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# SPARSH.....

*Touches*

*January, 2014*

## In this Issue:

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



# Editorial

*"The will to win, the desire to succeed, the urge to reach your full potential... these are the keys that will unlock the door to personal excellence."*

To win, to desire, to succeed, all these come through motivation. We at VKCPL & VK & Co, not only believe in imparting knowledge in our associate but also motivate them in the area of their interest.

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

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

**Editor:**

-Pooja Rawal

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## ■ **Articles Published**

- ▶ *An Article on Are Bitcoins legal? - A techno-legal perspective, by Shambo Dey was published in MoneyLife*
- ▶ *An Article on Conditional Sale and credit sale: thin line of distinction, by Nidhi Bothra was published in Taxmann*
- ▶ *An Article on Rights of MBS Bondholders against the Company, by Nidhi Bothra was published on IndiaCorpLaw Blog.*
- ▶ *An Article on Optionality Clauses Permissible in FDI Instruments – the Heydays for Exit Rights, by Nidhi Bothra was published on IndiaCorpLaw Blog.*
- ▶ *Reference of 'Equipment Leasing market in India: 2012-13' report, by Nidhi Bothra & Vinita Niar was given in the "White Clarke Group India Asset and Auto Finance Survey".*
- ▶ *Reference of 'Equipment Leasing market in India: 2012-13' report, by Nidhi Bothra & Vinita Niar was given in the "Global Asset and Auto Finance Country Survey Quarter 4, 2013".*
- ▶ *An Article on Will the Companies Act 2013 impede MSMEs from bond markets?, by Nidhi Bothra & Shambo Dey was published in MoneyLife.*
- ▶ *An Article on One Person Companies: A useful tool of Ring-Fencing and Corporatisation, by Aditi Jhunjhunwala was published in DTPA.*
- ▶ *An Article on Gold investment schemes: do they fit nowhere into regulations? by Nivedita Shankar was published in MoneyLife.*
- ▶ *An Article on SEBI's framework for Infrastructure Investment trust, by Vinita Nair was published in E-Focus, ICSI, WIRC.*
- ▶ *An Article on 'Nachiket Mor Committee Recommends Bank - NBFC Convergence, by Shampita Das was published on IndiaCorpLaw Blog*


### **Our Forthcoming Workshops**

- ▶ *Workshop on Factoring, Mumbai, 6<sup>th</sup> February, 14*
- ▶ *Crash Course on Companies Act, 2013 for senior professionals, Mumbai 10<sup>th</sup> – 11<sup>th</sup> February, 14.*
- ▶ *12 classes - Company Law by Vinod Kothari, Kolkata 13<sup>th</sup> February Onwards*
- ▶ *2<sup>nd</sup> Batch of 12 classes - Company Law by Vinod Kothari, Kolkata 15<sup>th</sup> February Onwards*



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

- ▶ *Submissions to Social Science Research Network, by Nidhi Bothra on REITs in China*
- ▶ *Vinod Kothari & Nidhi Bothra received certificate for contributing in World Bank Doing Business 2014.*

### ▶ **Sessions taken by Vinod Kothari**

-  *A Lecture on "Corporate Governance & CSR: Myths, realities, challenges and linkages" at the 24<sup>th</sup> regional Conference of Company Secretaries , ICSI, EIRC on 12<sup>th</sup> January, 14.*

### ▶ **Sessions taken by Nivedita Shankar**

-  *SIP Session - "General Discussion on company law" at ICSI, EIRC on 11<sup>th</sup> January, 14.*
-  *SIP Session - "General Discussion on company law" at ICSI, EIRC on 13<sup>th</sup> January, 14.*

### **Our Corner**

- ▶ *Our Junior Partner Nidhi Ladha ties the knot.*
- ▶ *Our Former Associate Rozy Jain ties the knot.*
- ▶ *Picnic at Pagalahat, South 24 Parganas.*

# *Our Articles Published*

## ***Are Bitcoins legal? - A techno-legal perspective***

*by Shambo Dey*

*published in [MoneyLife](#).*

### What is Digital Cash?

Digital cash aims to duplicate the functionality of paper cash, by providing it with properties of anonymity and transferability of payment. Digital cash is intended to be implemented data which can be copied, stored, or given as payment (for example, attached to an email message, or via a USB stick, Bluetooth, etc).

