

THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA

ERNAKULAM BRANCH OF SIRC

SICASA E-NEWSLETTER



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My Dear Young Friends,

"Destiny is not a matter of chance, It is a matter of choice. It is not a thing to be waited for, It is a thing to be achieved". – William Jennings Bryan



Being a schools boy, on his way to school, Napoleon saw a small crowd under a tree. It was a palm reader reading the palms and predicting the past, present and future of people around him. Napoleon also approached him and asked him to read his palms and say whether he will become an emperor in his life. After reading his palms, the palm reader told that none of the lines in his palm predict he will become an emperor. On hearing it, Napoleon took the knife with the palm reader and cut a line on his palm and asked him, whether he will become an emperor with the line drawn by him. After seeing this, the palm reader told him that no force in this world can prevent him from becoming an emperor, because the line was drawn by he himself.

Friends, it is we who decide our destiny. Our choice in life determines our destiny in life. It is not the lines in our palms or head that decide our future. It is we whose decisions and actions and choices decide our future and life. We ourselves should draw the lines for our future. We may have many reasons or excuses for not doing or starting anything or leaving or quitting a programme or a plan. Beyond all these reasons and excuses, a successful person will always see that the plans are executed and things get done. It is not our limitations but our determination and persistence that will transform our lives and make it successful.

Friends, we celebrated World Accountancy Day on 10th of the month jointly with Bhavan's College of Arts and Commerce well, attended and participated by students. The mega programme of the year, CA Students Conference was held on 24th and 25th of November. Eminent personalities like CA V Pattabhi Ram, Chennai, CCM CA Sripriya K, Chennai, CA Venugopal C Goivnd, Ernakulam, CA Ganesh Prabhu Balakumar, Chennai, CA Anjanikumar Sharma, Delhi, CA Balagopal R, Past CCM CA V C James and CA Vivek Krishna Govind chaired and led various sessions in which student presenters from different parts of India made technical presentations. The highlight of the two day conference was the interaction of students with BOS members and Guinness World Record Holders Sri William Panipacha, Sri Abheesh Dominic and Sri Job Pottas. CA. Mangesh Pandurang Kinare, Vice-Chairman, Board of Studies, CCM CA Babu Abraham Kallivayalil, and CCM CA. Rajesh Kumar, interacted with the students on various matters and cleared doubts and queries of the students. The Conference was inaugurated by Hon Justice Surendra Mohan, Judge HC of Kerala and the guest of valedictory function was Sri Hibi Eden MLA. It was a memorable event in the history of SICASA Ernakulam Branch.

"Wishing you all a Merry X'mas and a Happy & Prosperous New Year2018"

With warm regards

CA Roy Varghese
Chairman, SICASA Ernakulam Branch

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Upcoming Events



EKAH- All Kerala Cultural Fest to be held on 17th of December 2017

PRIVILEGES OF SMALL COMPANY

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Small Company (Section 2(85)) :

A company other than a public company ;

- paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
- turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees. Provided that nothing in this Section shall apply to –

a holding company or a subsidiary company;

a company registered under Section 8; or

a company or body corporate governed by any special Act;

This means, for a company to be classified as a small company, it should not be a public company or a holding company or a subsidiary company. If a company falls under any of these categories, it cannot be a small company (no matter howsoever low is the turnover or total paid up share capital). Also, a company which is registered u/s 8 of the Act cannot be classified as a small company, i.e., a limited company which has charitable or other objectives (as specified u/s 8 (1) (a)) and intends to utilise its income for promoting its objectives without making the payment of any dividends to its members cannot be considered to be a small company. In case a company or the body corporate is governed by a special Act which is passed by the government, it cannot fall under the category of small company.

A company which is eligible to be known as a small company in one particular year might not be eligible to have the status of a small company in the subsequent year. This status is determined on the basis of the Annual return which is filed after the end of every financial year. This form needs to have an attached certificate (refer Form no MGT 7) which certifies the company to be a small company. If the company is no longer a small company; along with the change in status, the benefits which are accorded to a small company are also withdrawn. The moot question which remains unanswered here is regarding the benefits which are accorded to a

small company. These benefits have been given in order to ensure that the interests of such companies are protected from the consequences of regulations designed to balance the interests of the stakeholders of large corporate blocs.

Exemptions & Benefits

Most of the benefits which are available to the small companies are the same as those which are available to a one person company. However, all the privileges which are available to a one person company are not available to a small company. The benefits which are accorded to a small company are:

Annual returns (Section 92):

Every Company shall prepare a return (referred as Annual Return) in the prescribed form containing the particulars as they stood on the close of the financial year. This has to be signed by the director and the company secretary, or where there is no company secretary, by a company secretary in practice.

