

## **Matter for 'Know Your Ethics'- September, 2018 issue of the CA Journal**

### **Q. What is Code of Ethics?**

**A.** Every profession has its own Code of Ethics.

Code of Ethics, 2009 is divided into Parts A and B.

Part-A of the Code of Ethics, 2009 has been introduced in line with the IFAC Code in compliance of membership obligation of the ICAI. This part of the Code establishes a conceptual framework for all members to ensure compliance with five fundamental principles of professional ethics, namely, integrity, objectivity, professional competency and due care, confidentiality and professional behavior. Under the framework, all Chartered Accountants are required to identify the threats to these fundamental principles and apply The Chartered Accountants Act, 1949 has been enacted by the Parliament for the regulation of the profession of Chartered Accountants and for the purpose of carrying out the object of the Act, the Chartered Accountants Regulations, 1988 have been enacted.

The Act has two schedules i.e. First Schedule & Second Schedule.

The First Schedule has four parts:

Part I - Professional misconduct in relation to Chartered Accountants in Practice.

Part II - Professional misconduct in relation to Members of the Institute in Service.

Part III - Professional misconduct in relation to Members of the Institute generally.

Part IV - Other Misconduct in relation to the members of the Institute generally.

The Second Schedule has three parts:

Part I - Professional misconduct in relation to Chartered Accountants in Practice.

Part II - Professional misconduct in relation to Members of the Institute generally.

Part III - Other misconduct in relation to members of the Institute Generally.

Code of Ethics, 2009 is divided into Part A and B.

Part- A of the Code of Ethics,2009 has been introduced in line with the IFAC Code in compliance of membership obligation of the ICAI. This part of the Code establishes a conceptual framework for all members to ensure compliance with five fundamental principles of professional ethics, name, integrity, objectivity, professional competency and due care, confidentiality and professional behavior. Under the framework, all Chartered Accountants are required to identify the threats to these fundamental principles and apply safeguards to ensure that the principles are not compromised. The framework applies to all Chartered Accountants, whether in practice or in service.

Part-B of the Code comprises two schedules to the Act along with the decisions of the Courts, Council and Disciplinary Directorate on professional misconduct, decisions, directions, guidelines, statements, clarifications and also interpretations of the Council on the various clauses of these two schedules.

**Q. What is the “professional or other misconduct”?**

**A.** Section 22 of the Act 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 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?**

- 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 more grave misconduct and higher punishment.

**Q. What is the procedure followed against a member for misconduct under disciplinary proceedings of the Institute?**

- A.** Relevant steps of disciplinary mechanism of the Institute are shown in the flow-chart as given in Appendix-1.

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

- 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. Please refer to Appendix-3.

**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. Please refer to Appendix-3.

**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' as appearing in Appendix-3 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. From the stand point of ICAI, the certificate of practice is the only requirement to practice as a Chartered Accountant. It may, however, be noted that a Government / specified Authority may require additional requirement like registration , and the members may need to comply with such requirements.

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