

Contemporary Ethical Issues



The profession of chartered accountancy requires a strict compliance with the ethics, as the public and organisations across the world view the members of the profession as a reliable source of financial information, certification and related expertise. No doubt, the ethics has come a long way from a point where it was postulated that a regime devoid of the ethics cannot command allegiance of people to a point today where ethics has come to be regarded as a mandatory obligation, marking a significant shift in the approach and jurisprudence. The ICAI Code of Ethics acknowledges this fact when it says that public conscience is expected to be ahead of the law, and therefore the members are expected to interpret the requirement as regards independence much more strictly than what the law requires and should not place themselves in positions which would either compromise or jeopardise their independence. The author discusses some contemporary professional issues with ethical implications in this article. Read on...



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Independence

Economic growth globally is seen as a corollary to an expansion of the corporate system. Further to it is a multinational pattern of business that has made inroads into almost all developed and developing economies of the world. This complexity has certainly raised opportunities for the accountancy profession. The myriad of areas like mergers, joint ventures, collaborations, future projections, etc., are widely monitored by the profession. It is thus more than ever necessary for the accountancy professionals to act independently, to ensure that the public can see the true picture of economics.

In order to get the exact meaning of *independence*, we may refer to the definition as in the ICAI Code of Ethics, adopted from the IFAC (International Federation of Accountants) Code of Ethics:

“290.8

Independence requires:

Independence of Mind

The state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional skepticism.

Independence in Appearance

The avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information, including safeguards applied, would reasonably conclude a firm's, or a member of the assurance team's, integrity, objectivity or professional skepticism had been compromised.”

In fact, the concept of *independence* is so vital to this profession that it would be no exaggeration to say that the entire gamut of ethics and, therefore, reputation of a chartered accountant is built upon it. Threats to independence and safeguards to be adopted to counter those threats successfully constitute what is called as the *Conceptual Framework Approach*.

Some provisions of the *Code of Ethics*, Chartered Accountants Act, 1949, decisions of the Ethical Standards Board (ESB) of ICAI and some of the

provisions of new Companies Act illustrate the role of independence:

1. Financial statement audit engagements are relevant to a wide range of potential users; consequently, in addition to the independence of mind, the independence in appearance is of particular significance. Accordingly, for financial statement audit clients, the members of assurance team, the firm and network firms are required to be independent of the financial statement audit client. Such independence requirements include prohibitions regarding certain relationships between members of the assurance team and directors, officers and employees of the client in a position to exert direct and significant influence over the subject matter information (the financial statements). Also, consideration should be given to whether threats to independence are created by relationships with employees of the client in a position to exert direct and significant influence over the subject matter (financial position, financial performance and cash flows).
2. In an assertion-based assurance engagement where a client is not a financial statement audit client, the members of assurance team and the firm are required to be independent of the assurance client (the responsible party, which is responsible for the subject matter information and may be responsible for the subject matter). Such independence requirements include prohibitions regarding certain relationships between members of the assurance team and directors, officers and employees of the client in a position to exert direct and significant influence over the subject matter information. Also, consideration should be given to whether threats to independence are created by relationships with employees of the client in a position to exert direct and significant influence over the subject matter of the engagement. Consideration should also be given to any threats that the firm has reason to believe may be created by network firm interests and relationships.
3. Solicitation of clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means is a 'misconduct' within the provisions of the Item (6) of part-I of the first Schedule to Chartered Accountants Act, 1949.
4. Expression of opinion on financial statements of any business or enterprise in which a CA in practice, his firm or a partner in his firm has a substantial interest is 'misconduct' within the provisions of the Item (4) of part-I of the second Schedule to Chartered Accountants Act, 1949.
5. An accountant is expected to be no less independent in the discharge of his duties as a tax consultant or as a financial adviser than as auditor. In fact, it is necessary that he should bear the same degree of integrity and independence of mind in all spheres of his work. Unless this is done, the accounts of companies audited by chartered accountants or statements made by them during the course of assessment proceedings would not be relied upon as correct by the authorities.
6. Members in practice while working as internal auditor of one subsidiary company can't be permitted to be appointed as statutory auditor of its holding company since as a statutory auditor he will be reviewing his own work, which he has done as an internal auditor of the subsidiary company either by himself or through his firm.
7. Members in practice are not permitted to accept appointment as statutory auditor of the branches of a bank when he is working as revenue auditor of few branches of the same bank.
8. The concurrent audit and the assignment of quarterly review of the same entity cannot be taken simultaneously as the concurrent audit being a kind of internal audit and the quarterly review being a kind of statutory audit undertaken simultaneously are prohibited under the provisions of 'Guidance Note on Independence of Auditors'
9. It is prohibitive to become the statutory auditor where a spouse of the member renders services as honorary treasurer, being violative of the provisions of the *Code of Ethics*.
10. For ensuring independence, the Section 144 of the Companies Act, 2013 restricts following

