

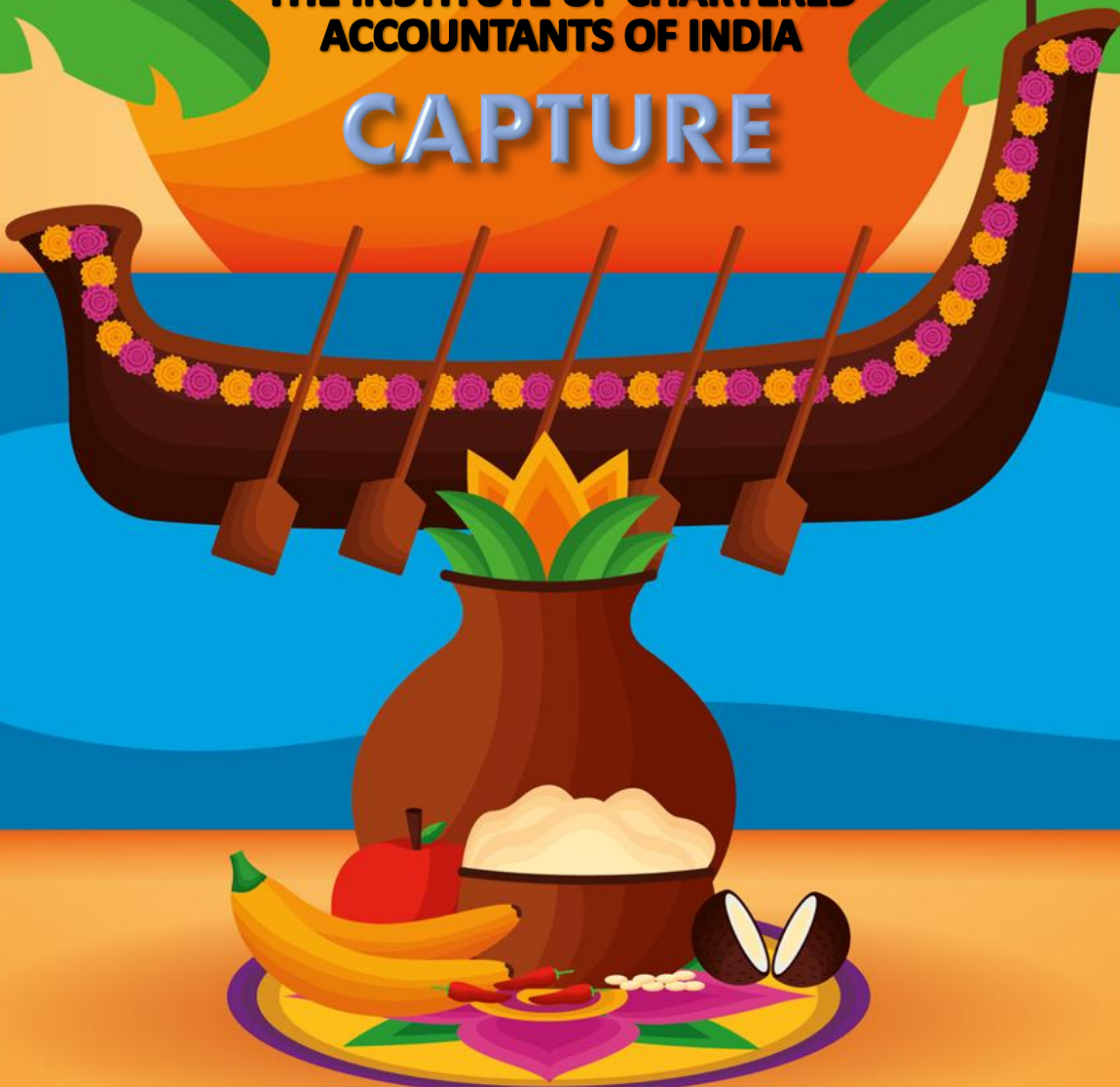


**ERNAKULAM BRANCH OF SOUTHERN
INDIA CHARTERED ACCOUNTANTS
STUDENT'S ASSOCIATION(SICASA)**

OF

**THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA**

CAPTURE



Newsletter – September 2019

September Edition

Chairperson's message



Dear Budding Talents!

