

Code of Ethics

It is easier to be principled but difficult to be ethical

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INTRODUCTION

Ethics means moral values. It is easier to be principled but difficult to be ethical. One can be transparent; but one needs to be accountable. I feel, 'Ethics' is nothing but accountability to one's conscience. In the field of Ethics, one is either ethical or not ethical. There is no 'in between' stage.

The coverage of the topic is too vast. I propose to briefly deal with the essence of Code of Ethics.

CODE OF ETHICS (COE) – IT'S NECESSITY

- The whole foundation of any profession, particularly CA profession, is its credibility. The sole purpose of COE is to ensure and uphold this credibility. It distinguishes a profession from business. This is not to say that a business need not or does not have ethics.
- Another grievance among members is that when the entire world is behaving anyway it wishes, why CAs be subjected to such restrictions that are apparently outdated !

SOURCE OF COE

- Our Institute's Motto – 'Ya Esha Supteshu Jagarti' is adopted from Kathopanishad and it denotes 'eternal vigilance' – awakening when the world is asleep. Ethics are as old as human civilization. It is nothing but the laws or rules of acceptable Behaviour.
- There are four recognised sources of law –
 - -First is 'custom'. E.g. Our Hindu law;
 - - Second is Legislation – Codified law. E.g. various Acts that we study.
 - - Third is judicial pronouncements; and
 - - Fourth is experts' opinions.

CODE OF ETHICS – ITS BROAD CONTENTS AND SCOPE:

- The provisions regarding 'misconduct' are contained in Chapter V of the Chartered Accountants Act, 1949 ('the Act'). Section 21 prescribes the procedure in enquiries relating to misconduct of the members while section 22 defines the professional misconduct. Basically 'professional misconduct' shall be deemed to include any act or omission specified in either of the schedules to the Act. However, the section further confers powers on the Institute to enquire into any 'other misconduct' of a member. Thus, the scope is very wide and can cover any misconduct, which may not be committed in the course of professional work. It refers to the conduct unbecoming of a professional. The Amendment Act has inserted Sections 21 (Disciplinary Directorate), 21A (Board of Discipline), Sec. 21B (Disciplinary Committee), Sec. 21C (Authority of BOD, DC and Director Discipline), Sec. 22A (Appellate Authority).

- There are two schedules to the Act.
- There are four parts in the First Schedule
- Part I contains professional misconduct in relation to CAs in practice. There are twelve clauses.
- Part II covers misconduct in relation to members in service and has two clauses.
- Part III specifies three clauses of misconduct in relation to members in general.
- Part IV contains two clauses of 'Other Misconduct' in relation to all members generally.

Authority attached to the various documents issued by the Institute

- There are various pronouncements made by the Institute from time to time. It is necessary to know their binding nature.
- Statements — These are issued on critical matters and are mandatory. It is the duty of the members to follow these statements while discharging their attest function. The deviation from the statement should be adequately disclosed.
- Guidance Notes - These are recommendatory in nature. A member should ordinarily follow them except where he is satisfied that in the circumstances of the case, it may not be necessary to do so. He may also consider a suitable disclosure in this regard

Authorities to Implement COE

- Director (Discipline) ('DD') - Section 21
- Board of Discipline ('BOD') – Section 21A (to deal with offences under First Schedule)
- Disciplinary Committee ('DC') – Section 21B (to deal with offences under Second Schedule)
- Appellate Authority ('AA') – Section 22A to section 22G (Both the schedules) Central Government will constitute Appellate Authority.

Important Principles

- Action for misconduct can be initiated either on receiving a Complaint or information from any source. There can be suo moto action by the Council.
- Complainant need not come with clean hands. Council is not concerned with nor has jurisdiction over the complainant's behaviour or conduct.
- Complaint once lodged cannot ordinarily be withdrawn except with the permission of the BOD/DC.
- Council has jurisdiction basically over an individual member; and not over firms; or on outsiders.

Broad Procedure

- Complaint to be filed in Form I.
- Filing fee Rs.2,500/-
- Complaint forwarded to Respondent for his explanation.
- Explanation forwarded to complainant for his rejoinder.
- If no prima facie finding of 'guilt', the matter is closed with the concurrence of BOD.
- One more hearing to decide the punishment.
- Appeal is to be filed within 90 days from the date of receipt of the order.
- Filing fee Rs.5,500/-

Persons authorised to represent

- Any other member of ICAI
- Any advocate
- Any member of ICSI or ICWA
- There are certain persons who are treated as disqualified for representing.

Punishment

- Punishment may be any one or more of the following –
- For First Schedule (by Board of Discipline)
 - Reprimand
 - Suspension upto 3 months
 - Fine upto rupees one lakh.
- For Second Schedule (by Disciplinary Committee)
 - Reprimand
 - Suspension for any period or permanently
 - Fine upto rupees five lakhs.