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activities to be undertaken by auditor of a company appointed under the Act (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company):

- (a) accounting and book keeping services;
- (b) internal audit;
- (c) design and implementation of any financial information system;
- (d) actuarial services;
- (e) investment advisory services;
- (f) investment banking services;
- (g) rendering of outsourced financial services;
- (h) management services; and
- (i) any other kind of services as may be prescribed:

It may be worthwhile to note that the ICAI, in its commitment to have highest standards of ethics, has maintained independence requirements for its members higher than those stipulated by the IFAC, e.g. ICAI has prohibited the members in practice to write the books of accounts of their auditee clients whereas the IFAC *Code of Ethics* contains situations where a member may provide bookkeeping services. Another instance might be that ICAI *Code of Ethics* provides that a statutory auditor of a company cannot also be its internal auditor whereas the IFAC *Code of Ethics* contains situations where a member may provide internal audit services. Further, the contingent fees is not allowed by the ICAI whereas the provisions for contingent fees on non-audit services as contained under the IFAC *Code of Ethics* are elaborative.

Transparency

With close circuit TV cameras lining the working areas of officials, and bio-matrix indicators to mark and ensure actual presence of individuals, transparency is relatively a modern manifestation of ethics compliance, but has probably arrived to stay. In the instant scenario, a chartered accountant is required not only to maintain her/his righteous conduct but also to let the public in general extend trust that righteous conduct is being maintained by her/him. This is the call of transparency. One can defend herself/himself against accusations of any malpractice when she/he can prove that she/he has behaved strictly in an ethical manner in compliance with the professional standards. One of the ways of ensuring this is to maintain proper documentation,

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which helps in defending one's actions and makes a person's professional actions transparent or easily assessable.

Our *Code of Ethics* provides to imbibe the concept of transparency:

290.27 When threats to independence that are not clearly insignificant are identified, and the firm decides to accept or continue the assurance engagement, the decision should be documented. The documentation should include a description of the threats identified and the safeguards applied to eliminate or reduce the threats to an acceptable level.

Advertisement

Advertisement is a word which is widely understood to be strict no for the chartered accountants. But if we look at it closely, there are some exceptions to this general rule, where requisite publicity has been permitted, while the basic sentiment of gaining popularity through constant excellence in performance, and not through propaganda, is protected:

1. Members may advertise through a write-up setting out their particulars or of their firms and services provided by them subject to the Advertisement Guidelines of ICAI and must be presented in such a manner as to maintain the profession's good reputation, dignity and its ability to serve the public interest.
2. Members can respond to tenders or enquiries issued by various users of the professional services or organisations from time to time and secure professional work as a consequence.
3. Members may advertise changes in partnerships or dissolution of a firm, or, of any change in the address of practice and telephone numbers, the advertisement being limited to a bare

statement of facts and consideration given to the appropriateness of the area of distribution of newspaper or magazine and number of insertions.

4. Members may have entries made in a telephone directory or a trade directory which is published and/or otherwise available such as electronic media, e.g. internet, telephone services, e.g. *ask me* services, etc., subject to conditions stipulated by the Council on this behalf.

Tendering

Closely associated with the issue of advertisement is tendering. The proviso (ii) of Item (6) of Part-I of the first Schedule to the Chartered Accountants Act, 1949 permits a practicing chartered accountant to respond to tenders or enquiries issued by various users of the professional services or organisations from time to time and secure professional work as a consequence.