The month of September marks the beginning of the festive season in Kerala. Onam brings in prosperity and celebrations to each Malayali. SICASA Ernakulam marched forward in our endeavour to provide the best education and enjoyment facilities to the students of SICASA Ernakulam.

SICASA Ernakulam organised a joint seminar with Nirmala College and M G University on Accounting Standards. The Seminar was inaugurated by the Chairman of Ernakulam branch of SIRC of ICAI, CA P R Sreenivasan. CA Amal Paul and CA. Asif Arfath M introduced various Accounting Standards to the gathering.

Teachers day was celebrated in a grand manner by SICASA Ernakulam. Essay writing and slogan writing competitions were conducted with the theme **"MY TEACHER-TORCH BEARER OF MY LIFE"** and cash prizes were announced for the best entries. The entry has also been sent to Delhi for competing at the national level.

Motivational sessions for the student were conducted and senior teachers were honoured at the branch. Various other motivational sessions were also undertaken this month. A session on **"STRATEGIC APPROACH FOR FACING FINANCIAL MANAGEMENT AND COSTING EXAMS"** by CA Shanti Ganapati and Self Development by SIRC Chariman CA Jomon K George were also a few other sessions conducted by SICASA Ernakulam for our students. Seminar on Tax audits was conducted and students were addressed by very eminent and senior Chartered Accountants CA Baby Paul and CA Parvathy Ammal.

Onam was celebrated in a very colourful manner at the branch. Students made a wonderful Flower carpet or Onapookkalam as we call it and organised various games making it a very memorable day. A sumptuous and tasty onasadya was given to all the participants.

Since the due date for filing of income tax returns have been extended by a month and the revised due date is 31st Oct 2019, October is going to be an extremely busy one. Many students who are preparing for their examinations in the month of November, 2019 would have definitely started their preparations. I wish all the students the very best for the assignments that they undertake be it audit, be it exam preparations. May each one of you succeed in reaching your professional and personal goals.

CA. Deepa Varghese

Chairperson, SICASA Ernakulam of SIRC of ICAI

Secretary's Report



Dear Friends,

May I start this Month's report by telling you how happy I am with the Onam celebrations conducted at the institute and the active participation of students for the same. We had various games that were conducted here, of which the photos you can find in our instagram page.

Hence forth, SICASA Ernakulam will be more active on Social media especially on our Instagram page, and I urge you to be part of our family and stay updated about news and celebrations at SICASA through our social media channels.

With the exams coming up in November, I hope you're all at the revision stages of your studies and the Ernakulam Branch of the Institute is fully preapred to help you with your Studies, with facilities like the reading room, a Library, Mock tests and helpful staff and I urge you to make best use of the same for your revisions.

Wishing you happy learning and fun times,

Jinu Baby

Secretary, SICASA Ernakulam of SIRC of ICAI

Companies and Borrowing Powers

Prepared by
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SRO0520068

Every trading company has an implied power to borrow, as borrowing is implied in the object for which it is incorporated. A trading company can exercise this power even if it is not included in the Memorandum. However non-trading company has no implied power to borrow and such power can be taken by it implied power to borrow and such power can be taken by it by including a clause to that effect in the Memorandum.

Definition:

The ability to borrow more funds. A person or company with a great deal in assets and little in debt is likely to have greater borrowing power than a person or company in the opposite position.

Restrictions on borrowing power:

- A public company can borrow only after the receipt of Commencement Certificate. [Section 149(1)]. But a private company can borrow immediately after the incorporation

The Board of Directors may borrow moneys by passing a resolution passed at the meetings of the Board. The board may delegate its borrowing powers to a Committee of Directors. Such a resolution should specifically mention the aggregate amount upto which the moneys can be borrowed by the Committee, the Managing Director, Manager or any other principal officer of the company on such conditions as it may prescribe [Section 292 (1) (c)]

- The moneys borrowed together with the moneys already borrowed by the company (excluding loans obtained from banks i.e. working capital) shall not exceed the aggregate of the paid up capital and the free reserves. [Section 293(1)(d)]

- It may be noted that a company may borrow in excess of its paid up capital and free reserves if it is so consented and authorized by the shareholders at a general meeting.

Transactions, which are not borrowing

- Temporary loans (repayable within six months or on demand) obtained from the company's banker in the ordinary course of business.
- Borrowing of money by a banking company in the ordinary course of business.
- Hire purchase and leasing transactions.
- Purchase of machinery on deferred payment.

