Vinod Kothari & Company

Vinod Kothari Consultants P Ltd

Academy of Financial Services P Ltd

1012 Krishna Building
224 AJC Bose Road
Kolkata – 700017
91-33-22817715/ 1276/ 3742

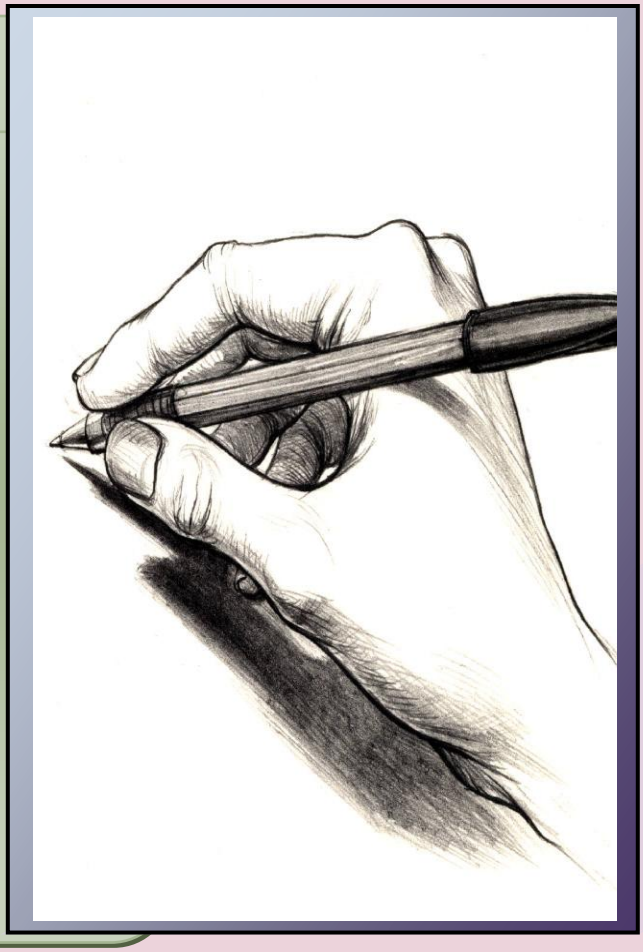
Also at:
601-C, Neelkanth,
98, Marine Drive,
Mumbai- 400 002
91-22-22817427

SPARSH.....

Touches

June, 2014

In this Issue:



Editorial

T:Together
E:Everyone
A:Achieves
M:More

***"The price of success is hard work, dedication to the job at hand, and the determination that whether we win or lose, we have applied the best of ourselves to the task at hand."*-Anonymous.**

Hard work, dedication, team work and co-ordination are the key to success, especially in today's dynamic corporate environment. We at VKCPL & VK & Co, work together not only for individual goals but also for the overall development of all our associates because we believe that 'Coming together is a beginning; keeping together is progress; working together is success.'

With the objective of hard work and dedication towards our profession, we have come again with **"Sparsh"**

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

Editor:
-Nikita Snehil
editor@vinodkothari.com

Articles Published

- *An Article on "Dividend rules tweaked: MCA makes setting-off of past losses mandatory" by Mr. Vinod Kothari, published in Money Life*
- *An Article on "Multi-level Marketing Schemes- Whether Legal?" by CS Nidhi Ladha's, published in Chartered Secretary, June 2014 Edition*
- *An Article on "Want to set up an NBFC? – Think again" by Abhirup Ghosh, published in Money Life.*
- *An Article on "FAQs On Overseas Direct Investments" by CS Esha Chakraborty and Abhirup Ghosh, published in TaxGuru.*
- *An Article on "Is e-voting mandatory for Listed Companies?" by CS Shampita Das, published in TaxGuru.*
- *An Article on "Deciphering DPT-3 and DPT" by CS Vinita Nair, published in TaxGuru.*
- *An Article on "MCA initiates step to restore heydays for Private companies: issues draft notification for public" by CS Vinita Nair and CS Shampita Das, published in Tax Guru.*
- *An Article on "MCA further clarifies on Shares held in fiduciary capacity" by Vijaya Agarwal, published in TaxGuru.*
- *An Article on "Highlights of Companies Rules 2013 on Compromise and Arrangement" by CS Nidhi Ladha, Published in VIPCA Journal vol.V.*
- *An Article on "Postal ballot and e-voting under the Companies Act, 2013 – Bombay high court seems to make some sense of the mixed provisions" by CS Aditi Jhunjhunwala, Published in VIPCA Journal vol.V.*

