

# TRIVIUM

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## THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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



*That person who is awake in those that sleeps, 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: 'On reaching God all progress ends'.*

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# SICASA CHAIRPERSON'S COMMUNICATION

**Dear Future Chartered Accountants,**

Let me begin by wishing you all a very happy Chartered Accountants Day. This being a very peculiar year, ICAI has celebrated CA day week virtually by conducting many webinars for the students as well as members. We Chartered Accountants were given the tag line of Partners in Nations building by Sri. APJ Abdul Kalam in the year 2005. As he has rightly penned, we are the doctors of economy and should help to rebuild our nation with our relentless efforts. We should continually be involved in this process as our contribution is very crucial and inevitable. Let me remind you all that, you all have chosen the right profession which will not only help you to grow yourself but also help the nation to grow. This economy now has gone back few years due to the impact of covid pandemic and as CA's you all should be equipped for the restructuring the economy to a better condition.



Jai hind , Jai Icai

CA Rema Sarma N  
SICASA Chairperson,  
Thiruvananthapuram Branch of ICAI.

# SECRETARY'S REPORT

**Dear Aspiring Chartered Accountants,**

Our fight against the Corona global pandemic is moving ahead with great strength and steadfastness. We have so far been able to avert the harm caused by corona to a large extent. We must be together in this to wipe out this pandemic.

I on behalf of Sicasa, hereby requests you all to be please stay at home and take utmost care of yourselves and your dear ones.

Keeping in mind about your aim, even during this pandemic, please focus to enrich your knowledge. We are here to assist you in multiple ways possible.

Apart from online classes, SICASA Trivandrum is continuously organizing online programs like webinars, YouTube study circles etc. in the best interests of students.

Best Regards,

Abhijith Anil  
Secretary  
Thiruvananthapuram Branch of ICAI.



# RESPONSIBILITIES & LIABILITIES OF DIRECTORS UNDER THE COMPANIES ACT, 2013



The director of a company is responsible for smoothly carrying out the business and managing the day to day affairs of the company. They are appointed by the shareholders for the efficient and effective running of the company as professionals. The relationship between a director and the shareholder is that of a 'fiduciary' (i.e. based on Trust). They are entrusted with lots of powers and with power comes liability and duty too. Many of such powers, duties and liabilities have been drafted in the Companies Act.

Section 149(1) of Companies Act, 2013 stipulates that the company should have Board of Directors. As per Section 2(34) of Companies Act 2013, "Director" means a director appointed to the Board of a company.

Majorly, directors are categorized as follows and is explained in brief:

## A. Executive Directors

- 1) Whole Time Director: He is in whole time employment and looks after the overall functioning and management of the company.
- 2) Managing Director: He is the head of management who has substantial powers to control and direct managerial affairs subject to the Board's approval.

B. Non-Executive Directors: He is neither a Whole-time Director, Managing Director nor a nominee director.

C. Independent Directors: He is a non-executive director with pecuniary relationship with the company, its promoters, senior management or affiliate companies, is not related to promoters or the senior management, and/or has not been an executive with the company in the three preceding financial years as defined in sec 149(6)

D. Others: On the basis of the purpose of their appointment, further types of directors are recognized as follows:

- a) **First Director:** Until directors are appointed in AGM, subscribers to MOA are the first directors.
- b) **Additional Director:** At the discretion of the board, additional directors can be appointed who will hold office until next AGM.
- c) **Alternate Director:** Board may also appoint an alternate director who will act when the original director is not present for a minimum of 3 months, subject to the articles of the company.
- d) **Rotational Director:** These directors have to retire at the end of their tenure due to rotational retirement mandated as per Companies Act 2013.
- e) **Nominee Director:** These are appointed by certain shareholders in case of oppression and mismanagement in the company. However, their liability is not just restricted to such handful of shareholders but extends to all shareholders as a whole.
- f) **Resident Director:** These are the ones who have resided in India for at least 182 days in the immediately preceding Financial year.

### 1) Responsibilities of Directors

Before understanding what are the responsibilities of Directors under the Company Law, first let us understand the difference between Duty and Responsibility. In normal parlance, the main difference between the two is; Duty is that which one is morally or legally obligated to do; while Responsibility is the state of being responsible, accountable and answerable. Through the above difference, we can reach to the conclusion that, Responsibility is much wider term than the Duty, and responsibility includes Duty also.

Therefore, as per Section 166 of the Companies Act, 2013, following are the Duties of Directors.:

#### a) Acting in Good Faith and in Best Interest:

He shall act in good faith in order to promote the objects of the company for the benefit of members as a whole, and in the best interests of the company, its employees, the shareholders, the community, and for the protection of environment.

#### b) Acting with care, skill and Independent judgement:

Director shall exercise his duties with due and reasonable care. Further, an exercise of judgement indicates that there should be no external influence, and he should have complete freedom to reach to his judgement.

**c) No undue Gain or Advantage:**

It stipulates that, no personal benefit should be made out of the company's business, neither it should accrue to director's relatives, partners or associates. The intent behind this is that, there should not be any loss to the company.