In case of a small company, Annual Return can be signed by the Company Secretary and when there is no Company Secretary or by the director of the company.

Meetings of the Board (Section 173) :

As per Section 173(1), Every Company shall hold minimum of 4 meetings every year provided the gap between two consecutive board meetings shall not be more than 120 days.

A Small Company shall be deemed to have complied with the provisions of Section 173 if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than 90 days.

Cash Flow Statement (Section 2(40)):

Section 2(40) defines "financial statement" and it includes : a Balance Sheet, Statement of Profit and loss, Cash Flow Statement, A Statement of changes in equity if applicable and any other explanatory notes.

Provided that the financial statement, with respect to Small Company may not include the cash flow statement. Small Company is not required to include the Cash Flow Statement as a part of its financial statement.

Auditor Regulations (Rotation of Auditors Section 139(2)):

The following class of companies falls under Rotation of Auditors :

- i) All unlisted public companies having paid up share capital of rupees ten crore or more;
- ii) All private limited companies having paid up share capital of rupees twenty crore or more;
- iii) All companies having paid up share capital of below the threshold limit mentioned above, but having public borrowings from financial institutions, banks or public deposits of rupees fifty crores or more.

This provision specifically excludes small company from mandatory rotation of the auditor or the maximum term of an auditor being 5 years in case of an individual and 10 years in case of a firm of auditors is also not applicable.

Merger Process:

The merger process of more small companies has to be approved on a fast track basis. Such merger also requires the approval of:

1. Official liquidator;
2. Registrar of Companies (ROC);
3. Members holding 90% of the total number of shares (or more); and
4. Majority of creditors who represent 9/10th in value of the creditors or class of creditors of the respective companies which are indicated in the meeting convened by the company by giving a notice of 21 days along with the scheme to its creditors for the purpose, or have otherwise been approved in writing.

Internal Financial Controls (Section 143(3)(i)):

This section requires the auditors of the companies to report as whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls.

In the notification dated 13th June 2017, states that the requirements of reporting under section 143(3)(i) shall not apply to small companies.

Consolidated financial statements (Section 129(3)):

It appears that small companies are not required to prepare consolidated financial statements. But, the small companies which have an associate company or joint venture have to prepare the consolidated financial statements.

Fees for Small Companies (Section 403):

Fees for filings and other formalities u/s 403 of the Companies Act, 2013 is also comparatively lower for the small companies. There is substantial rebate in fees for registration of small companies. It is also provided that such fees will be applicable only if it remains small for a minimum period of one year from the date of incorporation.

Small Company is permitted to have one meeting in each half of the calendar year and the gap between two meetings is not less than 90 days.

Conclusion

As mentioned above, a small company need not remain a small company throughout its existence. The year it fails to meet the essential requirements as mentioned above, the benefits will be withdrawn from next year onwards. The Act facilitates business-friendly regulations for the small companies and is a positive step taken towards promoting investments and small companies.

ACCEPTANCE OF DEPOSITS AND LOANS TO DIRECTORS

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Section 73:

It states that No company whether public or private can accept deposit from anybody without complying with the provisions mentioned in Section 73. Clause (viii) of Rule 2(c) specifically excludes loans from directors from the purview of deposit definition if the director gives a declaration that the amount he is lending is not out of borrowed funds. Clause (vi) of Rule 2(c) excludes loans received from any other company from the definition of Deposits.

Restriction on Company to accept loan and deposit as per Companies Act, 2013 Change in Provisions:

Section 73:

The Companies Act, 1956 permitted private companies to borrow from directors, shareholders and relatives of directors. However, the Companies Act, 2013 has brought a major change in the borrowing provisions for private companies and removed shareholders and relatives of directors from the list of lenders. Going forward, any company, whether public or private, can borrow only from the following persons apart from banks and financial institutions:

Directors of the Company provided that the director gives a declaration that the amount he is giving is not out of borrowed funds.

Any other Company, whether public or private (subject to the limit imposed by section 180(1)(c) of the Companies Act, 2013)

Loans and Deposits from Members or Directors in a Private Company Loan From Members

Apart from share capital of company, loans are major source of finance for company. A company can raise its funds from various sources like accepting public deposits, loan from financial institutions or banks. However Companies Act 2013 strictly prohibits Private Companies accepting funds by way of public deposits.

In Companies Act 1956 a private company was allowed to accept loan from Director, Shareholders or Relatives of Directors but Companies Act 2013 specifically defines any Loans taken are regarded as 'deposits'. As per the definition of the term 'deposit' under section 2(31) : "deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;"

However, as per Rule 2(c)(viii) of the Companies (Acceptance of Deposits) Rules, 2014 (the "Deposit Rules") the term 'deposit' shall not include any amount received from a person who, at the time of the receipt of the amount, was a director of the company, provided that the director from whom money is received, furnishes a declaration in writing to the company at the time of giving the money, to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others. Loan or an amount received by the company from its director is not regarded as a 'deposit' if the following conditions are fulfilled:

At the time of receipt of the amount by the company, the lender was a director

Of the Company. This doesn't state that the exemption applies "as long as the payer is a director". The loan will continue to be exempt even after the person concerned ceases to be a director on any account whatsoever.