- *An Article on "MCA's 'deemed' clarification on Foreign Subsidiary Status", by Esha Chakraborty and Shampita Das, published in Indian Corplaw.*
- *An Article on "MCA proposes some relief to private companies: Related party restrictions to be taken off", by Vinod Kothari, published in The Firm, moneycontrol.com on 24th June, 2014.*
- *An Article on "MCA clarifies CSR provisions", by CS Shampita Das, published in Indian Corplaw.*
- *An Article on "Identifying KMPs under the Companies Act, 2013", by Shampita Das, published in Indian Corplaw, on 11th June, 2014.*
- *An Article on "MCA clarifies on residency requirement of resident director" by Nikita Snehil, published in MoneyLife.*

For More Articles, Click here.

Our Forthcoming Workshops

- Company law for NBFCs by Mr. Vinod Kothari in Mumbai on 25th July, 2014.
- Securitisation Summit, 2014 in Mumbai on 22rd August, 2014.
- Real Estate Investment Trusts by Mr. Vinod Kothari in Mumbai on 23rd August, 2014.
- Treasury Management for NBFCs by Mr. Praveen Sethia in Mumbai in September, 2014.
- Factoring by Mr. Vinod Kothari in Mumbai /Kolkata in September, 2014.
- Basel III by Mr. Vinod Kothari in Mumbai in October, 2014.
- Securitisation and Covered Bonds by Mr. Vinod Kothari in Mumbai in October, 2014.
- Affordable Housing Finance by Mr. Vinod Kothari in Mumbai in November, 2014.
- Leasing and Asset Backed Lending by Mr. Vinod Kothari in Mumbai in November, 2014.
- Regulations for NBFCs by Mr. Vinod Kothari in Mumbai in November, 2014.

For More Details, click here

What's happening at VKC and VK &Co.

Sessions taken by Mr. Vinod Kothari:

- Lecture on 'Changes in the Companies Act and its impact on Real Estate' at The Bengal Club on 2nd June, 2014, organized by CREDAI.
- Panelist at - Enhanced disclosures under Companies Act 2013 in Kolkata, on 4th June, 2014, organized by NSE.
- Lecture on 'Corporate Law Conclave' in Siliguri organized by EIRC, ICAI on 21st June, 2014.
- Half Day Workshop on "Proposed exemption to private companies - Issues, Resolutions and Accounting Treatments" in Kolkata, organized by EIRC, ICSI on 27th June, 2014.
- 4th Company Law Conclave at ICAI on proposed exemptions for private companies, on 28th June 2014.
- Lecture on Companies Act 2013 vs. Capital Markets organized by Confederation of Indian Industry, at Oberoi Grand on 28th June, 2014.

Sessions taken by Ms. NidhiBothra:

- SIP Session at EIRC of ICSI on 24th June, 2014.

Hall of Fame:

- *Mr. Vinod Kothari was quoted on The Economic Times in the article "Legislators now in favour of giving newer shape to Companies Act 2013"*
- *Mr. Vinod Kothari was quoted on The Economic Times in the article " Government ammends rules for Company Secretaries"*

Articles Published

Dividend rules tweaked: MCA makes setting-off of past losses mandatory

By Mr.Vinod Kothari
Published in MoneyLife.

The tendency of pushing through substantive changes in the law through the Rules, completely bypassing the parliamentary process, continues unabated and is an extremely undesirable practice adopted by the MCA. Clearly, the Ministry of Corporate Affairs (MCA) is working fast and hard, in correcting the scores of anomalies and absurdities of the law passed and hurriedly enforced by the previous government. Over the last few days, lots of circulars, notifications and removal of difficult orders have continued to flow in. However, the abominable tendency to push through substantive changes in the law, while ignoring the parliamentary process continues unabated. The change discussed in this article, made by a notification of 12th June, actually amounts to putting in place a completely new provision for offsetting of past losses before companies may distribute dividends. This changes the position as it prevailed under the 1956 Act, and this change was nowhere discussed by any of the Committees that preceded the 2013 Act. Neither does the main law, the 2013 Companies Act envisage such a change. Therefore, the question is – could such a substantial change in law have been done by a virtually unnoticed notification?

To view the entire article click here.
This Article was published in Money Life on 16th June, 2014.

