

# Code of Ethics (COE)

Since, the inception of Chartered Accountancy Profession, as a self-imposed-discipline, profession, Code of Ethics has always been, back-bone of the profession ensuring high ethical standards of Chartered Accountants.

On the Occasion of 'Chartered Accountant's Day' we have requested our Past-President's to give their enriched views on some of the issue which the profession is currently facing. We are reproducing the opinions as experienced by some of our Past-President's.

## Issues-on which the opinion was sought

- ◆ Recently the media has carried reports where some members of our fraternity were involved in not so savoury matters. How do you think the spirit of the code of conduct can be inculcated in the minds of members, particularly the young entrants to the profession?
- ◆ Do you think that the present structure of code of ethics is strong enough to meet the challenges which would be posed by opening of service sector in tune with the WTO agreement to which India is a signatory by 2005?
- ◆ With the changing scenario the ICAI has been showing flexibility by inserting changes in the code of ethics like permitting CA's to respond to tenders, advertisements, & circulars by the World bank, IMF, American Development Bank etc. or similar International Bodies, any Government agency etc. What are your views in this regard & what more steps do you think need to be taken?

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There are four different segments of activity open to Chartered Accountant - namely

- (a) Public practice in the reserved area of auditing.
- (b) Employment with a firm of Chartered Accountants.
- (c) Employment with industry.
- (d) Practice in non-exclusive areas.

Before we express our opinion on the 'Code of Ethics' we may point out that in order to be effective and instrumental in achieving its objectives, the COE must change with the times. Like a suit of clothes it should of course not be so lax as to encourage indiscipline nor should it be so tight as to inhibit freedom of movement. The latter consideration is particularly relevant in an age when chartered accountants are in direct competition with other professionals. Our basic

contention therefore is that the COE which was relevant at the time when it was introduced is now much too tight to permit freedom of movement in a globalised and competitive environment.

Also, apart from the COE there are a few so called self regulations passed by the Council which are imposed on the members. Many of such regulations are without any reference to the legitimate needs of the consumer which in an age of competition deserve primary recognition. For example, the self regulation against the so called larger firms accepting audits below a designated fee is not conducive to the interest of the consumers.

Also, the disciplinary regulation regarding under-cutting is not only unfair to the consumers but is also a considerable hardship to a smaller firm beginning its practice which is unable to compete on these terms with a larger established firm.

As was mentioned by the Competition Policy Committee (CPC) in its Report, the ICAI Council should not impose restrictions on its members which are not in conformity with the interests of the consumer. Regulations which have no effect on the quality of the audit should therefore be deleted.

For example, the regulation about the use of firm names. The CPC also suggested that professional regulations should be oriented to a globalised environment.

Such regulations have been passed not with the interest of the consumer in mind nor with any desire to improve the quality of the work but to protect the interest of those who do not have a foreign affiliation. The ICAI Council should not administer the profession as if it is a trade union. Its aim should be to enhance the quality of the profession and it cannot do so if it continuously supports the weaker segments within the profession. As pointed out by the CPC in its report, the accounting profession is highly fragmented and this view is echoed in the excellent Vision Statement published by ICAI. We have accepted the rights of the consumer in regard to goods and products and it is time we respected the consumer's rights with respect to services.

In the international areas opened up by globalisation there are occasions when an audit report is required to be given under the name of an internationally recognised firm. This is not because such firms are superior in any way but because international investors and lenders cannot recognize the value of purely domestic names. By preventing a local firm from acting in an international name, we are encouraging the entry of foreign firms rather than denying an opportunity to them. As long as the consumer requires a report in the name of a foreign firm, he will obtain it one way or another. If he cannot obtain it from a local firm acting in an acceptable foreign name, he will invite a foreign firm to render the service and issue the report, because he is not going to give up his right to a service which he requires in order to comply with our outmoded regulations. This is not an idle speculation but is based on actual practice in as much as we are aware of cases where a report required for international investment purposes has been obtained from a foreign firm practicing in another country which is then forced to visit India for rendering such a service. To our minds, it is absurd to countenance the regulation which drives valuable professional business away from our country.

Indeed many of these restrictions are based on the erroneous assumption that foreign firms have entered or are in the process of entering India through the back door. This is not only unlikely but even impossible because ICAI has and should continue to have the right of regulating practice requirements. Only a member of the Indian Institute should be allowed to practice in India. This is the inalienable right of the Institute. However, when a member practices in India, who is authorised to do so by the ICAI then it is unfair, unnecessary and irrelevant in a globalised scenario to impose a restriction on him as to the name under which he can practice. It is the inability to practice in an international name which drives valuable professional business away from India.

It is idle to speak of foreign firms entering India through the back door because all firms about which such speculation exists are firms of Indian qualified and licenced chartered accountants. As regards companies engaged in professional practice, no company can conduct audits. Therefore, no company can enter into the audit field either by the back door or the front door.

