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CODE OF ETHICS

CA CHANDRASHEKHAR N. VAZE
26.12.2022

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PUNE BRANCH OF WIRC OF ICAI

IMPORTANT NOTE :

- ▶ **Members may be aware that the new revised Code of Ethics will be applicable from 1st July 2020.**
- ▶ **This presentation does not cover all the changes made in the Code. For the new Code of Ethics, a separate standardised ppt prepared by ESB is also circulated with this ppt. This is with the courtesy of CA. Kemisha Soni, Chairperson of ESB**



“

Ya esa suptesu jagarti kamam kamam Puruso nirmimanah |
Tadeva sukram tad brahma tadevamrtamucyate |
Tasminlokah sritah sarve tadu natyeti Kascan | etad vai tat ||

य एष सुप्तेषु जागर्ति कामं कामं पुरुषो निर्मिमाणः ।

तदेव शुक्रं तद् ब्रह्म तदेवामृतमुच्यते ।

तस्मिंल्लोकाः श्रिताः सर्वे तदु नात्येति कश्चन । एतद् वै तत् ॥

”

Motto

That person who is awake in those that sleep, shaping desire after desire, that, indeed, is the pure. That is Brahman, that, indeed, is called the immortal. In it all the worlds rest and no one ever goes beyond it. This, verily, is that, kamam kamam : desire after desire, really objects of desire. Even dream objects like objects of walking consciousness are due to the Supreme Person. Even dream consciousness is a proof of the existence of the self.

No one ever goes beyond it : cf. Eckhart : 'On reaching God all progress ends

Introduction

- ▶ Ethics means moral values – accountability to one's conscience.
- ▶ Code of Ethics ('COE') is not only philosophical, but practical. Hence, the title – 'Code of Ethics' – Practical Issues'
- ▶ Eternal vigilance is the cost of independence.
- ▶ In the field of Ethics, one is either ethical or not ethical. There is no 'in between' stage.

Need of COE

Why we alone are subjected to such a rigorous code?

- ▶ To ensure credibility which is the foundation of our profession
- ▶ Society's expectations
- ▶ An outsider's perception - delays, mild punishment etc.

A shield rather than a burden

Source of COE....

- ▶ Ethics are as old as human civilization
- ▶ Taittreeya Upanishad
 - ▶ Satyam Vada – Speak the truth
 - ▶ Dharmam Chara – Follow the rules of the religion(perform duty);
and
 - ▶ Swadhyayan-Ma-Pramadah – Do not commit default in self-study (This is our CPE).

COE is nothing but elaboration of these principles

Present Image

- ▶ Not assertive but too accommodative
- ▶ Credibility and respectability is diminishing
- ▶ An item in the checklist of a respectable organization –
“avoid bringing CA certificates as the same are often found unreliable”.

Common observations – lapses leading to Disciplinary proceedings

- ▶ Too much of ‘good faith’.
- ▶ Weak documentation
 - ▶ Two important maxims to be remembered and followed:
 - ▶ Work should not only be done, but it should be seen that it is done. And
 - ▶ Faintest of Ink is stronger than the strongest of memories.

Ctd..

- ▶ Lack of pro-activeness
- ▶ Obsession with tax considerations – principles of accounting and auditing are side-lined
- ▶ Lack of communication skills - inability to say 'No'

A couple of actual cases

- ▶ Absence of letter of appointment or reappointment – Good faith.
- ▶ Not obtaining of a copy of Board Resolution approving the accounts – Expert Advisory Committee’s opinion – Sec. 215 of Companies Act, 1956.
- ▶ Signing the balance sheet in good faith when only one director has signed.
- ▶ Two brothers and directors
- ▶ A CA certified the balance sheet of other CA firm – in the books there was a meagre negative cash balance on one day.