Multi-level Marketing Schemes- Whether Legal?

By CS Nidhi Ladha

Published in Chartered Secretary, June 2014 Edition (Page 721 Onwards)

Multi-Level Marketing (MLM) structure of retailing is emerging as an alternative form of direct marketing to customers. Ex facie, it leads to disintermediation, generates employment particularly for housewives, and therefore, there cannot be anything wrong in such practices.

However, in the past, several MLM schemes have been run as pyramid schemes, or money-for-money scheme which creates legal and regulatory uncertainty so much so that there have been some high profile litigation. Several rulings have gone into the legality of MLM schemes and several scams in the sphere have opened up the eyes of regulators.

To view the entire article click here.

This Article was published in Chartered Secretary, March 2014 (Page 721 Onwards)

Want to set up an NBFC? – Think again

By Abhirup Ghosh

Published in Money Life.

RBI is now singing a different tune. NBFCs have to take prior approval from RBI for any merger, amalgamation or even if any entity wants to buy 10% or more stake in the NBFC. This will make NBFCs think thrice before striking a deal involving substantial change in their shareholding. While the RBI said in the notification that these directions would help them to ensure that the management of the NBFCs are of "fit and proper" character, but the with the nature of restriction brought in by the directions, only one question arises – Are those holding the NBFCs are more fit and more proper than those who wanting to acquire?

The press release, earlier this year, coupled with this recent one, do not pronounce this year to be very auspicious year for the NBFCs growth as the regulators seems to be working on cross purposes themselves. RBI neither wants us to create one, nor does it want to us to buy one leaving no room for growth horizon. If this ruthless law making continues, the day is not far where NBFC sector will witness rallies in growth trajectory.

To view the entire article click here.

FAQs on Overseas Direct Investments

By CS Esha Chakraborty and Abhirup Ghosh
Published in TaxGuru.

The very concept of Overseas Direct Investments has been looked upon with a lot of curiosity and apprehension, at the same time! The governing body, Reserve Bank of India has also never failed to surprise us with the intricacies in its guidelines.

Direct investment outside India is governed by Foreign Exchange Management (Transfer or Issue of Any Foreign Security) (Amendment) Regulations, 2004 ('FEMA Regulations'), as amended from time to time.

Overseas Direct Investments (ODI) refers to the investments made in the overseas entities by way of contribution to their capital or subscription to the Memorandum of Association of a foreign entity or by way of purchase of existing shares of a foreign entity either by market purchase or private placement or through stock exchange, but it does not include portfolio investment.

While each case of such investment(s) has to be dealt separately based on its structure; with the following questions, we seek to understand the basic ground rules.

To view the entire article click here.

A Date with shareholders: guide to fixing record date

By CS Vinita Nair

Published in TaxGuru

Record date is the date fixed for taking record of shareholders or debenture holders of the Company. An investor must be a shareholder/ debenture holder on this particular date in order to be eligible to participate in a particular corporate action.

Under Clause 16 of the Equity Listing Agreement, a Company agrees to close its Transfer Books for purposes of declaration of dividend or the issue of risght or bonus shares or issue of shares for conversion of debentures or of shares arising out of rights attached to debentures or for such other purposes as the Exchange may agree to or require and further agrees to close its Transfer Books at least once a year at the time of the Annual General Meeting (AGM) if they have not been otherwise closed at any time during the year and to give to the Exchange the notice in advance of at least seven working days or of as many days as the Exchange may from time to time reasonably prescribe, stating the dates of closure of its Transfer Books (or, when the Transfer Books are not to be closed, the date fixed for taking a record of its shareholders or debenture holders) and specifying the purpose or purposes for which the Transfer Books are to be closed (or the record is to be taken) and to send copies of such notices to the other recognised stock exchanges in India.

To view the entire article click here.

MCA initiates step to restore heydays for Private companies: issues draft notification for public

By CS Vinita Nair and CS Shampita Das

Published in TaxGuru.

Ministry of Corporate Affairs published a "Draft Notification" on 24th June, 2014 which, by far if notified, will be of paramount importance and will restore the heydays for private companies. Clearing the air with respect to the same, the Ministry of Corporate Affairs published a draft notification on the inapplicability/ partial/modified applicability of certain provisions of Companies Act, 2013 to the Private Companies in exercise of powers under section 462 of Companies Act, 2013.

A quick bird eye's view of the sections, applicability whereof has been exempted, and/or modified has been covered in this article.