Again, to quote from the report of the CPC, it emphasised that local firms should be encouraged to establish international affiliations and relationships. Nevertheless local firms are not permitted to mention their international affiliations. This negative requirement does not contribute in any way to the quality of the service which is provided nor does it enhance the rights of the consumer. It is designed merely to protect the rights of those producers who do not have an international affiliation. In due course of time, international

affiliation will be so common that a large number of firms will aspire to and achieve such affiliation. Even today, such affiliation is not restricted to the so called "Big-4" firms.

Indeed, it is because local firms have formed affiliations with international firms that the latter have been kept away from entering India. Even if the door is opened to foreign practitioners they are unlikely to come to India if ICAI retains its right of licensing practitioners and if it encourages local Indian firms to form foreign affiliations. Therefore, it is in the national interest to encourage rather than discourage foreign national affiliation.

Since we have quoted from the report of the CPC let us emphasise that its Chapter on professional services was approved unanimously by the Committee without any minute of dissent. Also, when the report was presented to the Government through the Prime Minister himself, there was no criticism on the chapter on professional services.

Recently, it has been customary for ICAI to inflict restrictions on practicing members which are at variance with the law. For example, the self imposed restriction on ceiling of audits which goes below the ceiling permitted by the law. Once again, such restrictions ignore the right of the consumer to a free choice.

The restriction on issue of Brochures also denies the consumer the right to freedom of informed choice and is not in keeping with the tempo of modern times.

The foregoing general observations will indicate that, in our opinion, considerable relaxation is required in the COE. The relaxation which arise out of the foregoing observations will in no way affect the quality of the audit or of other services rendered by chartered accountants. They will only increase the freedom of action available to our members in a competitive environment and will recognise and enhance the rights of the consumer. In terms of the foregoing general observations, let us deal with each of the segments of activity available to our members :

a) **Members in public practice in the reserved area of auditing**

The self imposed regulation on ceiling should be deleted. This is a matter for the legislature not for ICAI. It is most unfair of ICAI to act on the assumption that its members will accept audits beyond their capacity to perform. Moreover the capacity of a firm to perform an audit is not measured only by the number of partners, it is measured by the number of chartered accountants in the firm, including partners as well as qualified assistants.

The legislature may ignore the latter out of a lack of information but surely, the ICAI cannot itself impose a ceiling that ignores those of its members who are in employment with firms of chartered accountants.

Also restrictions on issue of informative circulars, brochures etc. should be lifted. The Institute's vision statement itself recognizes that if may be necessary "to establish the advertisement code for the profession".

**b) Members employed by firms of Chartered Accountants**

ICAI should recognize the value of such members by emphasising to the government the need to amend the ceiling on company audits by including members in employment with firms of chartered accountants. A suitable weightage can be worked out so that partners have a higher ceiling than qualified assistants. But, the latter cannot be totally ignored. Instead, ICAI has itself evolved a ceiling which ignores qualified assistants - an attitude which is not respectful to the rights of a large section of its members.

**c) Members engaged in public practice in non-reserved areas**

Such members are in direct competition with other professionals who do not have to comply with any ethical rules. Thereby, they are in danger of losing out to other professionals. The position is that the Council, several years ago, accepted the right of the members to engage in activities which are not reserved for chartered accountants but which they are capable of rendering. This permissive provision is now turned against our members by requiring them to observe the same ethical rules as in the case of reserved services. The net result in a competitive environment would be that our members would lose out to other professionals. The restrictions imposed on them do not in any way contribute to the value of the services which they render. They are based merely on the archaic assumption that there are certain attitudes which a CA should not display.

A considerable volume of work involving accounting and tax service is now regularly out sourced to India from foreign countries. There is no reason why our members should not have the opportunity to perform this work. They can do so however, only if they are given reasonable rights of practicing in a corporate name without any hindrance as to their right to issue brochures and advertising their service. To deny this right is merely to shift valuable professional work away from our members to other professionals who may render the same service in a corporate form.

Members rendering other professional services should have total freedom to incorporate and should not be under any ethical restrictions.

**d) Members employed in Industry**

We believe there is a proposal that members employed in industry should obtain a declaration from the employer to the effect that the employer will not divulge in advertisement in respect of services which are permitted to a CA. For instance, a member employed in a Bank would have to obtain a declaration from the Bank that it will not advertise its taxation or consulting services. Such a requirement is not only totally absurd but would also cut the ground from under the feet of our own members. For instance, in the foregoing example, the Bank is not going to give up its right of advertising merely to satisfy our archaic regulations. Instead, it will employ persons other than our members.

The member in such a case may well be induced to resign his membership in order to enhance his employment prospects. Surely, it cannot be beneficial even under an outmoded sense of ethics to force a member to resign his membership in order to stay abreast in a competitive employment situation.