Ultra Vires Borrowing

- A Company is said to resort to ultra vires borrowing if it exceeds the authority given to it in this respect by the Companies Act, the Memorandum and the Articles of the company. An act of borrowing by the company may be ultra vires (outside the power of) the company or ultra vires the directors or ultra vires the Articles.

- **Void ab initio borrowings** – Where such loan is ultra vires the company, such loan is null and void and does not create an actionable debt. Any securities given in respect thereof are inoperative. Thus, the lender cannot sue the company for the return of the loan and shall be under an obligation to return back the securities, if any.

However, if the lender has acted in good faith that is without any knowledge that the company borrowed the money beyond its powers, he may have the following remedies

1.Injunction- If the company has not spent the money so borrowed, the lender may obtain an injunction order against the company restraining it from spending the amount and recover the same.

2.Restitution- If the money has been invested in some particular asset, he may claim that asset, or if such asset cannot be ascertained he may claim that any increase in the assets as a result of such borrowing be restored to him in the even of a winding up.

3.Subrogation- If the money has been applied in paying off some debts of the company, he is entitled to step into the shoes of the creditors so paid off and can rank as a creditor of the company to the extent of the money so applied.

4.Suit for breach of warranty- The lender may sue the directors personally for breach of implied warranty of authority and claim damages for the same.

5.Ratification of borrowing- If the borrowing power exercised by the company is ultra vires the Memorandum, that is beyond the powers given to its by the Memorandum, such borrowing cannot be ratified afterwards in any way, even by a unanimous resolution of the shareholders in a general meeting.

But if the borrowing is ultra vires the Articles, but intra vires the Memorandum the act of borrowing can be ratified by the shareholders in general meeting by altering the Articles or by passing a resolution as per Articles.

If the borrowing is ultra vires the directors but intra vires the Memorandum, that is within the powers given by the Memorandum but beyond the authority of the directors, the company in general meeting may ratify such act of the directors. In that case the debt will be valid and binding on the company.

BORROWINGS & CHARGES

Even if the borrowing is not ratified by the company, the lender in good faith will be protected since the directors in borrowing the money had acted as agent of the company. However in that case the directors will be liable to indemnify the company against the loss incurred thereby.

- Even in the case of unauthorized borrowings, the company will be liable to repay, if it is shown that the money had gone into company's pocket [Lakshmi Ratan Cotton Mills Co. Ltd v. J K Jute Mills Co; Ltd (1957) 27 Comp. Cas. 660 (All).]

CHARGES

- Borrowing has become an equally important method along with share capital of financing projects. Corporate borrowing has its own peculiarities. No single individual may in normal circumstances be in a position to meet the loan requirements of a company. Loan-money has, therefore, to be raised from a large number of individuals very much in the same way as share capital. Loans may have to be obtained in a sequence one after the other.

- The problem was solved by the evolution, on the one hand, of debentures and, on the other, of the concept of floating charge, both being reserved only for the corporate sector. The same assets are charged to several lenders and also to several lenders in a series. That raises a question as to who shall have priority. This gave rise to the concept of pari passu ranking. Since other trade creditors have also to seek payment only out of the company's assets, the problem had to be tackled as to how they should know, before supplying more credit, what assets would be available as security for their payments?

- The Act prescribes for registration of charges with the Registrar of Companies, and also gives a list of assets a charge on which must be registered. Registration of charges identifies the assets, which are subject to the charge. It becomes a source of knowledge, and, therefore, operates as constructive notice and a protection, to "all classes of persons interested in knowing the assets position of the company. It makes the charge effective against all quarters including the liquidator.

Types of charges

1. **Fixed charge** – a charge is fixed when it is made specifically to cover definite and ascertained assets of permanent nature such as land, building, or heavy machinery. A fixed charge passes legal title to certain specific assets and the company loses the right to dispose of the property unencumbered, though the company retains possession of the property.

2. **Floating charge** – it is a charge on the current assets of the company, present or future which changes from time to time in the ordinary course of business e.g. stock in trade, bills receivable, cash in hand, work in progress, goods in transit, inventory etc.

- (i) When the company goes into liquidation;
- (ii) When the company ceases to carry on the business;
- (iii) When the creditors or the debenture holders take steps to enforce this security e.g. by appointing receiver to take possession of the property charged;
- (iv) On the happening of the event specified in the deed.