**d) No Assignment:**

Directors shall not assign his office's rights to another person, and if done it shall be Void.

Now as regards responsibilities are concerned, the Companies Act, 2013 has given some powers to the Board of Directors as per Section 179(3) of the Act which stipulates the powers which are exercisable only by the Board by passing of the Board Resolution in the Board meeting only. The Shareholders will not have any right to take part in the decision making and management of the company which is reserved exclusively for the Board of Directors of the company. The Board shall not exercise any power which is required to be exercised by the company in general meeting.

The following are the powers of Board of Directors;

- a. to make calls on shareholders in respect of money unpaid on their shares
- b. to authorise buy-back of securities under section 68
- c. to issue securities, including debentures, whether in or outside India
- d. to borrow monies
- e. to invest the funds of the company
- f. to grant loans or give guarantee or provide security in respect of loans
- g. to approve financial statement and the Board's report
- h. to diversify the business of the company
- i. to approve amalgamation, merger or reconstruction
- j. to take over a company or acquire a controlling or substantial stake in another company
- k. to make political contributions
- l. to appoint or remove Key Managerial Personnel (KMP)
- m. to appoint internal auditors and secretarial auditor.



The Board by passing a resolution at its meeting, may delegate the powers specified in clauses (d) to (f) above to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office.

## 2) Liabilities of Directors

Directors are exposed to liabilities, it may be 'civil' or 'criminal' in nature in case of breach of duties by them. In cases of civil liabilities, the liability is set off by making payment or compensating the affected party whereas criminal liabilities, mentioned under various statutes, attract punishments for the person responsible for such breach.

Further, penal provisions throughout the Companies Act, 2013 have been made more stringent and provide for increased penalties as compared to the Companies Act, 1956. On an average, the minimum amount of fine that is imposed under certain Sections of the 2013 Act is Rs. 25,000/- which in certain cases extends to Rs.25 crores or even more.

In the following contraventions, the amount of penalties is Rs. 1 Crore or even more.

- a. Violation of provisions relating to Non-profit companies (Section 8)
- b. Violation of provisions relating to subscription of securities on private placement (Section 42)
- c. Issue of duplicate share certificates with an intent to defraud (Section 46 (5))
- d. Failure to repay deposits within specified time (Section 74 (3))

The liability of a director could arise in the following manner:

1. Breach of fiduciary duty
2. Ultra-vires acts
3. Negligence
4. Malafide acts/intentions

Apart from monetary penalties, certain offences even attract imprisonment. Most of the offences leading to imprisonment under the 2013 Act are non-cognizable (it would need a warrant to arrest) but there are certain serious offences which are cognizable in nature and would not require a warrant to arrest. These offences are mainly connected to fraud or intent to defraud. Some of such offences are listed below:

Section 7(6) - Furnishing of any false or incorrect particulars regarding any information or suppressing any material information, in any of the documents filed with the Registrar of Companies in relation to the registration of a company.

Section 34 - According to this section, every person who authorizes the issue of such prospectus which contains untrue or misleading statements in the form of inclusion or omission thereby inducing another person to buy shares on that faith will be subject to imprisonment which may extend from minimum 6 (six) months to maximum 10 (ten) years.

Section 36 - Fraudulently inducing person to invest any money.

Section 53 - This section strictly prohibits any company to issue shares at a discount. Recently the changes were made in the penalty provisions as per The Companies (Amendment) Ordinance, 2019. Non-compliance of this section results in a fine for the company and the officer in default which is equal to the amount raised by the issue of shares at discount or Rs. 5 Lakhs, whichever is less. Company shall also be liable to refund the money received with interest @ 12% p.a. from the date of issue of the shares.

Section 56 – Default relating to transfer and transmission of shares with an intent to fraud

Section 68 - This section contains provisions and guidelines to be followed by the company while buying back its own shares or other securities. According to Section 68 (11), in case of default by the company in complying with the provisions of aforesaid section or guidelines laid down by SEBI, criminal liability of the officer in default of such company shall be imprisonment up to 3 (three) years or fine not less than One lakh rupees which may extend to three lakhs rupees or both.

Section 71(11) - This section deals with issuing of debentures by the company for financing with an option to convert such debentures into shares, wholly or partly, at the time of redemption. Non-compliance shall make the officer in default liable for imprisonment for a period which may extend up to 3 (three) years or fine of 2 (two) lakhs to 5 (five) lakhs or both.

**Section 86 - Failure to Register Charge**

Officer in default- Maximum imprisonment of six months or a fine not less than Rs. 25,000 which may extend to Rs.1 lakh or both.