Just like paper currency and coins, digital cash is intended to represent value because it is backed by a trusted third party (namely, the government and the banking industry). Most money is already paid in electronic form; for example, by credit or debit card, and by direct transfer between accounts, or by on-line services such as PayPal.

To view the entire article click [here](#).  
This Article was also published in [MoneyLife](#)





# Conditional Sale and credit sale: thin line of distinction

by Nidhi Bothra  
Published in **Taxmann**

Financial instruments more often than not borrow their framework from existing instruments and at times transgress into one another's territories. Over the years, the judiciary has done abundant discussion on the implicit understanding of the parties in a transaction and what is conveyed face apparent to determine the nature of the contract. In the constant tug of war of substance vs. form some lines of distinction have evolved over a period of time that defines the periphery of each of the financial products. One such thin line of distinction that we discuss in this article is between conditional sale as a financial instrument and credit sale made by a trader/ seller. While in the financial markets the two jargons may be inter-changeably used but they certainly are not the same.

To view the entire article click [here](#).  
This Article was also published in Taxmann



# ***Rights of MBS Bondholders against the Company***

*by Nidhi Bothra*

*published on [IndiaCorpLaw Blog](http://www.indiacorplaw.com).*

The financial crisis of 2007-08 led to several failed securitization transactions and brought in a storm of litigation in structured products. Post the crisis, several bondholders sued the originators alleging misrepresentations on the quality of loans underlying the mortgage-backed securities that led to series of litigation and final settlements in some cases as well. There have been several rulings, post the crisis where the rights of the bondholders to proceed against the originator-banks have been put to question, questioning the privity of contract between the bondholders and the originator companies.

In this post, we discuss one such ruling of DB Structured Products Inc and try and elucidate the privity of contract between the bondholders, trustees and the originator companies in case of structured instruments and the likes.

To view the entire article click [here](http://www.indiacorplaw.com).

This Article was also published in [IndiaCorpLaw](http://www.indiacorplaw.com)



# ***Optionality Clauses Permissible in FDI Instruments – the Heydays for Exit Rights***

*by Nidhi Bothra*

*published on [IndiaCorpLaw Blog](http://indiacorplaw.com)*

The optionality clause in equity shares/ compulsory convertible debentures/ preference shares has been a gray area from the regulatory perspective in India for years. These instruments did not find their eligibility under the FDI norms or Securities Contract (Regulations) Act, 1956 (SCRA) provisions and did not have the nod from SEBI and RBI either. The position for such instruments remained ambiguous till SEBI's notification on enforceability of pre-emption right and call and put options in securities of Indian companies and the recent RBI notification that followed thereafter which expressly granted eligibility to such instruments under the FDI regulations. This post elucidates on the latest developments in this segment and its impact thereof.

To view the entire article click [here](http://indiacorplaw.com).  
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# ***Reference of 'Equipment Leasing market in India: 2012-13' report***

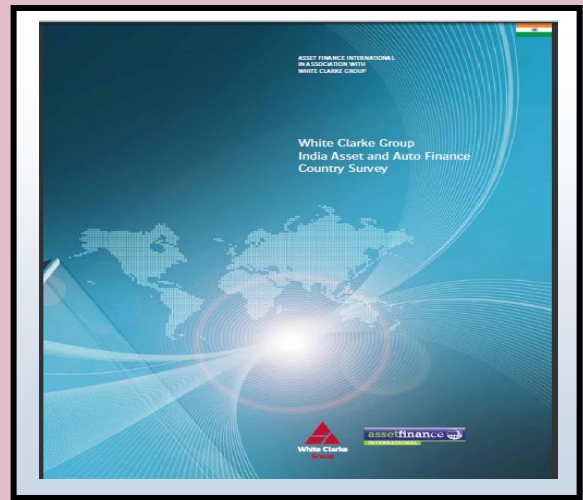
*by Nidhi Bothra & Vinita Niar*

was given **[“White Clarke Group India Asset and Auto Finance Survey”](#)**.