The Director furnishes to the Company a declaration in writing.

(c) Director at the time of giving money should give declaration that amount so advanced is not given out of the funds acquired by the director from others as loan or deposit or out of borrowing. The declaration is to be given before the loan transaction is complete.

This Exception to Deposits rules 2014 is applicable to both Private as well as Public Companies.

As per MCA notification dated 05/06/2015 section 180 of companies act 2015 is no more applicable on Private Limited Companies.

Hence there is no requirement to file a special resolution in AGM for authorization where the money to be borrowed, together with the money already borrowed by the company even if it exceeds aggregate of its paid-up share capital and free reserves.

Deposit From Members

Any Loans taken are regarded as 'deposits' under the Companies Act, 2013. As per the definition of the term 'deposit' under section 2(31) : "deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;"

According to provisions of Section 73, a company whether private or public can accept deposits from its members only subject to compliance of the Deposit Rules. But deposits from persons other than members can now be accepted by "Eligible Companies" only.

Rule 2(1)(e) of the Rules Eligible Company is a public company having a net worth of Rs. 100 crores or more or turnover of Rs. 500 crores or more can accept deposits from persons other than members. The eligible company should obtain the prior consent of the company in general meeting by way of special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits.

Thus, all private limited companies and "Non-eligible companies" can accept deposits only from members.

Quantum of deposit that can be accepted by a Private Limited company

As per notification MCA GSR 464(E), dated 5th June, 2015, a private limited company can accept deposits only from its members up to 100% of its paid up capital and Free Reserves & Securities Premium account provided it files with the Registrar information about such acceptance.

The above limit of 100% of paid up share capital & free reserve should be calculated based on the last audited Financial Statements adopted by the members.

The pre-condition for acceptance of deposits from members

Deposits can be accepted from persons, whose name appears on the Register of Members of the Company. However where a person whose name appears in the Register of members has transferred his shares but the transfer is pending for registration, then the Company should repay deposits which it has accepted from such members. The company should pass an ordinary resolution preferably at each AGM seeking authorization for acceptance of deposits and such resolution is to be filed with ROC within 30 days of passing the resolution.

The deposits should be subject to such rules as may be prescribed in consultation with the Reserve Bank of India.

Secretarial steps for private limited companies and non-eligible companies for acceptance of deposits

The following are the various steps which a private limited company and non-eligible company have to fulfill in order to comply with the provision for acceptance of deposits from the members.

Hold a Board Meeting for proposing acceptance of fixed deposit. In the said Board Meeting itself, approve the Notice for holding general meeting of the Company for obtaining the approval of the shareholders for the said proposal.

Hold the general meeting of the company and obtain the approval of the shareholders by means of special or ordinary resolution for authorizing the Board of Directors to accept the deposits.

To file a copy of such resolution within 30 days of date of passing the resolution with the Registrar of Companies in e-form MGT 14.

To open a separate a bank account called 'Deposit Repayment Reserve Account' with Schedule Commercial Bank and depositing amount not less than 15% of the deposit maturing during the Financial Year. Certifying that the company has not committed any default in repayment of deposit and interest thereon.

To hold one more Board Meeting to obtain the approval for the draft Circular in Form DPT-1 of the Deposit Rules. The said Draft Circular should be signed by majority of the Directors of the company.

To file a copy of such signed circular with the Registrar of Companies in Form GNL-2 for registration.

To ensure that the Circular which is to be issued for acceptance of deposits is sent either by electronic mail or registered post AD or by speed post to the members of the company only and not to public or other persons.

To appoint Deposit Trustees for creating security for the secured deposits, if any by executing a Deposit Trust Deed in Form DPT-2 at least 7 days before issuing the Circular.

To enter into contract with Deposit Insurance services providers at least 30 days before the issue of the Circular.

To issue deposit receipts in the prescribed format and under the signature of an officer duly authorized by the Board within a period of two weeks from the date of receipt of money or realization of the cheque

To make entries in the Register of Deposits accepted Rules within 7 days from the date of issuance of the deposit receipt and arrange to get such entries authenticated by a Director or Secretary of the Company or by any other officer authorized by the Board

To file the return of deposit in Form DPT-3 by furnishing the requisite information contained thereon as on 31st day of March each year duly audited by the Auditors before 30th June every year.

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PHOTO GALLERY

CA STUDENTS' CONFERENCE