There is now a proposal for the compulsory appointment of a Chief Accounts Officer (CAO) by companies. In this area, our members at present will be in competition with members of ICWA but in course of time, the competition may increase if government permits MBAs with Finance and members of ICFAI to act as CAOs. Because our members will be permitted to act as CAOs it is possible and even necessary that some essential aspects of our COE may be applied to them when they act as CAOs. However, only those aspects of discipline should be applied to such members as have an effect on the quality of their work. Otherwise, our members will either lose out in the competitive race or will be induced to survive in the race by resigning their membership.

**BASIC OBSERVATIONS**

In terms of the foregoing observations it is our opinion that our COE needs considerable change of a structural nature without which, it will no longer serve the interest of our members and will be deleterious to our ability to survive in a globalised and competitive environment.

Many of the observations made in this Article are based on valuable statements contained in the excellent Vision Statement issued by ICAI, for example :

- (a) ICAI should recognize changes in the economic and business environment and adapt to those changes.
- (b) ICAI should recognise the opportunities for chartered accountants in new emerging areas and restructure its role as a pro-active, innovative and flexible organisation.

- (c) The opportunities available to our professionals for rendering services to global organisations should be recognised and encouraged.

Many more examples can be given from the Institute's Vision Statement but the point which we wish to make is that the concepts so validly recognized and expressed in the Vision Statement should be reflected in suitable changes in the COE. This is the basic point which we have endeavoured to make in this Article.

*P.N. SHAH*  
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### Issue No.1

It is true that recently some members of our profession are involved in not so savoury matters. One reason for this is the present environment in which our members have to practice. We can notice corruption all round from top to bottom. Barring a few exceptions, there is corruption in all departments of the Government, in the political field and even in the private sector. Unless serious efforts are made to eradicate this evil some of our members are likely to get involved in unethical practices.

To inculcate the spirit of Code of Ethics in the minds of young entrants to the profession the Institute will have to take some positive steps. Some of them can be listed as under:

- (i) Code of Ethics should be given prominence in the theoretical education and practical training of the students. Study material given by the Board of Studies should include the book on Code of Ethics.
- (ii) In one of the papers for PE-II or Final Examination there should be one or two compulsory questions on Code of Ethics.
- (iii) When the new member is enrolled he should be given the book on Code of Ethics along with C.A Act and Regulations.
- (iv) Monthly Newsletter for students should include one page explaining the various aspects of Code of Ethics and brief discussion on decided disciplinary cases.
- (v) Even the monthly Chartered Accountants Journal should devote one or two pages every month on Code of Ethics.
- (vi) The existing procedure for dealing with disciplinary cases is time consuming and members have a feeling that even if a case is referred to disciplinary committee, the punishment awarded will be minimal and that too after 8 or 10 years. We should get the law amended. Schedule I and II of C.A Act should be combined and council should have power to award punishment. The effort should be to ensure that a complaint filed should

be decided and punishment, if any, should be awarded within one year of the date of receipt of the complaint. Once members become aware that disciplinary cases are decided within one year, this will prove to be deterrent and members will try to remain on the right path.

- (vii) Seminars and conferences organized by the Institute, Regional Councils and Branches for Students and Members should make it a point to have atleast one topic on code of ethics so that importance of the subject can be emphasised.

I find that sufficient importance is not being given to Code of Ethics at present. If the emphasis is given in various programmes and literature and repeated from time to time awareness will be created amongst the younger members and this will improve the present situation.

### Issue No.2

The present structure of Code of Ethics is strong enough to meet the future challenges. What is lacking is creation of awareness about the importance of Code of Ethics in our profession. This can be achieved by some of the steps suggested above. Moreover, as stated above, we should strengthen the machinery to ensure that this code is followed by all members. There should be a strong machinery to quickly punish the erring members. If this can be achieved we will be able to meet the future challenges.

### Issue No.3

We must recognize that our members have to compete with other professionals. Our code is very strict so far as the practice in the reserved field is concerned. The flexibility shown by ICAI is in the field where our members have to compete with other professionals. Therefore, there is nothing wrong in such flexibility. ICAI should have a cell to constantly watch how these concessions are utilized by the members and if any member over steps the reasonable bounds of the ethics, ICAI should take suo motu steps to check the situation or amend the regulation to withdraw such concession.

One major issue is about the competition by our members with foreign firms which have established offices in India. They render accounting and auditing services in the garb of consultancy work. There is no restriction on their activities. No Code of Ethics apply to them. Some of them indulge in unethical publicity and adopt unethical means to get professional work. In other words, they carry on business in the name of profession. This is a major hindrance to our members who want to carry on their professional work by remaining within the bounds of our Code of Ethics. ICAI should take some steps to curb these activities of such foreign firms. ■