Suggested Reading

- ▶ The Chartered Accountants Act, 1949 [as amended by the CAs (Amendment) Act, 2006]
- ▶ CA Regulations of 1988 (updated as on July 01, 2013)
- ▶ ICAI publication on 'Code of Ethics' (Eleventh edition January 2009)
- ▶ Chartered Accountants (Procedure of Investigations of Professional and other misconduct and conduct of cases) Rules, 2007 published in official Gazette of India dated February 28, 2007 ('Enquiry Rules')
- ▶ [Amendments in the Chartered Accountants Act, 1949 \(Published in official Gazette of India dated April 18, 2022\)](#)
- ▶ FAQs published by ICAI. (February 01, 2012)
- ▶ Appellate Authority (Procedure) Rules, 2011
- ▶ Manual for members
- ▶ ICAI Website for various pronouncements.
- ▶ ESB website; CA Ethics Plus – handy brochure issued by ESB.
- ▶ Speaking ppt. on Code of Ethics launched by ESB as an e-learning initiative

Two Schedules

First Schedule (internal to the profession)

| Part | Particulars | No. of Clauses |
|------|---|----------------|
| I | Professional misconduct in relation to CAs in practice. | 12 |
| II | Misconduct in relation to members | 2 |
| III | Misconduct in relation to members in general | 3 |
| IV | Other Misconduct' in relation to all members generally | 2 |

Second Schedule (Outsiders affected)

| Part | Particulars | No. of Clauses |
|------|---------------------------------------|----------------|
| I | CAs in practice | 10 |
| II | Clauses relating to members generally | 4 |
| III | Residuary cases of 'Other Misconduct | 1 |

Chapter V – Provisions relating to Misconduct

| Section No. | Scope |
|--------------------|---|
| 21 | Disciplinary Directorate ('DD') |
| 21A | Board of Discipline ('BOD') – First Schedule offences |
| 21B | Disciplinary Committee ('DC') – Second Schedule offences |
| 21C | Authority of BOD, DC and Director Discipline |
| 22A | Appellate Authority ('AA') - to deal with offences under both the Schedules |
| 22 | Professional and other misconduct. Since it covers 'other misconduct' also, the scope is very wide |

Important Pronouncements of ICAI

- ▶ Guidelines for advertisement for members in practice
- ▶ List of occupations which require general or specific permission (Appendix 9 of CA Regulations, 1988)
- ▶ Council General Guidelines, 2008
- ▶ Recommended self-regulatory measures
- ▶ Guidelines for conversion of CA firms in to LLPs

Authority attached to the various documents issued by the Institute :

- ❖ **Statements** –The deviation from the statement should be adequately disclosed.
- ❖ **Accounting Standards and Auditing and Assurance Standards (AAS)** which are now known as **Standards on Auditing ('SA')**. These become mandatory from the dates notified by the Institute from time to time. Till then, the `statements' remain in force. Once an AS/SA becomes mandatory, the concerned statement or its relevant part stands withdrawn.
- ❖ **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.

Disciplinary Mechanism-Authorities

Constitution of BOD

- An eminent person in the field of law to preside
- One member of the Council
- One nominee of the Central Government
- **Officer of Institute not below the rank of Deputy Secretary**

Constitution of DC

- President or Vice – President
- 2 members of Council
- 2 nominees of the Central Government

Ctd.

Constitution of DC

- President or Vice – President
- 2 members of Council
- 2 nominees of the Central Government

Constitution of Appellate Authority

- Chairperson – Judge of High Court
- 2 ex-members of Council
- 2 nominees of Central Government

Important principles

- Misconduct proceedings - initiated 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 not concerned with the locus standi of Complainant.
- A complaint filed with the Disciplinary Directorate shall not be withdrawn under any circumstances.
- Council has jurisdiction basically over an individual member and not on outsiders.

Important principles (contd.)

- Complaint filed beyond period of 7 years may not be entertained at the discretion of the Director Discipline if he is satisfied that it would be difficult to obtain evidence on account of time lag or that it would be procedurally inconvenient.
- Even if Respondent compensates the complainant for any losses, it will not undo the misconduct.
- Even if nobody is aggrieved due to a particular lapse / misconduct of the member, there can be disciplinary proceedings against the member.
- There is no time limit for disposal of complaint! Proceedings may continue for years together!

Broad procedure

- Complaint to be filed in Form I.
- Filing fee Rs.2,500/-
- Complaint forwarded to Respondent for his explanation.
- Written statement (21 days) extension not exceeding 21 days.
- Explanation forwarded to complainant for his rejoinder.
- Rejoinder (21 days)
- After examining these three documents, DD may call for any information as he thinks necessary; and decide whether there is a
- 'prima facie' guilt under either of the schedules or 'other misconduct'.