**Section 92(5) - Failure to file Annual return**

Officer in default - Maximum imprisonment of six months or a fine not less than Rs. 50,000/- and in case of continuing failure, further penalty of Rs.100 per day which may extend to maximum Rs.5 lakhs

**Section 118(12) - Tampering with the minutes of proceedings of general meeting, meeting of Board of Directors and any other meetings and resolutions passed by postal ballot.**

Any person found guilty of tampering with the minutes - Maximum imprisonment for 2 years and a fine not less than Rs. 25,000 but which may extend to Rs.1 lakh

**Section 128(6) - Failure to keep Books of accounts**

Maximum imprisonment of 1 year or a fine not less than Rs. 50,000 which may extend to Rs.5 lakhs or both.

**Section 185(2) - Loan to directors in contravention of section 185**

Maximum imprisonment of 6 months or a fine not less than Rs.5 lakhs which may extend to Rs.25 lakhs.

**Section 186(13) - Loan and investment by Company**

Maximum imprisonment of 2 years or a fine not less than Rs. 25,000 which may extend to Rs.1 lakh.

**Section 187(4) – Investments of company to be held in its own name:**

Maximum imprisonment of 6 months or a fine not less than Rs. 25,000 which may extend to Rs.1 lakh or both.

## **CONCLUSION**

Every director or officer-in-default of a company has huge responsibility of complying with various provisions of the Companies Act while dealing with the matters of the company and failure to abide by the provisions of the Act can lead to huge penalties to the company as well as themselves individually which can be in both civil and criminal form. Thus, they must be aware of the various compliance which needs to be performed. Therefore, a director must be careful while dealing with the affairs of the company and must ensure the maximum amount of transparency in his/her actions.

Thank you.

**Abedeen B. Kapasi**  
**CA Final (WRO-0490545)**

# EXPERIENCE MATTERS

with CA VISHNU S.R.



## Tell us more about yourself

I am Vishnu S R. I recently prefixed CA to my name. You could call me a newbie in this regard. I managed to secure All India Rank 9 in the final examination. I did my articleship from Kumar & Biju Associates LLP. My native is Veeranakavu near Neyyadam. I had done my schooling from GVHSS Veeranakavu and GHSS Kulathummel.

## How does it feel to be known as AIR 9 in the final examinations?

It is still more than a dream come true moment for me. I never could imagine that I could be among first 10 Ranks in such a difficult exam. The result day was quite special for me. Early morning, I woke up after a sleepless night. To relive me of the stress, I thought of going for a FDFS of Lalettan! I took leave from my office to prepare myself to accept the result. Preparing for the worst with a better back up plan is always part of a good strategy. When the results were announced, some of my friends started calling, but I didn't even get access to the site. I gave them the details to check my results. By that time I got in, I was surprised looking at my score sheet, especially ISCA. I didn't even check the merit list in the first 2 hours. When I saw the merit list, it was like sugar added in my favorite sweet. I was laughing loudly, and my neighbors did think that I went mad.

## How were your preparations towards achieving it?

I had just completed classes for 5 subjects before the study leave. I joined for articleship after clearing both groups of intermediate due to which the allowed leaves were good enough for the exam preparations.

I spent a few days to arrive at a good plan considering my strengths and weaknesses. My presentation skills were not up to the mark compared to the institute's expectations. This realization led me to regular writing practice and review.

Revathy Ma'am and Abhilash Sir helped me a lot in improving this. I followed 1-3-7 rule for revision, and it helped me to memorize the concepts quickly.

**Problem**

papers were quite comfortable for me compared to the others. Preparation of short notes for theory papers was beneficial in the last days before the exam.

**Did you set the goal for achieving all India Rank while preparing for your exams?**

Not actually. I already had a target with regard to the score i wanted to achieve. I actually missed it by a few marks. I believe preparing for an AIR is a kind of underestimating other students appearing for the exam. My friends were quite sure that I will qualify in the top. But an AIR was a big surprise. It does gives me a little more familiarity in the CA fraternity.

**Did you only rely on the study material provided by ICAI?**

I relied more on my class notes as well as ICAI study materials for my preparations. Bare Acts were an excellent backup resource for the sake of clarity in concepts.

**What are your hobbies?**

Sleeping is and always has been my favourite hobby. I guess a lot of you readers can relate to it. I used to sleep at least 10 hours during my study leave to keep my mind and body fresh and active. Swimming is the other favourite hobby of mine.



Oh! I lost, lost me where?  
Beyond the seas? Beyond the sky?  
Oh no... not far to there.  
Behind the woods? Between the bushes?  
Where all the thinkers stare.  
Into the river? Or the fire?  
To where no one ever dares...

Yes, I see myself there;  
Watching the mother's care  
While she feeds her kid  
Yes I found myself there -  
From where once I was lost!



Janani MK  
SRO0648337

# PAST EVENTS

**We had conducted a Webinar on the topic - Company Audit 2019 -20 & COVID Pronouncements by ICAI by our Chief Speaker - CA Jomon K George on Monday, August 3, 2020.**



**Our Chairman of The Institute - CA Anilkumar Parameswaran and SICASA Chairperson - CA Rema Sarma N attending the Webinar along with our Chief Guest - CA Jomon K George.**

**We thank all and one of you for giving an overwhelming response to the Webinar.**