Registration of charges[Section 125]

- The security created and charged for the following purposes must be registered with the ROC within 30 days

(or further period of 30 days with additional fees) after the date of their creation:

- (i) Securing any issue of debentures;
- (ii) Uncalled share capital of the company;
- (iii) Any immovable property;
- (iv) Book debts, stock in trade or other current assets of the company;
- (v) Any movable property (not being a pledge);
- (vi) Calls made but not paid;
- (vii) IPRs of the company.

- The ROC shall with respect to each company maintain a Register of charges containing all the specified particulars. Upon registration of charge by the company, ROC shall issue a Certificate of charges, which shall be conclusive evidence.

Memorandum of satisfaction[Section 138-140]

- On payment or satisfaction of any charge in full, the company must notify the fact to the ROC within 30 days from the date of such payment or satisfaction. The ROC shall on receipt thereof, shall record the same after send due notice to the concerned creditor and on receipt on him being satisfied (the creditor may issue NOC to the satisfaction) shall register the satisfaction of the charge. A memorandum of satisfaction shall be entered in the Register by the ROC.

The Central Government has been empowered to extend time for registration of charge or satisfaction of charge of issue of debenture of a series and to order that the omission or mis-statement in the Register of Charges be rectified.

One among the Essays that bagged a prize in the Essay writing Competition held in connection with Teacher's Day.

My Teacher – Torch Bearer of my Life

The first memory that comes into each of our minds when we think of our teacher varies from individual to individual, but there is no argument about the importance of a good teacher in one's life.

For us CA students, the teacher who teaches us the practical side of things, the one who prepares us for our future endeavors, and the one who takes up responsibilities for our silly mistakes in his own name should by all means be treated as our guru. Yes, I'm talking about none other than our principals.

We share a special bond with our principal, which some only realize after their articleship gets over. If we just take the time to open our eyes wide and look at things from a different perspective, we will understand that our principal is not only our mentor, but also a safety blanket that helps us prevent making mistakes, teaches us more than what our books do and occasionally scolds us for the silly mistakes we make, so that we never repeat them again.

I would like to discuss a few virtues my Principal bestowed upon me.

1. **Work Ethics** :- In an era where the daily news is flooded with frauds and scams, I learned from my principal, how to conduct myself as a professional and the ethical values and the responsibilities entrusted on me by the Institute and my office.

2. **Maintaining Confidentiality** :- On the first day my principal advised me on where we as Chartered Accountants stand in the 'food chain like structure' of the society. I was made understood that the public may confide in me and share financial secrets, that were part of the work I was doing and were not to be disclosed to the general public as such.

3. **Punctuality** :- Before my articleship period, I was never on time, anywhere and most of my friends used to complain about the same, but that never deterred me from being late, but then I met my principal, who was at least 15 minutes early, every day, consistently, wherever he was headed. I asked him how he managed and the simple reply he gave was that he valued the time of others, and that the proverb, "Time is money stands true, but more so than that, not wasting time earns you respect".

4. **Time Management** :- I had a very 'lax' time management policy to say the least, but things were set straight by my principal as he helped me design a time table during my exam leave, so as to help me study. I was addicted to social media at the time and that time table proved to be my 'Rehabilitation'. I still follow the time table, and find time for my hobbies, reading books, studying and still managing an active social life.

5. **General Conduct and Dressing** :- My principal taught me that each occasion and each situation calls for a different style of dressing. And that the way we dress and the way we conduct ourselves not only keeps us confident, but also commands respect from others.

6. **Social Skills** :- My principal taught me how to deal with others, how to communicate, with consideration to the position I hold, be it in my firm, as an employee or as an individual. I learned the skill of public speaking which is otherwise hard to master with my principal pushing me to take study circles at the institute and being active in social activities even other than SICASA and CA related activities.

I believe that the teacher is the captain of the ship that is my life, as he guides me through rough seas, onto calmer waters. He is my torch bearer, but even more than that he is someone I owe all my success to.

I believe that my teacher has transformed my life for the better and with this I would like to promise him that he is crafting not only a skilled professional, but more importantly a good human being, and we all know that's hard to find these days.

By,
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Memories to look back on...

Onam Celebration by SICASA





From the Tax Audit Seminar Conducted at The Branch.