Cntd....

Broad procedure (Ctd.)

- If no prima facie finding of 'guilt', the matter is closed with the concurrence of BOD / DC.
- If prima facie guilty, then BOD/DC depending upon the nature of offence conducts a detailed enquiry.
- BOD/DC to give report on its findings as to the guilt.
- One more hearing to decide the punishment.
- Orders then passed by BOD/DC are appealable to AA. Member of ICAI or [the Firm](#) aggrieved by order of BOD/DC; or the DD may prefer an appeal.
- 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

Hearings before BOD / DC

Board of Discipline ('BOD')

- ▶ Quorum is 2. Follow summary procedure. Rules of natural justice to be followed.
- ▶ Adjournment not more than once. If 'guilty' – then one more opportunity of hearing before awarding punishment.

Disciplinary Committee ('DC')

- ▶ Quorum 3 (of which atleast one is a Govt. nominee).
- ▶ Witnesses can be called.
- ▶ Rules of natural justice to be followed.
- ▶ Adjournment not more than once. Inability of representative shall not be a valid ground.
- ▶ If guilty, one more opportunity to the Respondent before awarding punishment.

Punishment

Punishment may be any one or more of the following – For First Schedule (by Board of Discipline)

- ▶ Reprimand
- ▶ Suspension upto 6 months
- ▶ Fine upto rupees two lakh.
- ▶ **Against Firm** – (any such member who is a partner or owner of a firm, has been repeatedly found guilty of misconduct mentioned in the First Schedule during the last five years) prohibit the firm from undertaking any activity or activities relating to' the profession of a chartered accountant in practice for such period not exceeding one year; or
- ▶ impose such fine as it may think fit, which may extend to twenty-five l an rupees

For Second Schedule (by Disciplinary Committee)

- ▶ Reprimand
- ▶ Suspension for any period or permanently
- ▶ -Fine upto rupees ten lakhs.
- ▶ **Against Firm** – (any such member, who is a partner or owner of a firm has been repeatedly found guilty of misconduct mentioned in the Second Schedule or in both the First Schedule and the Second Schedule, during the last five years) prohibit the firm from undertaking any activity or activities relating to' the profession of a chartered accountant in practice for such period not exceeding two years; or
- ▶ suspend or cancel the registration of the firm and remove its name from the Register of firms permanently or for such period as it may think fit; or
- ▶ impose such fine as it may think fit, which may extend to fifty lakh rupees

Now, there is no need to refer the case to High Court.

Indirect punishment

- ▶ Disqualification from allotment of audits from RBI, other banks, C & AG and other Government Bodies (these are the restrictions of the respective Govt. bodies).
- ▶ Eligibility to train articles is lost.
- ▶ A stigma. Almost invariably, the process itself is more torturous and painful than the punishment itself.

Complainants

Who complains?

- Users of our services – viz. Clients, Financial Institutions, Banks, Lenders, Investors, Regulatory Authorities are the complainants.
- Staff members, articled trainees, co-professionals, total strangers, members against their own partners.
- Complaints may be filed out of ego clashes, rivalry or as an arm twisting measure.
- Existence of professional black mailer

Other exposures / Vulnerability

- Police - criminal complaint. This often results into arrest and police custody.
- Press, for defamation
- Consumer Forum

‘Peer Review’ could be a good preventive step. It should be taken and implemented in its proper spirit by our members in their own self interest

Arbitration

There is one welcome development. For resolving the disputes or grievances among the members inter-se; or between articled trainees and members, ICAI is planning to introduce the concept of arbitration. It is expected to lessen the hardship, shorten the time and reduce the expenditure.

At the same time, it could be more effective.