To view the entire article click here.

This article was published in TaxGuru, on 25th June, 2014.

Deciphering DPT-3 and DPT-4

By CS Vinita Nair

Published in TAXGURU

A read through the provisions of Section 73 of the Companies Act, 2013 clearly states that the Companies can accept deposit from members and/or public on or after the commencement of the said Act i.e. on or after 1st April, 2014, in accordance with provisions of Chapter V.

Reading of Section 73 (2) and 76 (1) clarifies that Companies (Acceptance of Deposit) Rules, 2014 also needs to be complied for accepting deposits under Act, 2013.

Rule 16 of The Companies (Acceptance of Deposit) Rules, 2014 (Deposit Rules), states that every Company to which this Rules apply, shall on or before 30th June of every year file with the Registrar, a return of deposit in Form DPT-3 along with fees and furnish information as on 31st March of that year duly audited by Auditor of the Company.

Thus, it is very clear position that DPT-3 is to be filed for deposits accepted on or after 1st April, 2014 in compliance with Chapter V of Act, 2014 and Deposit Rules.

To view the entire article click here.

Is e-voting mandatory for Listed Companies?

By CS Shampita Das

Published in TaxGuru

Section 108 of the Companies Act, 2013 read with Rule 20 of the Companies (Management and Administration) Rules, 2014 ('MGT Rules') had made it mandatory for every listed company and company having not less than 1000 shareholders to provide e-voting facility at general meetings.

To bring the provisions of the Listing Agreement in line with the Act, 2013, SEBI *vide* its Circular CIR/CFD/POLICY CELL/2/2014 dated 17th April, 2014 amended Clause 35B to mandate listed entities to provide e-voting facility to its shareholders at General Meetings and postal ballot. If further provides that the *modalities* would be governed by the provisions of the Rules.

Uptil now things were going fine. Then MCA entered with its Circular No. 20/2014 dated 17th June, 2014 making it non mandatory for companies to provide e-voting facility to its shareholders till 31st December, 2014. This was with a view to buy more time for compliance with procedural requirements with regard to e-voting, engagement of depository agencies and providing more clarity on matters like demand for poll/postal ballot etc. And then the confusion arose.

To view the entire article click here.

MCA further clarifies on Shares held in fiduciary capacity

By Vijaya Agarwala

Published in TaxGuru

In what seems to have become an exclusive and welcome manner of making up for the perplexity created by the Companies Act, 2013, the Ministry has come out with yet another clarification vide **General Circular no. 24/2014, Dated: 25.06.2014** on holding of shares in fiduciary capacity in associate companies. The circular has been issued in continuation to MCA circular 20/2013 dated 27th December, 2013 (Circular 2013). The clarifications assume significance as holding, subsidiary and associates relationships have a bearing on consolidation of financial statements. Fiduciary capacity creates a relationship wherein one holds the duty to another of trust, confidence and good faith. In such a situation, it is rationally incorrect to assume that the entity holding shares has the power to exercise influence as well. Instead in such cases, the shareholding must be counted as the shareholding of the beneficiary and not the shareholding of the trustee.

To view the entire article click here.

MCA proposes some relief to private companies: Related party restrictions to be taken off

By Mr. Vinod Kothari

Published in moneycontrol.com

CA today [24th June 2014] came with a list of sections from which it proposes to grant exemptions to private companies. This is a proposed notification, and the MCA has sought feedback of stakeholders by 1st July 2014.

Considering the strangulating provisions of the Act as originally enacted, it is a major relief. However, if one takes into account the fact that private company exemptions was an essential promise made by the MCA at the time of taking the Bill through Parliamentary Committees, the relief seems much less than desirable.

Private company exemptions: essential scheme of the law:

Unlike the 1956 Act where the exemptions to private companies were essential part of the fabric of the law, in the 2013 Act, everything was made applicable to every company, with the Central Government reserving the power to exempt companies. One of the reasons for this approach was that exemptions were based on dynamics of business, and it would better serve the interest of business if the MCA could do it by notification, rather than through Parliamentary process. There were several submissions made by the MCA before the Parliamentary Committees that, where appropriate, the MCA will come up with exemptions for private companies.

To view the entire article click here.

MCA clarifies CSR provisions

By CS Shampita Das

Published in Indian Corplaw.

