



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(SET UP BY AN ACT OF PARLIAMENT)
THRISSUR BRANCH (SIRC)



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2024 AUGUST E-NEWSLETTER



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EDITOR'S NOTE



Dear Members,

As we navigate the ever-growing list of deadlines and due dates that come with our profession as practising Chartered Accountants, I am confident that we have collectively risen to the challenge and successfully completed the ITR filings and TDS return filings on time. It is a testament to our dedication and commitment to our work that we are able to meet these demanding deadlines.

As we reflect on our role in Nation Building, we are reminded that we are not just number-crunchers, but partners in the growth and development of our country. We are ever ready to provide our expertise and assistance, even in the most challenging times, to help our clients and stakeholders achieve their goals. Our perseverance and hard work are a source of inspiration to us all, and I would like to take this opportunity to express my admiration for the tireless efforts of our members.

As we celebrate India's Independence Day this month, I am filled with pride and honor thinking about our collective strength and unity despite setbacks and challenges. The bond of brotherhood among our members is a source of strength and comfort, and I am grateful for the camaraderie and love that exists within our community. I wish all members a happy Independence Day and hope that you will take time to reflect on the significance of this important national holiday.

This month, we have two thought-provoking articles that will provide valuable insights and knowledge. One article by CS Divesh Goyal delves into the intricacies of Rights Issue of Shares as per Companies Act, 2013. His expertise will undoubtedly provide valuable guidance for our members.

I hope you all enjoy reading these articles and look forward to staying in touch with each other.

Jai Hind, Jai ICAI.

Warm regards,

CA. Jeen Paul
Newsletter In Charge

CHAIRPERSON'S MESSAGE

Dear Professional colleagues,

Greetings to all of you!



I hope this message finds you well. As we close the month of July, I am sure that most of us are still reeling from the intense workload and deadlines that came with meeting the 31st July Income Tax filing deadlines. It was indeed a challenging month, but I am confident that we all rose to the occasion and managed to meet the deadlines.

A part from CA Day Celebrations, the month of July was filled with a plethora of seminars and workshops, catering to the diverse interests and needs of our members. We had a total of 8 seminars, each featuring a renowned expert in their field.

Our month began with MSME STARTUP Yatra on July 03 flagoff by CA. Geetha AB SIRC Chairperson, as a part of the programme we conducted a Seminar on "Listing of SMEs" led by CS Nikhil George Pinto, Kochi CS Chapter Chairman.

Next, we had a thought-provoking seminar on "Tryst Between Ethics & Practice" led by CA Deepa Varghese, which highlighted the importance of balancing ethics and practice in our profession.

On July 12, we conducted a seminar on "IT Refresher Seminar - Insight Portal Based Notices Leading to Re-Assessment" led by CA Veeramani P M, which focused on the latest developments in income tax law.

The CA.C K VASUDEVAN MEMORIAL SEMINAR took place on July 15, featuring a seminar on "Professionalising and Scaling Up Family Businesses" led by CA K. Ullas Kamath.

On July 17, we had two seminars. The first was on "Income Tax Law as Applicable for AY 2024-25 Practice Strategy for Doubling the Income of Professionals" led by CA Cotha Srinivas S (CCM), while the second was on "Public Speaking Skills" led by CA Jinu Rose Johnson.

Finally, we concluded the month with a joint seminar with TMA, ICSI, Chamber of Commerce, Investors Club Trichur, analyzing the Union Budget - 2024. The seminar featured experts from various fields, including CA R Krishnan, Dr. V K Vijayakumar, and Sri. T C Mathew.

As we conclude the month of July, we are excited to announce that we have an even more exciting lineup of activities planned for you in coming months. I take a moment to acknowledge the importance of Independence Day, which is just around the corner. On this special day, we wish all our members a heartfelt "Happy Independence Day"!

CA. ANOOP V FRANCIS
CHAIRPERSON

THE INTRICACIES OF RIGHTS ISSUE OF SHARES AS PER COMPANIES ACT 2013



CS. DIVESH GOYAL

Short Summary:

Meaning of Right Issue of Shares: the term 'right issue' not defined in any section or anywhere in the Companies Act, 2013. It is used only in Section 23. Practically, right issue is a method by which Companies raise capital by offering shares to their shareholders. This is privilege given to shareholders of a company to subscribe pro rata to a new issue of securities. The object is, of course, to ensure equitable distribution of Shares and the proportion of voting rights is not affected by issue of Fresh shares.