Clauses of both the Schedules

First Schedule

Part I

| Clause no. | A member in practice would be guilty of misconduct if he: |
|-------------------|---|
| (1) | Allows any person to practice in his name except his partner and employee who is also a chartered accountant |
| (2) | Pays any share , commission or brokerage to person other than member of Institute or his partner or retired partner |
| (3) | Accepts profits from a person who is not a member of Institute |
| (4) | Enters into partnership with person who is not member of Institute |

| | |
|-------------|--|
| (5) | Secures work from person who is not his employee or partner. |
| (6) | Solicits work by circular, advertisement, personal interview etc. (except to the extent allowed) |
| (7) | Advertises his professional services (except to the extent allowed) |
| (8) | Accepts audit work without first communicating with the previous auditor in writing |
| (9) | Accepts audit work without first ascertaining that requirements of section 225 of the Companies Act, 1956 (now section 140 of the Companies Act, 2013) are complied with. |
| (10) | Accepts professional assignment where fees are based on percentage of profits or are contingent upon the findings or results. |
| (11) | Engages in any other business or occupation (barring few exceptions) |
| (12) | Allows a person who is not his partner or any other person who is not a member of the Institute to sign on his behalf any balance sheet, profit and loss account, report or financial statements |

First Schedule

Part II – Members in service

| Clause no. | A member (other than member in practice) would be guilty of misconduct if he: |
|------------|--|
| (1) | Undertakes to share his emoluments of employment |
| (2) | Accepts any part of fees, profits or gains from any lawyer, CA, broker engaged by the company, customer as commission or gratification |

Part III - Members generally

| Clause no. | A member (whether in practice or not) would be guilty of misconduct if he: |
|------------|---|
| (1) | Not being a fellow, acts as a fellow |
| (2) | Does not supply information called for by the Institute, Council, its Committees, Director (Discipline), BOD, DC etc. |
| (3) | Gives information knowing it to be false while inviting professional work, responding to tenders, enquiries or publishing write up. |

Part IV – Other misconduct

| Clause no. | A member (whether in practice or not) would be guilty of misconduct if he: |
|------------|---|
| (1) | Is held guilty by any civil or criminal court which is punishable with imprisonment not exceeding 6 months. |
| (2) | Brings disrepute to the profession |

Second Schedule

Part I

| Clause no. | A member in practice would be guilty of misconduct if he: |
|-------------------|--|
| (1) | Discloses information acquired in the course of professional engagement to any person other than his client. |
| (2) | Certifies any report of financial statements unless the examination has been done by him or his partner or employee or by any other CA in practice |
| (3) | Gives an impression that he vouches for the accuracy of the forecast. |
| (4) | Expresses his opinion on financial statements of any business in which he, his firm or partner has a substantial interest. |
| (5) | Fails to disclose a material fact which is not disclosed in the financial statement but the disclosure of which is necessary. |
| (6) | Fails to report a material misstatement |

Part I (Contd.)

| Clause no. | A member in practice would be guilty of misconduct if he: |
|-------------------|---|
| (7) | Does not exercise due diligence or is grossly negligent. |
| (8) | Fails to obtain sufficient information which is necessary for expression of opinion. |
| (9) | Fails to invite attention to any material departure from generally accepted audit procedures. |
| (10) | Fails to keep moneys of client other than money meant to be expended in a separate banking account. |

Second Schedule

Part II:

| Clause no. | A member (whether in practice or not)would be guilty of misconduct if he: |
|-------------------|---|
| (1) | Contravenes any provisions of this Act or regulations etc. |
| (2) | Being an employee of company, firm or any other person discloses confidential information |
| (3) | Includes in any document to be submitted to the Institute, Council, its Committees etc. any information knowing it to be false. |
| (4) | Defalcates or embezzles moneys |

Part III :

A member whether in practice or not would be guilty of misconduct if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment exceeding six months.

Audit of a cooperative society – issues faced

- Auditors pressurized to give favourable grade inspite of there being many adverse comments.
- In case of frauds or serious irregularities, the auditor himself is required to file a police complaint.
- SA 700 (previously AS 28).
- Emotional blackmailing.