Persons who normally complain

- Normally, the users of our services – viz. Clients, Financial Institutions, Banks, Lenders, Investors, Regulatory Authorities are the complainants.
- Apart from these, the staff members, articled trainees, co-professionals and total strangers also file complaints. There are instances where members have complained against their partners.
- Private complaints come mainly out of ego-problem, rivalry or under mistaken belief that by harassing the auditor, one may settle a score against somebody else. It is used as an ‘arm-twisting’ measure.
- There are even professional ‘black mailers’ in this field.

Other exposures / vulnerability

- Complainants often are a little too enthusiastic. Apart from resorting to the disciplinary proceedings, they also approach –
 - Police, with criminal complaint
 - Press, for defamation
 - Consumer Forum
 - The profession is so vulnerable and the complaints are so damaging that the respondent member has hardly anything in his hands even to protect himself, let alone retaliation. Unfortunately, no one can really help in such a night-marish situation.

Conclusion

- Important amendments brought about by the Chartered Accountants (Amendment) Act, 2006 – Annexure I
- Details on certain important items of misconduct – Annexure II
- A few case studies have been given in the Annexure – III to this paper.
- Similarly, the gist of a few cases handled by me is given in Annexure – IV
- Certain important points in tabular form for easy reference - Annexure V
- If we become good human beings and then the professionals, the Code of Ethics will flow from within and will not have to be imposed from outside.

Amendments related to schedules and relevant section of the CA Act, 1949

	Amendments	Earlier
Insertion of new section 22	The heading of the section 22 now changed to : “Professional and other misconduct”	Previously – only ‘professional misconduct’.
First schedule	Now four parts	Earlier three parts
	<p>Members can now share fees with member of those professional bodies as may be prescribed by the Council.</p> <p>The Council has notified the following professional bodies:</p> <ul style="list-style-type: none"> ➤ ICSI ➤ ICWA ➤ Bar Council of India ➤ The Indian Institute of Architects ➤ The Institute of Actuaries of India 	Earlier sharing fees with lawyer, auctioneer, broker etc. was not allowed

	Amendments	Earlier
	Members are now allowed to secure work from another chartered accountant in practice	Earlier soliciting work from any source was not allowed
	Members are now allowed to respond to tenders or enquiries	
	Limited advertisement through write	

	Amendments	Earlier
Second schedule	Now three parts	Earlier two parts
	<p>Clause 4 to second schedule now amended to the effect that where a member or his firm or a partner has a substantial interest, he is not entitled to express his opinion on financial statement of such entity</p>	<p>Earlier a member was allowed to express his opinion of such entity provided he discloses the interest also in the report.</p>
	<p>Clause 7 now amended to include “lack of due diligence” also</p>	

2. Under the old Act (prior to amendment in 2006) the Council had a power in terms of clause
 - (ii) of Part II of Second Schedule to the Act, to issue Notifications. Under these Notifications, Council could provide that a breach of any of its Notifications would be regarded as a misconduct. Under the amended Act, such power is missing. As a consequence, the Notifications issued between 1965 to 2004 stand repealed with effect from 08.08.2008.
 - In lieu of these, the ICAI has now issued 'Council General Guidelines – 2008' by a Notification dated 08.08.2008. These are published at page nos. 686 to 689 of CA journal of October 2008. More or less, these are the same ones as were issued between 1965 to 2004. (See page 333 of BCA journal, November 2008 – ICAI and its Members)

Disciplinary Proceedings

Now, there will be three authorities (layers)

- Disciplinary Directorate (Director) Board of Discipline (BOD)
- Disciplinary Committee (DC)

BOD will decide cases of First Schedule; and if guilty may award punishment –

- Reprimand
- Remove from membership for a period not exceeding 3 months or
- impose fine upto Rs. one lakh

DC will decide cases of 2nd Schedule or mixed cases of 1st and 2nd Schedule; and award-

- Reprimand
- Remove from membership permanently or for such period as it deems fit or
- Impose fine upto Rs. 5 lakhs.

Council to constitute BOD.

BOD will consist of 3 persons with Director as its Secretary.

An eminent person in the field of law to preside

- One member of the Council.
- One nominee of Central Government

Council to constitute DC DC will consist of 5 persons

- President or Vice – President
- 2 members of Council
- 2 nominated by Central Government

Appellate Tribunal

Central Government will constitute Appellate Tribunal.

- Chairperson – Judge of High Court
- 2 members (not sitting)
- 2 nominee of Central Government

Annexure II

- A few selected items of importance are discussed below:
- Advertisement and solicitation.
- Communication with outgoing auditor
- Compliance with provisions of Companies Act
- Engaging in other profession or occupation
- Undercutting
- Attest function where the member is personally interested
- Sharing of fees or profits with a non-member or partnership with a non-member, charging fees based on the results of the work.

THANK YOU

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