While applying for tenders, members have to take care of not submitting false information, as the Item (3) of Part-III of the first Schedule to the Chartered Accountants Act, 1949 says that a member shall be guilty of professional misconduct if, while responding to tenders or enquiries, she/he gives information knowing it to be false.

As per the *Code of Ethics*, the government departments, government companies/corporations, courts, cooperative societies and banks and other similar institutions prepare panels of chartered accountants for allotment of audit and other professional work. Where the existence of such a panel is within the knowledge of a member, she/he is free to write to the concerned organisation with a request to place her/his name on the panel. However, it would not be proper for a chartered accountant to make roving enquiries by applying to any such organisation to include her/his name in any such panel.

It is permissible to quote fees on enquiries being received or respond to tenders from the organisations requiring professional services, which maintain such panel.

Attention of the members is invited to the Council decision taken at its 301st meeting held on December 20-22, 2010, in Puri, wherein while accepting the recommendations of the ESB on the issue that interference with the practices prevailing for requirement of EMD/Deposit is not required, it was further decided that on having received complaint/

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instance of exorbitant EMD/ Deposit, the ESB was authorised to look into the matter on case to case basis. The Council had also decided that a cost sheet be maintained by the members of ICAI responding to tenders and accepting the professional work based thereupon, incorporating the details of costs being incurred therein with regard to number of persons involved, hours to be spent, etc., so that the same may be called for by the Institute for perusal.

Provisions as in *Code of Ethics* pertaining to tendering are also noteworthy:

210.10 A professional accountant in public practice who is asked to replace another professional accountant in public practice, or who is considering tendering for an engagement currently held by another professional accountant in public practice, should determine whether there are any reasons, professional or other, for not accepting the engagement, such as circumstances that threaten compliance with the fundamental principles. For example, there may be a threat to professional competence and due care if a professional accountant in public practice accepts the engagement before knowing all the pertinent facts.

Safeguards in this regard are discussed in:

210.15 Such safeguards may include:

- *Discussing the client's affairs fully and freely with the existing accountant;*
- *Asking the existing accountant to provide known information on any facts or circumstances, that, in the existing accountant's opinion, the proposed accountant should be aware of before deciding whether to accept the engagement;*

- *When replying to requests to submit tenders, stating in the tender that, before accepting the engagement, contact with the existing accountant will be requested so that inquiries may be made as to whether there are any professional or other reasons why the appointment should not be accepted.*

Whistleblowing

Confidentiality is a fundamental principle for the chartered accountants. But there are some circumstances, where members have a duty to disclose. Such a duty is inherent in the Item 1 of Part-I of the second Schedule to the Chartered Accountants Act, 1949, which reads:

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he — discloses information acquired in the course of his professional engagement to any person other than his client so engaging him, without the consent of his client or otherwise than as required by any law for the time being in force;

One of such requirements of law has been introduced by the Section 144 (12) of Companies Act, 2013, which reads:

Notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

Following paragraphs appearing in the *Code of Ethics* are also worthy of a mention in this regard:

140.7 The following are circumstances where professional accountants are or may be required to disclose confidential information or when such disclosure may be appropriate:

- (a) Disclosure is permitted by law and is authorized by the client or the employer;*
- (b) Disclosure is required by law, for example:

 - i. Production of documents or**

other provision of evidence in the course of legal proceedings; or

- ii. Disclosure to the appropriate public authorities of infringements of the law that come to light; and*

(c) There is a professional duty or right to disclose, when not prohibited by law:

- i. To comply with the requirement of peer review or quality review of a member body or professional body.*
- ii. To respond to an inquiry or investigation by a member body or regulatory body;*
- iii. To protect the professional interests of a professional accountant in legal proceedings; or*
- iv. To comply with technical standards and ethical requirements.*

140.8 In deciding whether to disclose confidential information, professional accountants should consider the following points:

- (a) Whether the interests of all parties, including third parties whose interests may be affected, could be harmed if the client or employer consents to the disclosure of information by the professional accountant;*
- (b) Whether all the relevant information is known and substantiated, to the extent it is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgment should be used in determining the type of disclosure to be made, if any; and*
- (c) The type of communication that is expected and to whom it is addressed; in particular, professional accountants should be satisfied that the parties to whom the communication is addressed are appropriate recipients. ■*