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# SPARSH.....

*Touches*

*November, 2013*

## In this Issue:

- 🌸 Editorial
- 🌸 Our Articles Published
- 🌸 What's happening at  
VKC and VK & Co.
- 🌸 Our Corner
- 🌸 Contact Us



# Editorial

*"Knowledge is having information. Intelligence is the ability to use it in your advantage. Wisdom is being yourself in the process."*

As rightly said, We at VKCPL & VK & Co, believe in imparting knowledge in every associate, who later on has the capability to convert this knowledge into opportunity and advancement.

With this thought in mind, we come again with **"Spارش"**

Stay in touch with us through **SPARSH!!**

**Editor:**

-Pooja Rawal

[editor@vinodkothari.com](mailto:editor@vinodkothari.com)



## ■ **Articles Published**

- ▶ *Reference of the Article: FACTORS IMPENDING FACTORING -- Why is factoring not picking up in India post enactment of the new Act?, by Nidhi Bothra and Shampita Das was given by Deputy Governor of RBI Dr. K. C. Chakrabarty in his Speech: Welcome to India: State of the Indian economy, banking sector and factoring services*
- ▶ *An Article on Section 62 (1)(c) of Companies Act, 2013 and Liberty of Capital Raising by Companies, by Vinod Kothari was published on IndianCorpLaw.*
- ▶ *An Article on Section 185 of Companies Act, 2013; Straight answer to some nagging questions, by Vinod Kothari was published on CompaniesAct.in.*
- ▶ *Reference of the Leasing report, by Nidhi Bothra & Vinita Nair was given in the article New hopes for Indian leasing as gloom lifts in the economy on AssetFinance International*
- ▶ *An Article on Look forward to heydays of CS professionals: Certification requirements under the new Act by Vinita Nair and Aditi Jhunjunwala was published in MoneyLife*
- ▶ *An Article on New Regime of Corporate Governance: Heading Towards "Hung" Companies by Nivedita Shankar was published on IndianCorpLaw.*

## ■ **Our Forthcoming Workshops**

- ▶ *Workshop on Factoring, Mumbai 17<sup>th</sup> January, 2013*



## ***What's happening at VKCPL and VK & Co.***

- ▶ *Workshop on Leasing and asset backed lending | 20<sup>th</sup> - 21<sup>st</sup> November, 13 | Mumbai.*
- ▶ ***Session taken by Vinod Kothari***
  - ✿ *Session on Securitisation at Symbiosis School of Management.*
  - ✿ *Vinod Kothari quoted in The Telegraph.*
  - ✿ *Session on Companies Act, 2013 at Association of Corporate Adviser & Executives.*
  - ✿ *Session on Companies Act, 2013 at Calcutta Chamber of Commerce*
  - ✿ *Workshop on What every Institutional investor must know about the Companies Act 2013 at Motilal Oswal, Mumbai.*
  - ✿ *Vinod Kothari quoted in Howrah @Sunday.*
  - ✿ *Quoted on economics times*
- ▶ *Session by Nidhi Bothra on securitisation and SARFAESI at National University for Juridical Sciences*



## ***Our Corner***

- ▶ *Our Senior Associate Vinita Nair ties knot.*
- ▶ *Chit-o-Chat with Nidhi Jain (Ex-Associate)*



# *Our Articles Published*

**Reference of the Article: FACTORS IMPENDING FACTORING -- Why is factoring not picking up in India post enactment of the new Act?,**

*By Nidhi Bothra and Shampita Das*

**Was given by Deputy Governor of RBI Dr. K. C. Chakrabarty in his Speech: Welcome to India: State of the Indian economy, banking sector and factoring services**

Factoring as a form account receivables financing has been a widely acceptable mode of asset-backed financing world-over. Unfortunately in India, the factoring business has had several stumbling blocks. While the government has made efforts to provide a facilitating regulatory environment for factoring business to develop, the fog does not seem to have cleared out completely.

