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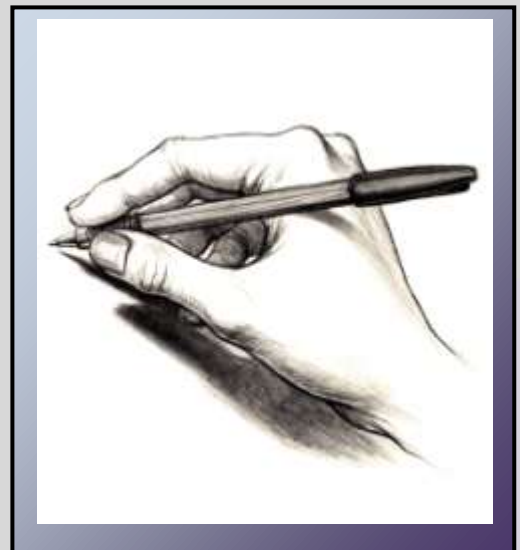
# **SPARSH.....**

## ***TOUCHES***

### ***JANUARY, 2015***

#### **In this Issue:**

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



## Editorial

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



*The individual activity of one man with backbone will do more than a thousand men with a mere wishbone.*

- Annettes Funicello.

We, at VKCPL & VK & Co., believe in hard work, determination and perfection. We put in our best into each and every act done by us which results into huge success and appreciation by all.

With this thought of creativity and continuing growth, we come again with "Sparsh".

*Stay in touch with us through SPARSH!!*

Editor:

-Tejash Doshi

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





## *Articles Published*

- ▶ Are NBFC's on thin ice? by Mr. Vinod Kothari in Moneylife
- ▶ Analysing the new SEBI Insider Trading Regulations 2015 by CS Aditi Jhunjhunwala in companiesact.in
- ▶ Anomaly in PAS 3 for issue of bonus shares u/s. 63 of Companies Act, 2013 by CS Aditi Jhunjhunwala in TaxGuru
- ▶ Anomaly in MGT-10 for disclosure u/s 93 read with Companies (Management and Administration) Rules, 2014 by CS Aditi Jhunjhunwala in TaxGuru
- ▶ Wilful Defaulters: A Further Analysis by Prachi Narayan in IndianCorpLaw
- ▶ Taking Care of Children: Companies Act imposes obligations pertaining to Subsidiaries by CS Aditya Shah in TaxGuru
- ▶ Borrowers beware, as the Bank is always right! by Abhirup Ghosh in Moneylife
- ▶ SEBI Amendment in case of Foreign Venture Capital Investors by Neha Somani in Moneylife
- ▶ SEBI eases and Standardizes Regulations for Securitised debt Instrument by Neelu Singh in TaxGuru
- ▶ RBI reviews ODI provisions by a proprietorship concern/unregistered partnership firm in India by Niddhi Parmar in onlinelawsolutions.com

*For More Articles, Click [here](#).*


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

 *Mr. Vinod Kothari was the Chief Guest at the 10th Regional Conference of Practising Company Secretaries on 3rd January, 2015 at The Lalit Great Eastern Hotel, Kolkata.*


 *Mr. Vinod Kothari one of the Panelist at the 25th Regional Conference of Company Secretaries on 17th January, 2015 at Hyatt Regency Kolkata.*

## Our Corner

 *Happy Birthday Swati Rampuria*

 *Happy Birthday Prachi Narayan*

 *Happy Saraswati Puja*

 *Trip to Gangtok*

## ***Our Forthcoming Workshops:***

1 Day Workshop on Real Estate Investments Trusts on  
6<sup>th</sup> February, 2015, Mumbai

Workshop on Factoring, Mumbai/Kolkata

Workshop on Basle III, Mumbai

Workshop on Securitisation and Covered Bonds, Mumbai

# Articles Published

## “Are NBFC’s on thin ice? by Mr. Vinod Kothari in Moneylife”

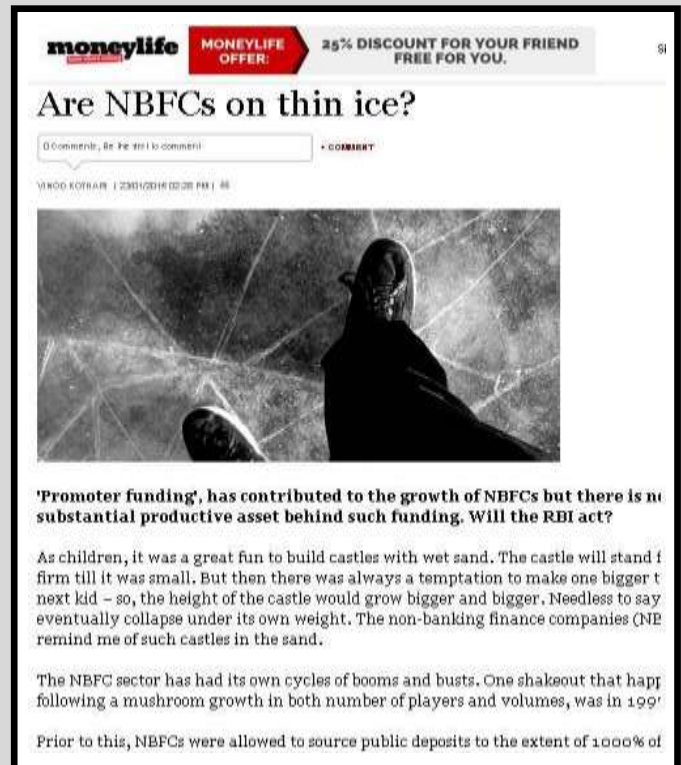
As children, it was a great fun to build castles with wet sand. The castle will stand fine and firm till it was small. But then there was always a temptation to make one bigger than the next kid – so, the height of the castle would grow bigger and bigger. Needless to say, it will eventually collapse under its own weight. The non-banking finance companies (NBFC) remind me of such castles in the sand.