The provisions of the Companies Act, 2013 and the relevant Rules thereunder relating to corporate social responsibility (CSR) have come into effect from April 1, 2014. Since this concept is novel in India from a regulatory standpoint, several difficulties are bound to rise in its implementation. Matters are compounded further because the nature of the Act and Rules are extremely prescriptive in nature, including as to what matters fall within the purview of CSR and what do not. Not only have the Rules made the scope of the CSR provisions quite restrictive in nature (as discussed here), but the type of matters covered within CSR under Schedule VII of the Companies Act have undergone amendment seven before coming into effect.

Given all these complexities, the Ministry of Corporate Affairs (MCA) last week issued a clarification regarding the CSR provisions under the Act and the Rules. It is evident that industry was concerned regarding the scope of CSR activities in Schedule VII, which are quite restrictive in nature. Now, the MCA has clarified that "the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule" and that the "items listed in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities". Illustrations of various types of activities are provided in the clarification. This suggests that the MCA is willing to provide some level of flexibility to the corporate sector in implementing the CSR policy.

To view the entire article click here.

Identifying KMPs under Companies Act, 2013

By CS Shampita Das

Published in Indian Corplaw.

Amendments from the Ministry of Corporate Affairs (MCA) to the hurriedly introduced Rules (under the Companies Act, 2013) continue to flow. Now, the MCA has come out with an amendment to the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 dated 9 June 2014 to introduce Rule 8A pertaining to appointment of whole-time company Secretary. The text of the Rule is provided below:

Rule 8 to the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 follows from Section 203 (1) of the Companies Act, 2013 and provides for appointment of key managerial personnel ('KMP') in companies as follows:

"Every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel."

Rule 8 specifies two sets of companies – (1) Listed Companies and (2) Other Public Companies. For other public companies, the threshold limit for the section to be applicable is Rs. 10 crore paid up capital.

Looking at the language of the newly inserted Rule 8A, one can just lament on the loose drafting of MCA, which has once again created confusion instead of clarifying the position. Rule 8A suggests that companies not falling under Rule 8 would be required to appoint a whole-time company secretary.

To view the entire article click here.

MCA clarifies on residency requirement of resident director

By Nikita Snehil

Published in MoneyLife

With the implementation of the pre-requisite to have at least one resident director, foreign companies doing business in India will now have a tough time ensuring the residency requirement.

The Ministry of Corporate Affairs (MCA) seems to be in top gear, issuing clarifications, circulars and notifications in response to the numerous queries and representations received from various stakeholders. In the case of directors, MCA clarified rules about Independent Directors a few days ago and now subsequent to examining the matter, MCA has issued clarifications on residency requirements.

The MCA clarified that companies incorporated between 1st April 2014 to 30th September 2014 should have a resident director either at the incorporation stage itself or within six months of their incorporation.

Further, Companies incorporated after 30 September 2014 needs to have the resident director from the date of incorporation itself.

To view the entire article click here.

Highlights of Companies Rules 2013 on Compromise and Arrangement

By CS Nidhi Ladha

Published in VIPCA Journal vol.V.

VIPCA

Highlights of Companies Rules 2013 on compromise and arrangement

By CS Nidhi Ladha, B.Com (H), ACS • ladha.nidhu@gmail.com

The Companies Act, 2013 (the Act) has already been enacted as Act no. 18 of 2013 after getting green signal from the Hon'ble President on August 29, 2013 and 98 sections of the Act have already been enforced by the MCA. However, a bigger part of the law depends on the rules to be notified in this regard by the MCA.

The MCA had placed on its portal, the draft rules (first set) for public comments on September 6, 2013[1] and draft forms under such rules inviting comments till October 8, 2013. As a further step and as continuation of its speedy actions, the Ministry has now uploaded second set of draft rules on its portal on September 20, 2013[2] which is open for public comments till October 19, 2013.

Chapter XV comprising of Section 230 to 240 of the Companies Act, 2013 (the Act) deals with compromise, arrangements and amalgamations. This note deals with the draft rules specified for chapter XV on 'Compromise and Arrangement' (the Rules) and provides a quick snapshot on the same. The Rules are more or less based on the Companies Court Rules, 1959.