We spoke to several of the industry players to try and understand the mood of the market, opportunities, issues and challenges concerning the industry post the Factoring Regulations Act, 2011 came into effect. This article captures the grappling issues faced by the market players and we pose some possible solutions for the same.

Click here original article can be viewed [here](#).

The Speech: Welcome to India: State of the Indian economy, banking sector and factoring services can be viewed [here](#).



# Section 62 (1)(c) of Companies Act, 2013 and Liberty of Capital Raising by Companies

By Vinod Kothari

Published on [IndianCorpLaw.com](http://IndianCorpLaw.com)

Closer to the gradual implementation of the 2013 Act, one gets an ever firmer feeling that the drafting of the law became highly superficial, and the twin Parliamentary committees merely went on the basis of innate assurances that MCA would do what is required to resolve all the problems in law-making. If the law has problems, rule-making can do nothing to resolve the same. And let us face it – the law has problems. In fact, it has big-time problems.

What is more important for companies than the liberty in capital-raising. There are plenty of restraints on capital raising in the new law, one, obviously being the intricate set of requirements in section 42 dealing with private placements. However, this article is about section 62, which apparently will have massive applicability, to all companies, and on all types of issuances, except in case of rights or bonus issuances. This article explains the dire consequences of sec 62.

Click [here](http://IndianCorpLaw.com) to view the entire article. This article was also published in [IndianCorpLaw.com](http://IndianCorpLaw.com).



# Section 185 of Companies Act, 2013; Straight answer to some nagging questions

By Vinod Kothari

Published on [CompaniesAct.in](http://CompaniesAct.in).

Section 185 is one section of the Act that has created the maximum concern. And for most obvious reasons, as the section puts a blanket bar on granting of loans or making of guarantees. There is no scope for any approval, whether by the company or by the central government. The section has already come into force. Offence of the section makes not only the lender but even the borrower liable for prosecution.

With these very serious questions, there are numerous questions in peoples' minds about the section.

This write up below takes lots of these questions headlong

Click [here](#) to view the entire article. This article was also published in [CompaniesAct.in](http://CompaniesAct.in)





## Reference of the Report on Equipment Leasing Market in India: 2012-13

By Nidhi Bothra & Vinita Nair

Was given in the article New hopes for Indian leasing as gloom lifts in the economy on [AssetFinance International](#)

Earlier this month, P Chidambaram India's Finance Minister, assured the Indian diaspora community, and the investor world at large, that the country was a safe investment destination

He also assured the stability of the Indian rupee, saying it better reflected its true value after the Reserve Bank of India took urgent steps for managing the currency volatility. "We believe that the exchange rate of rupee today is a better reflection of its true value and we are confident that both volatility and speculation have been largely contained,"

The new mood of optimism in India was echoed by Nidhi Bothra (pictured above), executive vice president at Vinod Kothari, Kolkata, who stressed that although leasing has been in existence in India since the 1970s it is only in the last couple of years that it has regained popularity.

Click here original report can be viewed [here](#).

The Article New hopes for Indian leasing as gloom lifts in the economy can be viewed [here](#).

### New hopes for Indian leasing as gloom lifts in the economy



Written by Brian Rogerson  
Published: 25 November 2013  
Created: 25 November 2013



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## ***Look forward to heydays of CS professionals: Certification requirements under the new Act***