The significance of lease transactions stands on the understanding that capital is precious – a business would rather save precious capital for more important needs if it can avoid investing into assets. The motivations for which lessees are prepared to take assets on lease differ – in some cases, it is off-balance sheet funding and consequent advantages, in some cases, ease of employees acquiring cars, in some cases tax benefits, and so on. It is clear that off-balance sheet remains a strong differentiator between leasing and borrowing in India.

In India, leasing has been in existence since the 1970s and has had its own peak and trough. Despite the long existence, leasing has not been very impactful over the decades and had a low penetration rate. It is only in the last couple of years that leasing has regained popularity and despite the stressed times for the economy, leasing has been growing at a steady pace.

To view the entire report click [here](#).  
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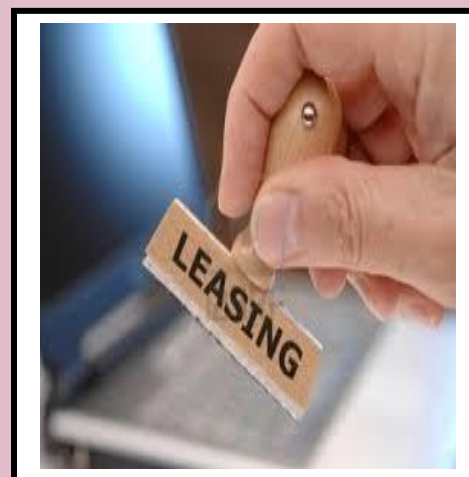
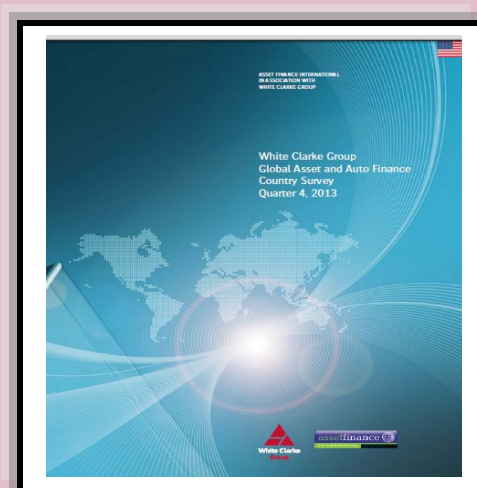
was given in the **[“Global Asset and Auto Finance Country Survey Quarter 4, 2013”.](#)**

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# ***Will the Companies Act 2013 impede MSMEs from bond markets?***

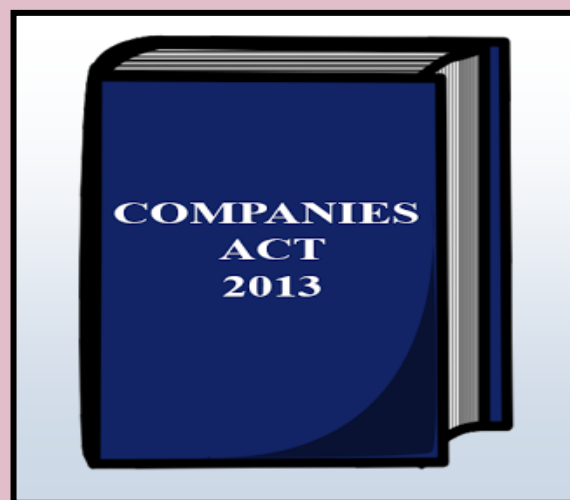
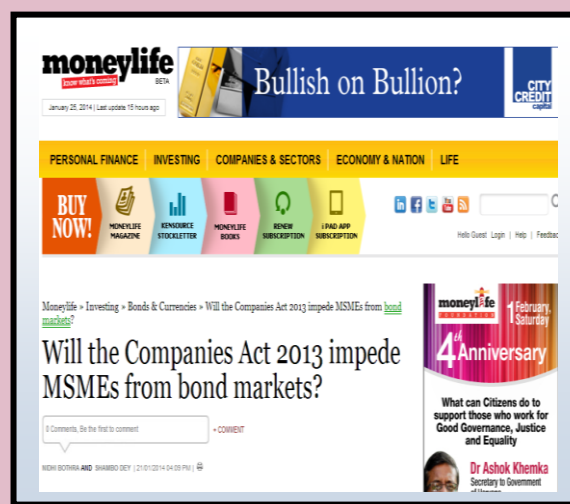
*by Nidhi Bothra & Shambo Dey*

