(4) First Schedule to CA Act, 1949:

(Part I - Professional Misconduct for Members in Practice)

Clause - 1 : Restriction on use of firm's name

Clause - 2 : " " sharing of profits with others

Clause - 3 : " " " " Other's profits

Clause - 4 : " " Partnership with others

Clause - 5 : " " Securing professional work through others

Clause - 6 : " " Solicitation of client or professional work

Clause - 7 : " " Advertisement

Clause - 8 : Prior Communication with predecessor auditor:

A member in practice shall be deemed to be guilty of professional misconduct, if he accepts a position as auditor, previously held by another CA or Certified auditor

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without first communicating with him in writing.

Notes: (i) Professional reasons: (a) Non compliance of Secs. 139 and 140

(b) Non payment of undisputed audit fees (Except Sick unit)

(c) Issue of Qualified report

First two cases → If incoming auditor accepts the audit → it will be a professional misconduct

Example: Mr. Y appointed as auditor in place of Mr. X

- No communication made by Y to X
  - Professional Misconduct under Cl. 8, P-1, S-I
- Y sends communication to X
  - Under Certificate of Posting
    - Professional Misconduct under Cl. 8, P-1, S-I
  - By RPAD / Hand with written Ack, UDIN / Regd. mail.
    - X reply → Non compliance of Sec. 139 and 140
      - Y accepts audit
        - Y → Professional Misconduct U/c - 9, P-1, S-I
    - Non-payment of undisputed audit fee.
      - Sick unit
        - Y accepts audit
          - No Misconduct
      - Not a sick unit
        - Y accepts audit
          - Y - Professional Misconduct U/c - 1, P-2, S-II
    - Issue of Qualified report.
      - Y accepts audit
        - No Misconduct

(ii) Other Points: From book [Noting from class Notes - H.W.]

Clause 9: Non-Compliance of Sections 139 and 140 of Companies Act, 2013:

A member in practice shall be deemed to be guilty of professional misconduct, if he accepts an appointment as auditor of a company

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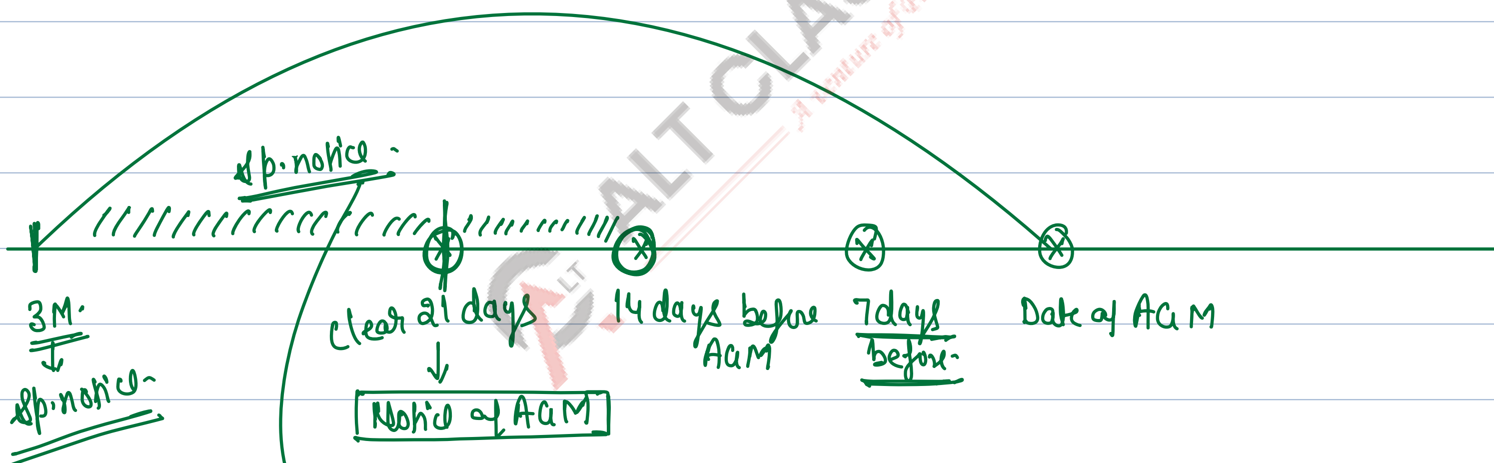
without first ascertaining the compliance of Sections 139 and 140 of Companies Act, 2013. (read with Sec. 141)

- Sec. 139 : Appointment, re-appointment and rotation of auditor.
- Sec. 140 : Removal, resignation and requirement of special notice.
- Sec. 141 : Eligibility, Qualification and disqualifications of auditor.

(Revise Secs. 139 to 141 - from Study Material of Inter-Law)



to be given to concerned auditor immediately.

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Right of representation.

Aspects to be considered by incoming auditor to ascertain whether Company has complied with the provisions of Sec. 140:

(Learning + Noting – H.W.)

Imp.

Clause 10 : Restriction on Charging fees on %age Basis !

