Ch. 19 - "PE and Liabilities of Auditors"

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

(2) NOCLAR

(3) Relevants 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 $\boxed{\text{and}}$ Partner / Employee.

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

- Member of ICAI
  - Holding COP
    - (A) Partner / Employee of Ram
    - (B) Not a Partner / Employee of Ram
  - (C) No COP
- (D) Not a Member of ICAI

RAM will be guilty of Professional Misconduct

- (B) ✓
- (C) ✓
- (D) ✓

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, ICAI (ICWAI); IAI, IIA, Bar Council]
  - (f) Persons having prescribed Qualifications (8) [Reg. 53A - CS, Cost Accountants, Actuaries, Architects (B.Arch.), B.Tech, 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

(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

Permission

Sale

13.06.2026

(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 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

Permission

13.06.2026

Dispute settled on - 10.06.2027

Sale

10.06.2028

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

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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

$\boxed{\text{and}}$

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

		Exceptions
Cl. 1 →	Restriction on Use of Firm's Name	→ Another Practicing CA – Partner / Employee
Cl. 2 →	" " Sharing of profits with Others	→ Member / Partner / Retired Partner → legal rep. of deceased partner → 53A (Qualification) / 53A (Member)
Cl. 3 →	" " Sharing of Other's profit	→ Another Member / Partner → 53A (Q) / 53A (Member)
Cl. 4	" " Partnership	→ Another Practicing CA → 53A (Q) / 53B (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) Circular;

(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:

(i) Exclusive Area (e.g. Statutory Audit by a CA) → Responding to such tenders is permitted provided minimum fees is prescribed in tender itself.

(ii) Non-Exclusive Area (e.g. Internal Audit, Computerisation of Records) → 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:

" " w.r.t. development of website:] From Book