*published in [MoneyLife](#).*

From the recommendations of the RH Patil Committee, emphasising on the importance of the deep and liquid corporate bond market to the constant on-going efforts of Securities and Exchange Board of India (SEBI) and Reserve Bank of India (RBI), to catalyse the corporate bond market in India there has been limited success at the fore. The corporate bond market in India, which stands below 5% of GDP at present, has the potential to reach to a level of 15% of GDP during the 12<sup>th</sup> Five Year Plan (2012-17) on back of policy and regulatory reforms, according to a survey conducted by the Confederation of Indian Industry (CII). A robust corporate bond market is imperative to meet the funding needs of the emerging Indian economy considering the limitations of bank financing and government funding. If there were not enough regulatory bottlenecks before India Inc on raising funds via corporate bonds, the requirements of Companies Act, 2013 (CA, 2013) makes the process even more treacherous and do not seem to be in tandem with the counterpart regulators' reform targets.

To view the entire article click [here](#).

This Article was also published in [MoneyLife](#).





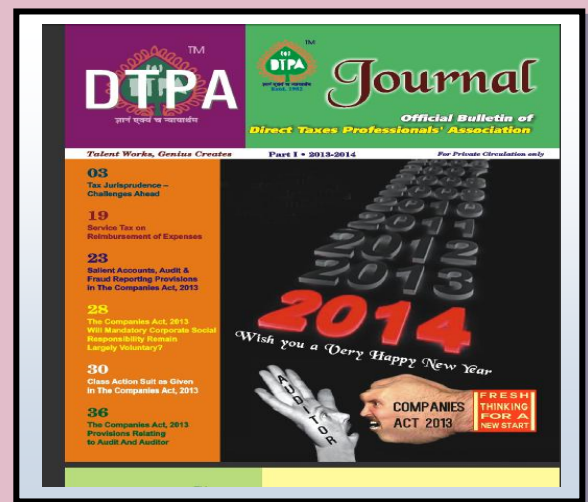
# ***One Person Companies: A useful tool of Ring-Fencing and Corporatisation***

*by Aditi Jhunjhunwala  
published in DTPA.*

With the Companies Act, 2013 (New Act) now being notified in phases there are several new provisions which have been introduced. The new provisions may not be novel in itself in as much as the Indian Companies Act is concerned as much of the concepts have been bought from International Laws as well. In this write up we discuss the concept of One Person Company, its benefits and provisions applicable line with the Rules introduced in that regard by Ministry of Corporate Affairs (MCA) on September 09, 2013. The concept was first recommended in India by an expert committee in 2005 and was subsequently inserted in the Companies Bill so as to provide an option to persons operating under the sole proprietorship model to operate as a company.

“OPC” means a company with only a single member as defined in section 2(62) of the Act. The Company is a private company and all the provisions as may be applicable to private companies will become applicable to OPC except the provision of minimum number of members, unless a provision is specifically exempted.

To view the entire article click [here](#).  
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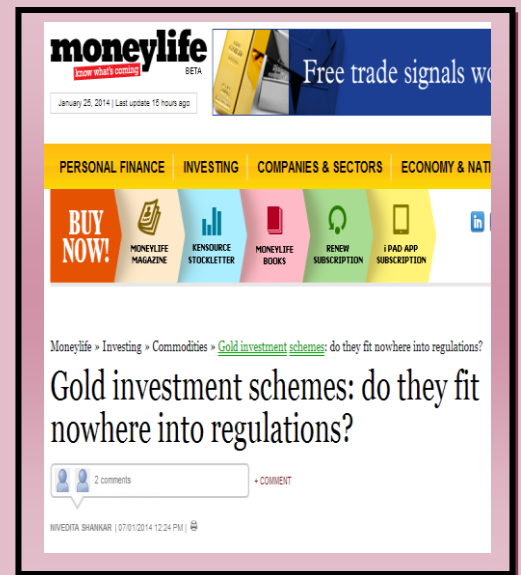
# ***Gold investment schemes: do they fit nowhere into regulations?***

*by Nivedita Shankar  
published in [MoneyLife](#).*

The recent spurt of gold investment schemes has grabbed the attention of many. The schemes which offer interest at the end of the tenure as contribution by the company, require the same to be redeemed against jewellery only. However, what is forgotten in this mad rush is that such schemes are completely unregulated. A recent PIL questioned the legality of these very schemes.