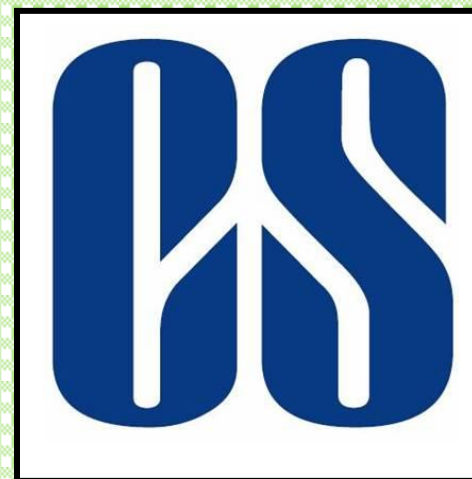
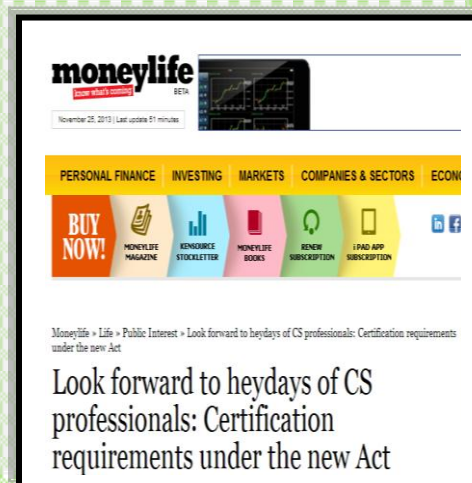
*By Vinita Nair and Aditi Jhunjhunwala*

*Published in [MoneyLife](#)*

Considering that there are only around 5,800 Practising Company Secretaries or PCS in the country, each one will get to sign a reasonable number of annual returns, even if all such companies were to be distributed evenly. So all the practising professionals surely have a reason to cheer!

There is enough buzz in the corporate world regarding the role of Practising Company Secretaries (PCS) under the Companies Act, 2013 (the Act, 2013). Professionals were worried inasmuch as the scope and position of a Company Secretary in employment seemed to have increased, the role of PCS was a matter of concern when the corresponding section of 383A under the Companies Act, 1956 (the Act, 1956) was missing in the Act 2013. However, it seems that Act, 2013 has widened the scope of services that a PCS can offer. One of such area is annual return to be filed by a company under Section 92 of the Act, 2013.

Click [here](#) to view the entire article. This article was also published in [Moneylife](#)



# ***New Regime of Corporate Governance: Heading Towards “Hung” Companies***

*By Nivedita Shankar*

*Published on [IndianCorpLaw](#).*

The OECD in its report titled “Guide on Fighting Abusive Related Party Transactions in Asia” commented: “Abusive related party transactions have increasingly become a challenge to the integrity of Asian capital markets”. In fact, this very report also recommended that the voting system should be such that majority of the disinterested shareholders should approve the related party transactions in general meetings. Such a practice is already followed in Malaysia, Hong Kong and Singapore.

Although such a recommendation is noble, yet the serious repercussions that it may give rise to have been grossly overlooked. The point on independent shareholders voting in general meetings was highlighted by SEBI in its consultative paper under the head “Abusive RPTs” in point 11.25(d). The main reason for proposing this was to ensure that the approval of major Related Party Transactions (“RPTs”) is done only by disinterested shareholders.

Click [here](#) to view the entire article. This article was also published in [IndianCorpLaw](#).

Tuesday, November 26, 2013

## **Guest Post: New Regime of Corporate Governance: Heading Towards “Hung” Companies – Part 1**

[The following post is contributed by The following post is contributed by Nivedita Shankar, who is a Senior Associate at Vinod Kothari & Co. She can be reached at [nivedita@vinodkothari.com](mailto:nivedita@vinodkothari.com).

The views expressed herein are solely those of the guest author and cannot be ascribed to the other contributors of this Blog]

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Although such a recommendation is noble, yet the serious repercussions that it may give rise to have been grossly overlooked. The point on independent shareholders voting in general meetings was highlighted by SEBI in its consultative paper under the head “Abusive RPTs” in point 11.25(d). The main reason for proposing this was to ensure that the approval of major Related Party Transactions (“RPTs”) is done only by disinterested shareholders. The Companies Act, 2013 (“Act, 2013”) has incorporated similar provision under section 188 wherein related parties have to abstain from voting on any related party resolution in general meeting. Effectively, this shall mean that only disinterested shareholders shall vote on any resolution. This section is yet to be enforced.