I. Kind of Shares:

As Per Section-43 of Companies Act, 2013 Share capital of Company limited by shares shall be of two kinds:

1. Equity Shares
2. Preference Share

II. Ways of Issue of Securities: -

As Per Section-23 of Companies Act, 2013 a Private Limited company can issue securities:

1. By way of Right issue of Shares
 2. By Bonus Issue of Shares
 3. By Private Placement/ Preferential Allotment of Shares
- In This Article We will discuss about Right Issue of Shares by Private/ Unlisted Public Limited Company.*

III. Corresponding Provisions of Law:

Section 62(1) of Companies Act, 2013 – Further Issue of Share Capital

IV. Who are Eligible for Right Issue of Shares:

Eligibility to the persons who, at the date of the offer, are holders of equity shares.

'Holder of shares'/ Section 62(1)(a) of the 2013 Act means:

Kedar Nath Agarwal v. Jay Engg. Works Ltd. [1963] 33 Comp. Cas. 102 (Cal.)

A 'member' may be a 'holder' of shares but a 'holder' may not be a 'member'. A person whose name is on the register may have sold his shares and from the moment his property in the shares has passed to his purchaser he has ceased to be a 'holder' of those shares. [See section 81(1)(a) of the 1956 Act]

V. Time Period Validation of Notice for Right Issue of Shares:

The Notice of Right issue of shares limiting a time not being less than 15 (fifteen) days and not exceeding 30 (thirty) days.

Note: However, in case of Private Limited if Company took Consent from 90% of the Members of the Company (90% members in number) in writing then they can close offer even before 15 days.

VI. Time Period for Opening of Offer:

The letter of offer shall be dispatched to all the existing shareholders at least three days before the opening of the issue.

Note: However, in case of Private Limited if Company took Consent from 90% of the Members of the Company (90% members in number) in writing then they can close offer even before 15 days.

VII. Modes of issue of Letter of Offer:

Letter of offer can be issue through any of following mode:

- Registered Post or
- Speed Post or
- Electronic Mode or
- Courier or
- Any other mode having proof of delivery

Note: Letter of offer can be delivered through hand Delivery. One thing is important that, Company have to keep maintain proof of delivery of letter of offer to the shareholders.

VIII. Content of Letter of Offer:

Section 62 or any other Section of Companies act is silent about Content of Letter of Offer for Right Issue of Shares, in absence of any guidelines Companies can create letter of offer according to themselves. However, as general guidance following points should cover under Letter of Offer:

- No. of Shares available for Subscription
- Price of Shares, Base of Price of Shares
- Date of open and end of Offer
- Bank Account details of the Company
- Clause for Renunciation Right
- Type of Shares, etc.

IX. Right of Renunciation:

Unless the articles of the company otherwise provide, the offer for right issue shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the Letter of offer shall contain a statement of this right.

Note: Company by mentioning in its Article of Association restrict the renunciation right of the Shareholders.

X. Extra Ordinary Power with Board of Directors:

after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company.

Note: In case offer is fully not subscribed by shareholder in the give time as mentioned in Letter of Offer, after expiry of time Board of Directors having power to dispose those un-subscribed shares as per their decision taken in Meeting of Board of Directors.

Process of Issue of Right Issue of Shares:

INITIAL STEPS:

- a) Check the Authorized Share Capital of Company.
- b) If Authorized capital permits to increase paid up share capital, then its ok. If Authorized capital doesn't permit to increase authorized capital then first increase authorized share capital of company.
- c) To decide Cut-off date for Eligible Shareholders for Right Issue of Shares.
- d) To Draft Letter of Offer.

I. STEP – To Call Meeting of Board of Directors

i. Issue Notice of Board Meeting to all the directors of company at least 7 days before the date of Board Meeting.

- ii. Attach Agenda of Board Meeting along with Notice.
- iii. Attach Notes of Agenda and Draft Resolution along with Agenda.
- iv. Attach draft Letter of offer along with Agenda & Notice.