Advertisement and solicitation

(Clause 6 of Part I of the First Schedule)

| | |
|--|--|
| Circulation of letter to small group of clients for soliciting work or to persons who are likely to require services of a Chartered Accountant | Prohibited |
| Announcement in newspaper for changes in constitution of partnership or address etc. | Permitted. Should be limited to a bare statement of facts |
| Advertisement for soliciting clients under box numbers in the news paper | Prohibited |
| Application for empanelment for allotment of audit | Permitted. But cannot make roving enquiries as to whether such panel is maintained |

Advertisement and solicitation (Contd.)

| | |
|---|---|
| Tenders | Responding to tenders permitted |
| Publication of books or articles | Permitted . Association with any firm of CAs should not be mentioned. |
| Issue of greeting cards or invitations: | Permitted . Can be sent to clients, relatives and friends. Designation 'Chartered Accountant' and name of the firm is permitted . Any other professional designation, status and qualifications etc. is not permitted. |
| Classified advertisement in the Journal / Newsletter of the Institute | Permitted . But only in the Journal or Newsletter of the Institute |

Advertisement and solicitation (Contd.)

| | |
|--------------------------|--|
| Giving public interviews | Permitted. Name of the firm should not be mentioned. |
| Photographs | Permitted. Provided no payment is made for such publication. No reference to the name of the firm. |
| Sign board for office | Permitted. Use of glow signs or lights should be avoided. |

Write ups

- Limited advertisement through write up now allowed
- Guidelines dated 14th May, 2008 - a “write up” is the writing of particulars setting out services rendered by the Members issued, circulated or published by way of **print or electronic mode or otherwise including in newspapers, journals, magazines and websites (in Push as well in Pull mode) in accordance with the Guidelines.**
- The write-up should not include the names of the clients (both past and present).
- The write-up should not contain any information about achievements / awards or any other position held.
- It is mandatory to mention the membership number and firm registration number with Institute.

Communication with previous auditor

Clause 8 of Part I of the First Schedule)

- Communication - before accepting the audit and not merely before signing the report
- RPAD - advisable so as to create fool-proof evidence
- Where there is no reply from the outgoing auditor, audit can be accepted after reasonable period has elapsed. Actual NOC is not a precondition
- Where undisputed audit fee of outgoing auditor are outstanding – accepting audit assignment itself is a misconduct
- Applies to all kinds of audits – statutory audit, tax audit, internal audit, concurrent audit, VAT audit and audit of Govt. entities etc.
- Previous auditor means the immediately preceding auditor. Where there was no audit in a particular year, previous auditor would mean auditor of the year when the audit was last done.

Engaging in any other profession or occupation

(Clause 11 of Part I of First Schedule)

- See Appendix 10 to the Regulations (1988)
 - Part A– general permission
 - Part B – specific permission
- Members are permitted to become sleeping partner in a family run business.
- He can also be a karta of an HUF, but should not be actively engaged in the carrying on of the activities.
- Members are permitted to be an ordinary / simple director in a company or promoter of a company (Director Simplicitor).
- Members engaged in other business or occupation - not allowed to perform attest function and train articles barring a few **exceptions (like teaching assignments not exceeding 25 hours)**.

Sharing of fees or partnership with a non-member

- See Regulations 53A and 53B of CA Regulations.
- Partnership with sister-professionals like CS, CWA, lawyers allowed (subject to certain conditions).
- Sharing of fees with other professionals like CS, CWA,
- Actuary, B.E., B.Tech, Architect, Lawyer and MBA allowed.

Lack of due diligence or a case of gross negligence

- Clause (7) of Part I of the Second Schedule)
- The scope is enlarged by Amendment. It not only mentions 'gross negligence'; but also now covers 'lack of due diligence'.

Council General Guidelines, 2008

The Guidelines pertain to –

- Conduct of a member being an employee.
- Prohibition of appointment of member as cost auditor.
- Prohibition on expressing an opinion on financial statements of a relative.
- Maintenance of books of account by Members.
- Ceiling on tax audit assignments (Max. 60 nos. other than clause (c) of Sec. 44AB of I.T. Act, 1961).
- Appointment of an auditor where undisputed audit fees of previous auditor are unpaid.

Council General Guidelines, 2008 (contd.)

- Maximum number of audit assignments under Companies Act, 2013 that can be held by a member shall be 30 nos. despite the ceiling / liberties specified in Companies Act. Members are required to maintain a register of audits done.
- Ceiling on fees for other assignments of the same client whose statutory audit is done by a member.
- Not to accept audit where member is indebted for more than Rs.10,000/-
- Directions on unjustified removal of auditors.