### **The resultant imbalance in giving power to minority**

Corporate governance is seen as a tool to control any abuse by a related party but in companies in India, the majority control rests with the promoters. Thus, even corporate governance becomes a tool in the hands of majority solely.

Clause 49 of Equity Listing Agreement in its list of recommendations to be included in the annual report of listed companies, requires disclosure of only such materially significant related party transactions that are apprehended to have potential conflict with the interest of the company at large. The discretion has of course been left to the management, which in effect controls the company in most cases. Such a loose approach means that minority shall always have an upper hand in cases of corporate

Wednesday, November 27, 2013

## **Guest Post: New Regime of Corporate Governance: Heading Towards “Hung” Companies – Part 2**

[The following post is contributed by The following post is contributed by Nivedita Shankar, who is a Senior Associate at Vinod Kothari & Co. She can be reached at [nivedita@vinodkothari.com](mailto:nivedita@vinodkothari.com).

The views expressed herein are solely those of the guest author and cannot be ascribed to the other contributors of this Blog.

This is a continuation from the [previous post](#) in this series]

### **Precedents around the world**

#### **United States**

Clause 314 of NYSE Listed Company Manual considers the Audit Committee as an appropriate forum to review a related party transaction. The Exchange also reviews proxy statements and other SEC filings, disclosing RPTs and where such situations continue year after year, the Exchange after evaluation also determines whether such RPTs should be permitted to continue.

Under Regulation S-K of U.S. Securities Law, Item 404 requires public companies to disclose transactions involving amounts of more than USD1,20,000/- in which the related person is or has had direct or indirect material interest.

#### **United Kingdom**

Financial Reporting Standard-8 require companies to make adequate disclosures in their financial statements to draw attention to the possibility that the reported financial position and results may have

# Upcoming Events

Workshop on Factoring, Mumbai 17<sup>th</sup> January,  
2013

Details can be viewed [Here](#)

Workshop on Housing Finance Workshop,  
Mumbai

Details can be viewed [Here](#)

The Calendar of our Forthcoming Courses can be viewed [here](#)



# What's happening at VKC and VK & CO

## Leasing & Asset Backed Lending | 20-21 November, 2013 | Mumbai

Vinod Kothari Consultants Pvt. Ltd. (VKCPL) organized and hosted a 2 day workshop on Leasing & Asset Backed Lending on 20th – 21st November, 2013 in Mumbai at Indian Merchants Chamber.

The workshop covered the basics of leasing the legal and the taxation aspects of the same. In the second day the faculty covered various forms of asset value risks, structure of leases, accounting treatments related to leases, pricing of leases (in excel) and securitization of lease receivables.

The workshop started off with providing the distinction between financial contracts i.e. lending and Non-financial contracts i.e. leasing. Following this topics such as legal framework, prevailing tax structures, pricing and accounting of lease transactions, securitization leases, etc were also taken into consideration. Lease structuring along with the cash flows were the highlights of this Workshop. Landmark judgments of different cases were handpicked and discussed during the workshop which enhanced the understanding of the participants. Active involvement of the participations were received which made the sessions more lively and exciting.

The faculty of this workshop was Ms. Nidhi Bothra, Executive Vice-President of VKCPL who is an expert in the field of Leasing, Mortgage Lending, Hire-Purchase, Structured Finance, Securitization, Cash-Flow Modeling, Islamic Finance, Covered Bonds and much more.

To view the full feedback please click [here](#)



The poster features a central graphic of a globe with the words 'Operating Lease' above it and 'Financial Lease' below it. The text '20th - 21st November, Mumbai' is in a blue box at the top right. The VKC logo is in the top left corner. The text 'Organized by: Vinod Kothari Consultants P Ltd' is in the center. Contact information for Kolkata and Mumbai offices is listed at the bottom.