II. STEP – To Hold Meeting of Board of Directors

- i. Check the quorum of Board Meeting.
- ii. Identify the Shareholders to whom you will issue shares.
- iii. Pass Board Resolution for approval of offer letter.
- iv. Authorize a director of company to issue Letter of Offer.
- v. Letter of offer shall be dispatched through above mentioned modes.

III. STEP – Correspondence by Shareholders

- i. Receive the acceptance/ rejection of offer from shareholders within time prescribed in Letter of Offer.
- ii. Receive the application money from the shareholders accepting the offer within time prescribed in Letter of Offer.
- iii. If company doesn't receive subscription of all offered shares, company can renounce shares to outsiders after expiry of offer period.

IV. STEP – To Call Meeting of Board of Directors

Within 60 days of receipt of letter of offer company have to allot shares by holding of Board Meeting

- i. Issue Notice of Board Meeting to all the directors of company at least 7 days before the date of Board Meeting.
- ii. Attach Agenda of Board Meeting along with Notice.
- iii. Attach Notes of Agenda and Draft Resolution along with Agenda.
- iv. Attach list of people who have subscribed for the shares.

V. STEP – To Hold Meeting of Board of Directors

- i. Check the quorum of Board Meeting.
- ii. Present List of Allottees before the Board Members.
- iii. Pass Board Resolution for allotment of shares (within 60 days of receiving of money).
- iv. Pass Board Resolution for Issue of Share Certificates and authorization of directors for signing of Share Certificates

VI. STEP- To File form with ROC:

i. To File PAS-3 with concerned Registrar of Companies within 30 days of passing of Resolution in Board Meeting for Allotment of Shares.

ATTACHMENTS:

- ii. List of Allottees.
- iii. CTC of Board Resolution for allotment of Shares.

VII. STEP- To Issue of Share Certificates:

Issue Share Certificate in Form- SH-1 (as per Section-56) within 2 (two) months from the date of Board Meeting in which allotment of shares made by the Company.

VIII. STEP- Payment of Stamp Duty on Issue of Share Certificate:

As per Indian Stamp Act, every company is required to make payment of Stamp Duty on Share Certificates within 30 days of issue of Share Certificates.

Every state has its own process and provision for payment of stamp duty.

A. Whether Valuation report required for Right Issue of Shares?

There is no requirement of Valuation Report for Right issue of shares. Company can issue shares on Face Value in case of Right Issue of Shares.

In case, Company proposing to issue shares on premium in that case Company should obtain Valuation Report from Registered Valuer.

B. Whether Company can receive allotment money in Cash u/s 62(1)?

Section 62(1) doesn't prescribe the way of receipt of allotment money. By following the guidelines of Income Tax Act company can receive Allotment money in Cash also.

C. Whether Company can issue Preference Shares by right issue of Shares?

Section 62(1) states about issuance of Shares. Therefore, Company can issue Equity as well as Preference Shares through Right Issue of Shares.

However, Company can't issue Debentures or securities other than mentioned above by right issue of shares.

D. Whether there is any restriction on use of money received from subscribers of Right Offer?

Section 62(1) doesn't put any restrictions on usage of subscription money. Company can use subscription money any time after receipt of same.

One can opine that, Company can use subscription money of right issue even before allotment of shares.

E. What is minimum time gap between two Right Issue offer as per Companies Act, 2013?

Section 62(1) doesn't prescribe provisions for minimum time gap between two Right Issue offers.

One can opine that, Company can issue any numbers of Right issue offer during a financial year without any limit of time gap.

F. If one Right issue offer is going on in the Company. Whether company can open another right issue offer before completion of first?

Section 62(1) doesn't restrict the issuance of New Offer letter until closure of earlier Right Offer.

One can opine that, a Company can simultaneously issue two right issue offers.

Basic Abouts Right Issue of Shares:

- a) No need to open Separate Bank Account for Right issue of Shares.
- b) No need to file any form for Issuance of Letter of Offer with ROC by Private Limited Companies.
- c) PAS-3 can be filed within 30 days of holding of Board Meeting for allotment of Share.
- d) Shares can be issued on Face Value.
- e) There is no restriction under Companies act to receive subscription money in cash also.
- f) Only shares can be issued by Right Issue of Shares.

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