

Know Your Ethics

Ethical Issues in Question-Answer Form

Q. What is the professional or other misconduct?

A. Section 22 of the Chartered Accountants Act, 1949 defines professional or other misconduct as follows:-

For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 of the Act to inquire into the conduct of any member of the Institute under any other circumstances. What constitutes 'misconduct under any other circumstances' has to be determined on case to case basis keeping in view the facts of the circumstances of each case. Fraud, intention to deceive and committing an act which affects the public or society at large could be in the ambit of such misconduct. Following are few examples of 'misconduct under any other circumstances' by a member:-

1. Conviction by a competent Court for an offence involving moral turpitude punishable with imprisonment or for an offence not of a technical nature committed by a member in his professional capacity.
2. Retention of books and documents of the client and failure to return these to the client on request without a reasonable cause.
3. Material misrepresentation e.g. misrepresenting to a firm, while seeking employment as an accountant, that he has worked for three years as a senior assistant with another firm.
4. Publishing an advertisement in a newspaper with malafide intention to malign any person.
5. Using objectionable, derogatory and abusive language or/and making irrelevant, incoherent, irresponsible and insane statements in his correspondence with a person.

Q. What is the distinction between the two schedules to the Chartered Accountants Act, 1949?

A. The two schedules are distinguished on the basis of gravity of misconduct and quantum of punishment for the misconduct, the second schedule pertaining to comparably graver misconduct and higher punishment.

Q. What will be the procedure where a member is guilty of charges both under the First Schedule and Second Schedule to the Chartered Accountants Act, 1949?

A. The procedure to be followed when a member is accused of misconduct under both schedules is the same which is followed for misconduct under the second schedule.

Q. Can a member in practice render Management Consultancy and other services?

A. Yes, however, the areas covered under the Management Consultancy and other services have been summarized by the Council. The "Management Consultancy and other services" may be referred at pages 103 -105 of the Code of Ethics, 2009 edition.

Q. Whether a member in practice is permitted to undertake the management of NRI funds?

A. No, the member is not permitted to undertake such assignment because the same is not covered under "Management Consultancy and Other Services" permitted to be rendered by the practicing members of the Institute.

Q. Can a Chartered Accountant provide 'Portfolio Management Services' (PMS) as part of CA practice?

A. No, the Explanation to Clause (xix) of the definition of "Management Consultancy and other Services" expressly bars the activities of broking, underwriting and Portfolio Management.

Q. Whether a Chartered Accountant in practice is required to obtain any trade license for practicing?

A. No, a Chartered Accountant in practice is not required to obtain any trade licence for practicing as a professional. The certificate of practice issued by the Institute is the only requirement to practice as a Chartered Accountant.

Q. Can a Chartered Accountant in practice work as a 'Collection Agent/Recovery Agent'?

A. No, a Chartered Accountant in practice cannot work as a Collection Agent. However, he can act as a Recovery Consultant as provided in clause (xxv) of "Management Consultancy and other Services".

Q. Whether a practicing Chartered Accountant can agree to select and recruit personnel, conduct training programmes and work studies for and on behalf of a client?

A. Yes. The expression "Management Consultancy and other Services" defined by the Council includes both personnel recruitment and selection and conducting training programmes and work-studies. Therefore, a Chartered Accountant in practice shall not commit any professional misconduct by rendering such services for and on behalf of the client.

Q. Whether Code of Ethics is applicable outside India?

A. The Code of Ethics of the Institute is applicable to all its members even outside India. ■

* Contributed by the Ethical Standards Board of the ICAI