**CELEBRATING 25 YEARS**  
**VK**  
SINCE 1988  
VINOD KOTHARI CONSULTANTS P. LTD.  
PROFESSIONAL SERVICES

20<sup>th</sup> - 21<sup>st</sup> November,  
Mumbai

**2 Day Workshop on Leasing & Asset Backed Lending,**  
**Mumbai**

**Operating Lease**  
**Financial Lease**

*Organized by:*  
Vinod Kothari Consultants P Ltd

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## **Seminars & Sessions taken by** **Vinod Kothari.**

***Session on securitisation at Symbiosis School of Management  
on 7<sup>th</sup> November, 2013***

***Session on Companies Act, 2013 at Association of Corporate  
Adviser & Executives, Kolkata on 16<sup>th</sup> November, 2013***

***Session on Companies Act, 2013 at Calcutta Chamber of  
Commerce on 16<sup>th</sup> November, 2013***

***Workshop on What every Institutional investor must know  
about the Companies Act 2013 at Motilal Oswal, Mumbai, on  
18<sup>th</sup> November, 2013***

***Session by Nidhi Bothra on securitisation and SARFAESI at  
National University for Juridical Sciences on 1st December,  
2013***

# Vinod Kothari quoted in different newspapers in this month

## ***Vinod Kothari* quoted in The Telegraph**

*"In the past, there have been many instances of wilful defaults. So our courts have framed a notion that whoever defaults is defaulting because he wants to. They are yet to come to grips with the reality that in this age of consumer banking, the loan may have been sold to the consumer either by an aggressive banker, or he took the loan in the hope that he will be able to pay." says **Vinod Kothari**, director, **Vinod Kothari Consultants**, Calcutta"*

To view the full news piece please click [here](#)

## **Quoted in economics times**

*"I will hold to the view that the mutual fund structure is flawed, as mutual funds are unleveraged vehicles, says **Vinod Kothari**, a consultant on structured finance."*

To view the full news piece please click [here](#)

## **Quoted in Howrah@Sunday.**

*Where he said that, restriction on the issue of convertible debenture is not the sole option to avoid scandals.*

To view the full news piece please click [here](#)





# Our Corner!!!!

Our Senior Associate Vinita Nair has tied the knot. We wish her a happy and successful marriage life ahead!!!



# Chit-O-Chat with Ms. Nidhi Jain (Ex-Associate)

## How did you feel when you were a part of VKC and how do you feel now?

In your first job post qualification, if you get a chance to handle a branch office, what else would you expect from your employer. Vinod Sir showed that confidence and trust in me, and I considered myself fortunate enough to get an opportunity like this. Those were the days I would say. I never felt that I was working as an employee of VKC. I always worked as if it was my own firm. Till date, I consider Mumbai office of VKC as my office (though its not).

I really feel privileged to have worked with VKC and I never miss a chance to flaunt my knowledge in my current organization and also never miss to mention that I learnt this from my ex-boss.

## How do you think being in this profession has helped you chase your dreams?

CA and CS are professional education which not only enrich your technical knowledge of Finance but also develops a strong entrepreneur in you who can face any sort of challenges in life. I am into this profession for only 3 years and I am pretty satisfied with whatever I have achieved so far.



## What are your future career endeavors?

Nothing planned as of now

## How has VKC helped you in grooming your personality both professionally and personally?

VKC has a great role in helping me grow myself both professionally and personally. Writing articles, taking trainings (in-house/ industry workshops), speaking on public forums, attending lectures, and most importantly working with Vinod Sir, all these have added a lot to my career graph.

## Finally what is your message to us? Any feedback or suggestions for the team?

Being a part of VKC, you are being privileged to enhance your professional knowledge as much as possible, as learning is inevitable part of your work in VKC. Try to leverage on it.

All the very best to the Team. Keep doing good work and take VKC to a new landmark.

# Contact us



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