A member in practice shall be deemed to be guilty of professional misconduct, if he charges or offers to charge or accept or offers to accept

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

- %age of profits ; or
- contingent findings ; or
- result of such engagements

except as permitted under Regulation 192.

Note : Fees which is based on %age or Contingent upon findings, as per the Criteria prescribed by any Court, Government or Regulator is permitted.

Regulation 192 : (Exceptions to clause 10 requirement)

(A) Receiver or liquidator : %age of realisation or disbursement of assets

(B) Cooperative Society : %age of PUC, WC, GI/NI or profits.

(C) Valuer for purposes of direct taxes and duties : %age of value of property

(D) Management Consultancy Services : %age Basis or Contingent upon findings

(E) Fund raising services : %age of funds* raised.

(F) Debt recovery services : %age of debt recovered.

(G) Cost optimisation services : %age of Benefit derived.

(H) Other services as prescribed : (a) Acting as Insolvency Professional
(b) Non-Assurance Services to Non-Audit clients.

Clause - 11 : Restrictions on Engaging into Other Occupations :

A member in practice shall be deemed to be guilty of professional misconduct, if he
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engages himself into any business or occupation other than that of profession of Chartered Accountancy, unless permitted.

Note: A practicing CA may become director (Simplicitor Director) of a company, provided he or any of his partner is not the auditor of that company.
However, to become a Managing Director / whole-time Director, prior permission from Council is required.

Situation - I : Director of A Ltd. can be appointed as auditor of B Ltd. (No relation among A&B)

Situation - II : Director of H Ltd. (Holding Co.) can be appointed as auditor of S Ltd. (Sub.) ? – No *

Situation - III : Director of H Ltd. (Holding Co.) can be appointed as auditor of H Ltd. ? – No.

* Though not specifically prohibited under any law, but such a relationship affects Independence, hence to be avoided.

Reg. 190A : It provides a list of occupation / activities, where a practicing CA may be engaged:

(a) Generally (i.e. no specific and prior approval required);

or

(b) with specific and prior approval of Council of ICAI.

Reg. 191: A CA in practice may act as a - liquidator, trustee, executor, administrator, arbitrator, receiver, advisor or representative for costing, taxation or financial matters

Or

may take up an appointment made by C.G., S.G., Court or any legal authority

Or

acts as secretary, in professional capacity

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provided his employment is not on $\boxed{\text{salary cum full time basis}}$

Note: Dealing in Equity and Currency derivative is considered to be in personal capacity, hence permitted.
However, dealing in commodity transaction or derivatives is considered to be a business activity, hence required specific and prior approval of council.

(4) Part I of First Schedule:

Clause - 12: Signing of Reports and financial Statements:

A member in practice shall be deemed to be guilty of professional misconduct, if he allows a person not being a member of Institute in practice or a member not being his partner

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to sign on his behalf or on behalf of his firm

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any B/s, P&L A/c, report or f.s.

(Such reports or f.s. as ultimately finalised and submitted to outside authorities)

allow - Member ≠ COP ≠ Partner

Note: Power to sign routine documents on which a professional opinion or authentication is not required, may be delegated, for example: (a) Issue of Questionnaires

(b) " " letters forwarding draft observations.

(c) Attending a tax representation case

(d) Acknowledging info. recd. from clients

(e) Issue of audit Queries;

(f) Initiating and stamping of Vouchers etc.

Sec. 26: Unqualified persons are not authorised to sign on behalf of Chartered Accountants.

(5) Part II of First Schedule: [Professional Misconduct for Members in Service]

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

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

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

Ex.: Mr. X agree to pay 50% of his first month salary to XYZ Consultants as consideration for arranging employment for him.

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

or

(4) Agent or (5) Customer of such company, firm or other person (i.e. employer)

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by way of Commission or Gratification

Ex: CA Sohum (Finance Manager) of XYZ (P) Ltd. ask for 50% share in Consultancy fees, as a consideration for referring name of Punnet as legal Consultant to his Company.

(6) Part III of First Schedule: [Professional Misconduct for Members Generally]

A member (whether in practice or not), shall be deemed to be guilty of professional misconduct, if he:

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

Clause-2: does not supply the information called for; or
" " comply the requirements asked for
↓ by
ICAI, Council or any of its Committee, Director (Discipline), Board of Discipline, Disciplinary Committee, Appellate Authority, or QRB (Quality Review Board).

Note: Providing false information to ICAI, Council or ------- ------------- amounts to professional misconduct under cl. 3, P-II, Second Schedule.

Clause-3: while inviting professional work from another CA; or
" responding to tenders; or
" advertising through write-ups or anything as provided for in clauses (6) and (7) of Part I of First Schedule
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gives $\boxed{\text{false information}}$, knowingly.

(7) Other Misconduct: A member of ICAI, shall be guilty of other Misconduct, if he

Part IV of First Schedule

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.

Part III of Second Schedule

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

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

Examples: (a) Using coercive methods to obtain loans.

(b) " service of articles for personal work.

(c) Non-replying within a reasonable time and without good cause to public authorities.

(d) Dishonour of Cheques due to insufficient funds.

(e) Misappropriation of funds of regional councils by elected members of the council.