

COMPLIANCE WITH ETHICAL STANDARDS

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'Ethics' (n) " the moral principles that govern a person's behaviour or how an activity is conducted". Oxford Dictionary

'Ethical' (a) " decent, fair, good, honest, just, moral, noble, principled, righteous, upright, virtuous"

The motto of our Institute is Ya Esha Supteshu Jagarti adopted from Kathopanoshad which means -----

In my opinion, ethics is nothing but answerability to one's conscious, person's inner mind. In reality, it is easier to advise or much easier to tell but difficult to follow or practise. Even, in Mahabharata, the honest person, Dharmaraj has to state "naro wa kunjaro wa."

ICAI has established Ethical Standards Board. The objective of the Board as found on ICAI website is : " The objective of Ethical Standards Board is to set up ethical standards for chartered accountants, converge with the International best practices on ethics, subject to local laws, thereby enhancing the quality and consistency of services provided by chartered accountants and strengthening the public confidence in the profession".

The **Basic Features** or what the Institute calls it Fundamental Principles of Ethical Standards are :

- **Integrity:** Honesty and straightforwardness in professional and business relationships.
- **Objectivity:** Avoid the impact of biases on your judgement, decision making or allow undue influence on others or yourself.
- **Professional competence and due care:** Maintain professional knowledge and skill at the standard expected by a member of the public when seeking professional advice, or the standard of work and output by an employer. This includes keeping up to date with current trends and technical standards
- **Confidentiality:** Respect the right of your clients and employer to have personal details and information kept secure, private and confidential.
- **Professional behaviour:** Compliance with laws and regulations relevant to where you live and do not behave in a way that reflects badly on you, your business or employer and the profession.

The fundamental principles of ethics establish the standard of behaviour expected of a professional accountant.

Many of us consider that Code of Ethics is restrictive. It hampers the growth. In fact, it is incorrect. CoE, protects the profession thereby it increases the members / professionals credibility and respect. It distinguishes a profession from business.

There has always been a criticism about the laxity on the part of our Institute in disposing the complaints and awarding the punishment. Generally, the punishment was either a reprimand, suspension or fine. The Institute was not to be blamed but the law was like that. The law was drastically amended in 2006.

Authority to documents issued by ICAI

Statements : Statements are mandatory, hence must be followed while discharging attest function. Therefore, the deviation must be adequately disclosed.

Accounting / Auditing Standards : Mandatory in nature, obviously from the dates notified by ICAI. The Standards over-ride the Statements.

Guidance Notes : Recommendatory in nature. A member should ordinarily follow them except when he is satisfied that in the given circumstances it may not be necessary to do so.

Chartered Accountants Act 1949.

The provisions re 'misconduct' are contained in Chapter V of the Chartered Accountants Act 1949.

Accordingly, 'professional misconduct' shall be **deemed to include** any act or omission specified in either schedule to the Act. However, the section authorises the Institute to enquire into any 'other misconduct' of a member, thus giving wide powers to enquire the misconduct which is not necessarily related to the professional work. Generally, it refers to the **conduct unbecoming of a professional**.

Authorities to implement CoE :

The Chartered Accountants (Amendment) Act 2006 came into force wef 08th August 2006

Sec 21 : Disciplinary Directorate established.

Director Discipline to give opinion as to whether a member is *prima facie* guilty on the complaint / any information received by him.

If guilty under First Schedule ---- Reference to Board of Discipline

If guilty under Second or both Schedules ----- Reference to Disciplinary Committee.

Sec 21 A – Board of Discipline - Consists of three persons – an outsider i.e. a person with experience in law and having the knowledge of disciplinary matters and profession; and two members of the Council of which one is Central Govt nominee.

Sec 21B – Disciplinary Committee. Consists of five members. President or Vice-President as presiding officer plus two Central Council Members and two nominees of the Central Govt. (Not necessarily Central Govt nominees on the Council). The nominees to have experience in the field of law, economics, business, finance or accountancy.

Appellate Authority : Secs 22A to 22G. The Central Govt is to constitute the Appellate Authority. Aggrieved person to appeal. Aggrieved person may be a member of ICAI or Director Discipline.

Powers of the Authorities :

Board of Discipline : One or more of the following punishments can be awarded

- a) Reprimand the member;
- b) Removal upto three months;
- c) Fine upto ` 1.00 lakh.

Disciplinary Committee : One or more of the following punishments can be awarded

- a) Reprimand the member;
- b) Removal for such period as it thinks fit;
- c) Fine upto ` 5.00 lakhs.

Principles of Enquiry

1. Action for misconduct can be initiated either on receiving a complaint or information from any source. *Suo moto* action by Council is also possible.
2. Council is not concerned with complainant's behaviour or conduct.
3. Complaint once lodged cannot be ordinarily withdrawn except with the permission of BoD/DC.
4. Committee has authority to punish individual member and not the firm or an outsider.
5. The Complainant intends to withdraw the complaint or does not pursue it or remains absent, the Respondent is not automatically absolved. The Council takes the complaint to its logical conclusion by stepping into the shoes of the Complainant.
6. Complaint to be filed within seven years from the date of occurrence.
7. Compensation payment by the Respondent will not absolve him.

8. Complainant need not prove that he is aggrieved or has suffered a loss.
9. No time limit for disposal of a complaint.

Who are the Complainants ?

1. Govt – Income Tax Dept, ROC, MCA, SFIO, Police, RBI etc.
2. Normally user of our services viz clients, financial institutions, banks etc. Disputes between Directors / partners.
3. Staff members, article trainees, professional brothers. Even there are instances where members have complained against their present or ex-partners.
4. Private complaints mainly out of ego, rivalry for 'arm-twisting' purposes. Even in one case a lady member has complained against her ex-husband!

Reasons

1. Members do many things in too much of 'good faith.'
2. Lack of basic documentation.
3. Work should not only be done but it should be seen that it is done. Faintest of ink is stronger than the strongest of memories.
4. Tax considerations override accounting & auditing principles.
5. Lack of communication skills. Difficulty in saying 'No' to unjustified demands.
6. Greed.
7. Blind faith on software. No mind in the work.

Important clauses of First Schedule

Part I

Clause (3): accepts or agrees to accept any part of the profits of the professional work of a person who is not a member of the Institute.

Clause (6): solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means;

Clause (7): advertises his professional attainments or services, or uses any designation or expressions other than chartered accountant on professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Chartered Accountants of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council;

Clause (8): accepts a position as auditor previously held by another chartered accountant (or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing);

Clause (10): charges or offers to charge, accepts or offers to accept in respect of any professional employment, fees which are based on a percentage of profits or which are contingent upon the findings, or results of such employment, except as permitted under any regulation made under this Act;

Part IV

Clause (1): is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term not exceeding six months;

Clause (2): in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

Important clauses of Second Schedule

Part I

Clause (4): expresses his opinion on financial statements of any business or enterprise in which he, his firm or a partner in his firm has a substantial interest;

Clause (5): fails to disclose a material fact known to him which is not disclosed in a financial statement, but disclosure of which is necessary in making such financial statement where he is concerned with that financial statement in a professional capacity;

Clause (6): fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity;

Clause (7): does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;

Clause (9): fails to invite attention to any material departure from the generally accepted procedure of audit applicable to the circumstances;

Part II

Clause (1): contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council:

Clause (3): includes in any information, statement, return or form to be submitted to the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority any particulars knowing them to be false;

Part III

A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.