Forms prescribed

Form No.	Particulars
Form 15.1	For making application to NCLT for an order directing calling of meetings
Form 15.2	
Form 15.3	
Form15.4	Format in which notice is to be sent to CG, RBI and other regulatory authorities
Form 15.5	Format for advertisement of notice calling meeting
Form 15.6	Filing of report by chairperson on result of meeting
Form 15.7	Filing grievances by aggrieved shareholder with respect to takeover offers of unlisted companies
Form 15.8	Filing of second and final petition for approval of scheme of compromise or arrangement
Form 15.9	Form for order of NCLT approving the scheme of compromise or arrangement
Form 15.10	Form for order of NCLT approving the scheme of merger, demerger or reconstruction
Form 15.11	Filing of statement with RoC during pendency of scheme under section 232(7)
Form 15.12	Form for filing declaration of solvency by small/holding-subsidiary companies under section 233
Form 15.13	Form for filing scheme of arrangement to CG, ROC and OL by small/holding-subsidiary company under section 233
Form 15.14	Form for issuing confirmation order by CG u/s 233
Form 15.15	Form for filing confirmation order received from CG u/s 233
Form 15.16	Form fir sending notices to dissenting shareholders by the transferee company u/s 235 to acquire their shares
Form 15.17	

Manner and form of application to National Company Law Tribunal for calling meetings

Section 230 (1) of the Act requires making of an application by the company or member or creditor or liquidator (if company is in liquidation) to the National Company Law Tribunal (NCLT) for an order directing calling of a meeting of members or creditors.

The Rules have now specified **Form 15.1** for making such application along with such documents as may be prescribed in the said Form. Upon hearing, the NCLT will pass an order fixing the time, date, quorum, manner of circulation of notice etc. It is to be noted that Rule 15.1 (2) has empowered the NCLT to decide the class of creditors and/or of members whose meeting or meetings have to be held for considering the proposed compromise or arrangement.

Filing of Creditors Responsibility Statement in a scheme of corporate debt restructuring

Section 130 (2)(a)(ii) of the Act allows filing of corporate debt restructuring scheme, if consented by at least 75% secured creditors in value and requires, along with other prescribed documents, filing of a creditors responsibility statement by the creditors.

The Rules have specified the format for filing of such statement by the creditors. The said statement is required to be signed by all consenting secured creditors and is to be filed in **Form 15.2**.

Sending of notices to members or creditors

On the direction of the NCLT, the notice calling meeting of members/creditors is to be sent along with a statement in accordance with section 230(3) of the Act.

Earlier, the scheme of arrangement was required to accompany the notice however, the Rules have now prescribed the detailed contents of such statement to be sent along with the notice. Sending of notices may not be an easy task now!

The statement will require, along with necessary details in relation to holding of meeting as to time, date and place:

Postal ballot and e-voting under the Companies Act, 2013 – Bombay high court seems to make some sense of the mixed provisions

By CS Aditi Jhunjhunwala

Published in VIPCA Journal vol.V.

VIPCA

Postal ballot and e-voting under the Companies Act, 2013

-Bombay high Court seems to make some sense of the mixed provisions

By Aditi Jhunjhunwala • aditi@vinodkothari.com

With all of us trying to solve the puzzle of the Companies Act, 2013 (Act/Act 2013) and its related Rules, one of the first few cases has been dealt with by the Bombay High Court trying to unwind the knots in the Act through a reasoned and well vision judgment while considering a scheme of arrangement between Wadala Commodities Limited and Godrej Industries Limited1. The question at the initial stage for summons for direction to convene the meetings was "whether in view of the provisions of Section 110 of the [the 2013 Act] and SEBI Circular dated 21st May 2013, a resolution for approval of a Scheme of Amalgamation can be passed by a majority of the equity shareholders casting their votes by postal ballot, which includes voting by electronic means, in complete substitution of an actual meeting. In other words, whether the 2013 Act, read with various circulars and notifications, has the effect of altogether eliminating the need for an actual meeting being convened."

The Court appreciated the apparent legislative intent under the Act, SEBI Circulars as well as listing agreement in providing postal ballot and electronic voting as the same would encourage wider shareholder participation, greater inclusiveness and encourage more shareholders to vote. However, the Court has also reasoned the need of physical meetings vis-à-vis postal ballot and electronic voting by highlighting that the principal behind voting is not merely a right to vote on any particular item of business, so much as the right to use the vote as an expression of an informed decision. The Court has given detailed reasoning for holding physical meeting which are discussed in depth in this write up.