Such gold purchases schemes require the investor to put in money for say 11 months and the installment for the 12th month is put in by the company. Thus, the interest is nothing but the last installment which the investor earns. Although, such schemes claim that cash refunds will not be possible, yet in a way it is cash in the form of the 12th installment that the investor gets back. Such schemes not only ensure that the investor remains tied to the company but also that the company always has a steady inflow of money.

To view the entire article click [here](#).  
This Article was also published in [MoneyLife](#).



# ***SEBI's framework for Infrastructure Investment trust***

*by Vinita Nair*

*published in [E-Focus, ICSI, WIRC.](#)*

Infrastructure is the foundation for development of Indian economy. This is evident from the huge investment in infrastructure sector of around Rs. 65 lakh crores, targeted to be achieved in the 12th Five Year Plan (2012-2017). The Cabinet Committee on Infrastructure (CCI) identified a Harmonized Master List of infrastructure sub-sectors, to guide all the agencies responsible for supporting infrastructure in various ways.

Government attempts to fulfill this huge requirement of funds by way of Public Private Partnerships (PPP), Bank finance, Foreign Direct Investments, take out financing, External Commercial Borrowing, setting up of Infrastructure Debt funds (either as a mutual fund or NBFC) etc.

To view the entire article click [here](#). This Article was also published in [E-Focus, ICSI, WIRC.](#)



# ***Nachiket Mor Committee Recommends Bank - NBFC Convergence***

*by Shampita Das*

*published on [IndiaCorpLaw Blog](http://indiacorplaw.com)*

The RBI, in September, 2013 had set up a 'Committee on Comprehensive Financial Services for Small Businesses and Low-Income Households', under the Chairmanship of Dr. Nachiket Mor, Member on RBI's Central Board of Directors. The main objective of the Committee was to prepare a detailed report on India's vision for financial inclusion and financial deepening and to review existing strategies and develop new ones to achieve the objective of financial inclusion and financial deepening.

The RBI on 7th January, 2014 released the Report of the Committee on Comprehensive Financial Services for Small Business and Low Income Households<sup>1</sup> for public comments on or before 24th January, 2014.

To view the entire article click [here](http://indiacorplaw.com).  
This Article was also published in [IndiaCorpLaw](http://indiacorplaw.com)



# **Upcoming Events**

***Workshop on Factoring, Mumbai, 6<sup>th</sup> February, 14***  
***Details can be viewed [here](#)***

***Crash Course on Companies Act, 2013 for senior professionals,  
Mumbai 10<sup>th</sup> – 11<sup>th</sup> February, 14.***  
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**The Calendar of our Forthcoming Courses can be viewed [here](#)**



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# Our Corner!!!!

Our Junior Partner  
Nidhi Ladha has tied the  
knot. We wish her a  
happy and successful  
marriage life ahead!!!

Our Ex Associate  
Rozy Jain has tied the  
knot. We wish her a  
happy and successful  
marriage life ahead!!!



# Poems written by our Team Members

There is a bright day for every night  
Fight with all your spirit and might  
The one's who have seen the journey, stand here to tell you the tale  
Those who live to succeed never fail

Sometimes, it may get darker and your spirit may give way  
There may come time when your heart may go astray  
Put trust in yourself when all others may give up on you  
For no one knows you better but you

Remember, the sun has a sinking spell every night  
But rises in full glory after every dark night  
Let the fire within not die  
For you know you were destined to shine

- **Nidhi Bothra**

Its night, its night, its night,  
Look up with all your might.  
There are stars moving tediously,  
And emitting light brilliantly.  
We long long admire,  
And put all our sorrows on fire.  
Its night, its night, its night,  
Look up with all your might.

- **Neha Gupta**



# One day Picnic at Pagalahat, South 24 Parganas

It's not work only that always happens at V K & Co.

Celebrations are always a part of it and this was a perfect time for a small outing after all work!

One day Picnic at was organized at Pagalahat, South 24 Parganas

Our colleagues, Nidhi Jain & Sikha Bansal also joined in  
..... 😊 😊



# Contact us



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