is deducted by the Govt. to meet the administrative and other Expenditure will not amount to professional misconduct.

Sale of Goodwill by Legal representative:

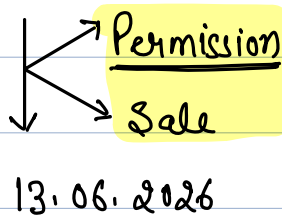
Council of ICAI permit the legal representative of **deceased Proprietor** to sell the goodwill of proprietorship firm, provided

(A) If no dispute exist among legal representative (B) If dispute exist among legal rep.

- (i) Permission from ICAI is to be obtained within one year from date of death of Proprietor.
- (ii) Sale of goodwill takes place within one year from date of death of Proprietor.

Note: In this case, ICAI will keep the firm's name in Abeyance for one year from date of death of Proprietor.

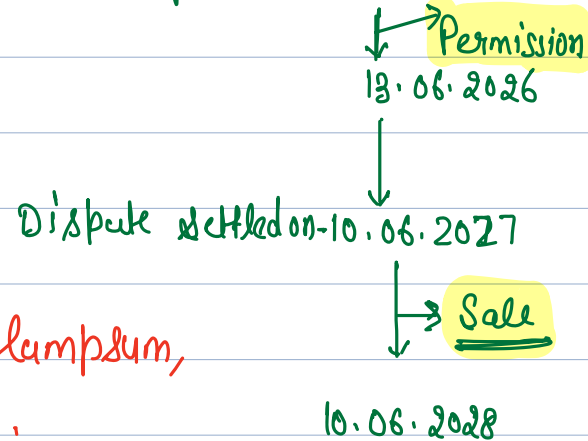
Example: Date of Death : 13.06.2025



- (i) Permission from ICAI is to be obtained within one year from date of death of Proprietor.
- (ii) Sale of goodwill takes place within one year from date of resolution of dispute.

Note: In this case, ICAI will keep the firm's name in Abeyance till one year from date of settlement of dispute.

Example: Date of Death : 13.06.2025



Notes: (i) Consideration should be determined in lumpsum, though may be paid in instalments.

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

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

Clause-3: Restriction on sharing of other's profit:

A member in practice shall be deemed to be guilty of professional misconduct, if he accepts or agrees to accept



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

Note: Sharing of profits of other persons covered under Reg. 53 A is permitted.

Clause-4: Restriction on Partnership with Others:

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

✓ (a) Member in Practice

✓ (b) Persons having prescribed Qualifications

Reg. 53A: CS, Cost Accountant, B.Arch, Actuary, B.E, B.Tech, LLB, MBA

✓ (c) Members of recognised professional bodies

Reg. 53B: Members of ICSI; ICAI (ICWAI); IAI, IIA, Bar Council

and

Members of recognised professional bodies outside India,
whose qualification of accountancy recognised by
Council of ICAI.

* (d) Persons, who but for his residence abroad, are entitled to
have their name in Register of Members.

Summary of clause 1-4

cl. 1 → Restriction on Use of Firm's Name

cl. 2 → " " Sharing of profits with Others

cl. 3 → " " Sharing of Other's profit

cl. 4 " " Partnership

Exceptions

- Another Practising CA
 - Partner
 - Employee
- Member / Partner / Retired Partner
- legal rep. of deceased partner
- S3A (Qualification) / S3A (Member)
- Another Member / Partner
- S3A (Q) / S3A (Member)
- Another Practising CA
- S3A (Q) / S3B (Membership)

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

A CA in practice shall be deemed to be guilty of professional misconduct, if he secured professional work through:

- (a) services of persons other than Partner or Employee; or
- (b) the means which are not open to a CA.

Note: Securing the work through the arrangements covered under clauses (2), (3) and (4) will not amount to professional misconduct.

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

A member in practice shall be deemed to be guilty of Professional misconduct, if he solicits clients or professional work, directly or indirectly by (a) Circulars;

(b) Advertisement;

(c) Personal communication;

(d) Interview; or

(e) any other means (e.g. website)

Exceptions:

✓ (A) Securing professional work from another CA in practice.

✓ (B) Responding to tenders:

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(i) Exclusive Area (e.g. Statutory Audit by a CA)

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Responding to such tenders is permitted provided minimum fees is prescribed in tender itself.

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(ii) Non-Exclusive Area (e.g. Internal Audit, Computerisation of records)

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Permitted

Note: Earnest Money deposit / Security deposit / Caution money if required, while responding to tenders, is permitted

Council Guidelines as to permitted and prohibited forms of solicitation: From Book
" " w.r.t. development of website:]