Other recommended self-regulatory measures

- Branch audit and joint audit vis-à-vis no. of partners.
- Ratio between qualified and unqualified staff.
- Disclosure of interest by auditors in other firms.
- Ceiling on the fees. Interestingly the clause relating to undercutting of fees is being deleted. ~~Know Your Client Norms~~

ESB Brochure

Some interesting FAQs from the brochure: —

53. Whether a statutory auditor can accept the system audit of same entity? *Yes, the statutory auditor can accept the assignment of a system audit of the same entity, provided it did not involve any scrutiny/review of financial data and information.*

66. Can a Concurrent Auditor of a Bank also undertake the assignment of quarterly review of the same bank?

No, the Concurrent audit and the Assignment of quarterly review of the same entity cannot be taken simultaneously as the concurrent audit is a kind of internal audit and the quarterly review is a kind of statutory audit. It is prohibited in terms of the 'Guidance Note of Independence of Auditors'.

67. Can a member act as an Insurance Agent and arrange business for Insurance Company?

No, members are permitted to render Insurance Financial Advisory services. It is not permissible to the members to do any kind of marketing and business procurement for any insurance company. There services should remain limited to professional services in the form of advisory and consultancy services”.

Other misconduct

- ❑ Section 22 covers items of misconduct specified in the Schedules and also “other misconduct”. The Council is empowered to take action in such cases with a view to upholding the overall image of the members in the society. Thus, **a person’s conduct may be unbecoming of a professional, even as a human being.**
- ❑ Without prejudice to the generality of the coverage of ‘Other Misconduct’, now, both the Schedules contain separate parts specifying ‘Other Misconduct’. These parts cover mostly offences of civil or criminal nature or any act that would bring disrepute to the Institute.

National Financial Reporting Authority

Section 132 of the Companies Act

- Sub-section (2): General function of NFRA:
 - Make recommendation to the Central Government on accounting and auditing policies
 - Monitor and enforce compliance with accounting standards and auditing standards
 - Oversee the quality of service of the professions associated
 - Perform any other functions as may be prescribed
- Sub-section (3): Constitution of NFRA
 - Chairperson and other members (part time and full time) not exceeding 15 members
 - Chairperson and full time members shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment and two years after ceasing of appointment

Contd. :

- Sub-section (4):
- **Section 132**
- Power to investigate – suo motu or on reference made by the Central Government – such class of bodies corporate or persons
- Proviso – where NFRA has initiated investigation – no other institute can initiate or continue any proceedings in such matter of misconduct
- - Explanation – expression “professional or other misconduct” shall have the same meaning assigned to it under section 22 of the CA Act, 1949.

Contd.

- Sub-section (4) – punishment:
- Penalty :
- In case of individuals – Not less than Rs. 1 lakh which may extend to five times the fees received
- In case of firms – Not less than Rs. 10 lakhs which may extend to ten times the fees received
- Debarring the member or firm from engaging himself / itself from practice for a minimum period of six months or such higher period not exceeding ten years

Draft NFRA Rules

Composition of the Authority

- ▶ Chairperson – Chartered Accountant
- ▶ Accounting member
- ▶ Auditing member
- ▶ Enforcement Member
- ▶ One representative of MCA
- ▶ One representative of RBI
- ▶ One representative of SEBI
- ▶ A retired Chief Justice of a High Court or a person who has been Judge of a High Court for 5 years
- ▶ President of ICAI (ex-officio)
- ▶ --- Maximum 15 members (see section 132 (3)) ----

Draft NFRA Rules Structure of Authority

- Committee on Accounting Standards
 - Committee on Auditing Standards
 - Committee on Enforcement
- These are sub committees of NFRA

Functions of NFRA:

- Standard Setting
 - Based on recommendations received from the Committee of Accounting Standards
 - Recommend the standards to the Central Government
- Monitoring, compliance review and overseeing quality of service
- Receive reports from the Committee of Accounting and Committee of Auditing
- Forward reports to the Committee on Enforcement with its recommendations

Functions of NFRA:

Enforcement:

- (a) receive any reference from the Central Government for investigation;
- (b) receive recommendations from the Member – Accounting and Member – Auditing for any investigation based on the monitoring and compliance review or investigation of auditor or audit firm undertaken by them;
- (c) suo motu determine any investigation to be undertaken by the Authority;
- (d) forward such requirements to the Committee on Enforcement;
- (e) receive the final investigation report from the Committee on Enforcement on matters referred to them whether arising out of the Quality Review process or based on investigation requests made to the Committee on Enforcement;

Functions of NFRA (contd.):

- (f) issue a notice in writing to the company or its branch investigated or the Professional on whom action is proposed to be taken;
- (g) provide the opportunity of being heard to the company or its branch
- (h) accept or overrule, in writing, clarifications received and objections raised;
- (i) take suitable action or pass orders imposing penalty or debarring the Professional or firm concerned.