Purpose of a meeting

The issue considered by the Court was a shareholder is merely required to cast a vote or also be able to express his opinion and thereafter make an informed decision. The important part of the observation by Court being extracted below is:

"..the shareholder has an inalienable right to ask questions, seek clarifications and receive responses before he decides which way he will vote. It may often happen that a shareholder is undecided on any particular item of business. At a meeting of shareholders, he may, on hearing a fellow shareholder who raises a question, or on hearing an explanation from a director, finally make up his mind. In other cases, he may old strong views and may desire to convince others of his convictions. This may be in relation to matters that are not immediately obvious to the shareholder merely on receipt of written information or a notice."

The Court went on further to explain the same in light of provisions of amendments to the listing agreement citing Clause 49(I)(A) of the SEBI circular dated April 17, 20142 which speaks of the rights of the shareholders. These include the right to

- participate in and to be sufficiently informed on decisions concerning fundamental corporate changes;
- the opportunity to participate effectively and vote in general shareholder meetings;
- the opportunity to ask questions to the board, to place items on the agenda of general meetings, and to propose resolutions, subject to reasonable limits;

The Court considered that in light of the above spirit and intent of the legislation one cannot hold a view that a meeting of shareholder can be completely done away with. The Court considered that the purpose of shareholders' democracy is to persuade and be persuaded collectively which can be possible only through a physical meeting where there can be deliberation and exchange of views unlike in case of a ballot where a shareholder merely casts vote without any say or interaction.

Meeting Quorum

The Court further observed that the Act provides a provision for quorum for meetings. In case of voting exclusively by postal ballot or electronic voting the meaning and essence of the said provision will completely get vanished. Hence, though one may argue that the provisions of section 110 eliminate the requirement of quorum, however, how will the statutory requirement under section 103 get complied with as casting a vote by postal ballot or e-voting may not constitute personal presence if one has to go by mere language of law?

Amendments to proposed resolutions

The Court said that there can be amendments to the agenda items and the proposed resolutions wherein the possibility of flow of suggestions can be only on the floor. Likewise in a scheme of arrangement there is likelihood of changes in the proposed scheme on matters such as the exchange ratio. The suggested amendments come only from the members present in the meeting including the board of directors and thus, a scheme may be accordingly modified and put to vote which is not possible in case of a postal ballot facility. The Court further observed that all the schemes are only proposed and are therefore, subject to not only approval but amendments. Further, interestingly court pointed section 230 of the Act vis-as-vis section 391 to 394 of the Companies Act, 1956 (Act 1956), wherein, the section still requires calling of a meeting and not merely putting the scheme to vote. Thus, the Court identified

Hall of Fame

Mr. Vinod Kothari was quoted by The Economic Times in the article 'Legislators now in favour of giving newer shape to Companies Act 2013' on 23rd June, 2014.

"The worst law that our country has ever passed, it is a completely reactive law. This will further pull down India from its existing poor ranking of 134 among 188 World Bank member counties to the bottom"

To view the entire article click here.

Mr. Vinod Kothari was quoted on The Economic Times in the article *" Government ammends rules for Company Secretaries" on June 12, 2014:*

"This change in scope had left the CS fraternity in a state of shock and led to huge disappointments among them, according to company law expert Vinod Kothari"

To view the entire article click here.

Exclusive Interview of Mr. Vinod Kothari covered by "Dhaka Tribune" in Bangladesh on 2nd June 2014.

Every country needs an active bond market and Bangladesh is no exception to that rule, said Vinod Kothari during an interview with Dhaka Tribune. He recently came to Bangladesh to attend an IDLC Finance Ltd workshop on bond markets.

Vinod Kothari is an internationally recognised author, trainer and consultant on specialised financial subjects. He lectures around the world including New York, Washington, London, Milan, Malaysia, Bangladesh and so on.

He said the businesses in Bangladesh can avail more debt and wider primary markets and therefore talks should be held on developing such markets in a well-planned manner. Following is the details of his interview:

At what stage is our bond market at the moment?

The market is yet to come out of its primary stage. It needs to be more active, with sufficient buyers and sellers in the market to increase liquidity. It will increase willingness of investors to buy bonds.

To read the entire interview click here.

Contact Us

1012 Krishna Building
224 AJC Bose Road
Kolkata – 700017,India
Ph: 91-33-22817715/ 1276/ 3742

Mumbai office:
601-C, Neelkanth,
98, Marine drive,
Mumbai- 400 002
022-22817427

Mail to:
vinod@vinodkothari.com;
nidhi@vinodkothari.com

Our Websites:
www.vinodkothari.com
www.india-financing.com