Draft NFRA Rules Investigation on:

- Authority to take investigation or conduct quality review of audit on following class of companies:
 - Listed companies
 - Unlisted companies with net worth of not less than 500 crores or paid up capital of not less than 500 crores or annual turnover of not less than 1000 crores
 - Companies having securities listed outside India
- Authority to take investigation or conduct quality review of audit on following class of companies:
 - Listed companies
 - Unlisted companies with net worth of not less than 500 crores or paid up capital of not less than 500 crores or annual turnover of not less than 1000 crores
 - Companies having securities listed outside India

Draft NFRA Rules

Investigation on:

- **Authority to take investigation against following class of auditors or audit firms which conduct the audit of the following category of companies or their branches (including through the network or brand to which it belongs), whether “directly or indirectly”, :**
 - Audit of 200 companies or more in a year
 - Audit of 20 or more listed companies
 - Companies (including listed companies) having net worth of not less than Rs. 500 crores or paid up capital not less than 500 cr or turnover not less than 1000 cr
 - Companies having securities listed outside India **-Proviso :**
 - provisions in respect of class or classes of companies shall not be applicable where a reference is made by the Central Government or any Regulator or where the Authority, in public interest, suo motu decides to exercise powers under sub-rule (4) or (5), as the case may be.

Committee on Accounting Standards and its functions

- To examine the matters relating to formulation and laying down accounting standards and to submit the same for consideration by the Authority.
- conduct scrutiny of financial statements of such class of companies and in such manner as may be decided by the Committee or the Authority:
- For a period of two years from the commencement of these rules, the Committee may conduct scrutiny under this rule through the
- Registrars of Companies or in cooperation with Financial Reporting Review Board set up by the ICAI;
- Refer matters to the Authority for the Authority to decide on further course of action, through the Committee on Enforcement.

Committee on Auditing Standards and its functions

- To examine the matters relating to formulation and laying down auditing standards and shall submit the same for consideration by the Authority.
- investigate or review selected audit and review engagements, including specifically the working papers, of any auditor including an individual, a firm or an LLP;
- refer matters to the Authority to decide on further course of action, through Committee on Enforcement, where violations of laws, rules or professional standards have been observed triggering investigations, disciplinary action, or reference to other regulators or law enforcement agencies. There will be no direct referrals to Committee on Enforcement before referring to Authority.

Committee on Enforcement and its functions

- to examine the matters referred to it by the Authority (whether emanating from the Committee on Accounting, Committee on Auditing, or otherwise) requiring further enquiry or investigation
- to investigate, on a reference made by the Authority, matters relating to professional and other misconduct committed by the professional or auditor (individual or firm or LLP) and recommend to the Authority appropriate action under sub-section (4) of section 132

Procedure of Investigation related to Complaints and Information

- Filing of compliant in Form I to Member- Enforcement
- Information case received shall be dealt accordingly. Anonymous information will not be entertained.
- ▶ Within thirty days of receipt of an information or a complaint, the Director(Discipline) shall decide in such manner as may be specified, whether a complaint or information is actionable or is liable to be closed as non-actionable
- Member- Enforcement, on examination of compliant – to form Prima Facie Opinion.
- This Prima Facie Opinion to be placed before the Committee of Enforcement

NFRA – Pros and Cons

Pros

- ❖ An independent body will ensure more discipline in the fraternity.
- ❖ In most countries outsiders oversee work of accountants. This increases confidence of outsiders towards the fraternity
- ❖ ICAI can then focus on capacity development and other programmes for growth of the profession.

Cons

- ❖ Will take away significant regulatory power from the ICAI
- ❖ ICAI will be reduced to a mere exam giving agency

Thank You

CA C. N. Vaze

Mulund