The NBFC sector has had its own cycles of booms and busts. One shakeout that happened, following a mushroom growth in both number of players and volumes, was in 1997.

Prior to this, NBFCs were allowed to source public deposits to the extent of 1000% of their net worth, which many of them actually did, and many collapsed under burden of severe asset liability mismatches. Thereafter, there have been periods of optimism and pessimism, and sometimes, a mix of the two.

Over the last 10 years or so, the NBFC sector has grown impressively. This is best demonstrated by the consistent increase in the share of NBFC assets versus those of the banking sector. The growth has been steady, from 10.7% of bank assets in the year 2009, to 14.3% of bank assets in 2014.

To view the full article click [here](#)





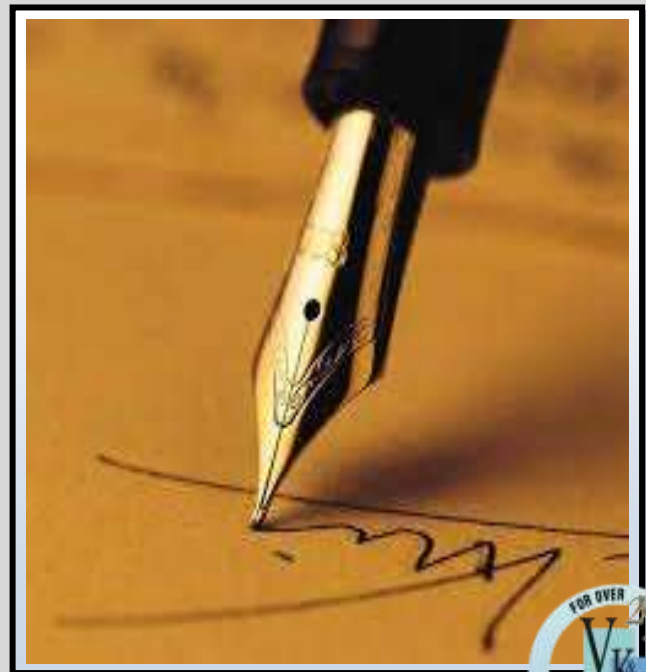
## “Anomaly in PAS 3 for issue of bonus shares U/s. 63 of Companies Act, 2013 by CS Aditi Jhunjhunwala in Taxguru”

“We’re all human and we all goof. Do things that may be wrong, but do something.” This expression goes well with our Ministry of Corporate Affairs (MCA), who in its attempt for speedy implementation of the Companies Act, 2013 (the Act) and its allied rules committed errors and omissions, some of it being apparent on the face while others creep at the time of specific implementation by the companies. One such slip is in case of filing with respect to section 63 of the Act.

Section 63 deals with issue of bonus shares by a company. Clause (b) to sub-section (2) of Section 63 read with Rule 12 (6) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 (the Rules) requires a company to pass shareholder’s resolution for the purpose of capitalising its profits or reserves, amongst other conditions prescribed under the sub-section.

Form no. PAS 3 deals with return of allotment of securities and therefore, allotment pursuant to issue of bonus shares under section 63 will require filing under PAS 3. The section read with the rules nowhere requires that the shareholder’s resolution will be a special resolution, however, on perusal of the form under point 5 (e), we find that the date of “special resolution” is required.

To view the full article click [here](#)



## **“Anomaly in MGT-10 for disclosure u/s 93 read with Companies (Management and Administration) Rules, 2014 by CS Aditi Jhunjhunwala in Taxguru”**

Section 93 requires every listed company to file return in MGT 10 with respect to change in number of shares of promoters and top ten shareholders. Rule 13 of the Companies (Management and Administration) Rules, 2014 requires the reporting to be done in case there is 2% or more increase or decrease in the number of shares. However, this 2% is of 2% of what? Whether 2% of the holding of individual or 2% of the company's capital. The Act and the Rule both are silent on the same.

The help kit for the form MGT 10 however, seems to suggest that the change of 2% is to be calculated on the shareholding of the shareholder himself and not on the paid up capital of the company. The change to be reported is the change is 2% or more – this should logically mean 2% of the total share capital of the company. More logical interpretation would have been 2% of the company's capital, because it is then only that the change is significant and requires abrupt reporting.

We are of the view that the intent of section 93 could not be to report 2% change relative to the shareholding of the shareholder himself. The idea is to report material movements in shareholdings.

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## **“Wilful Defaulters: A Further Analysis”**

**By Prachi Narayan**  
**Published in Indian Corporate Law**

A previous post on the topic discusses SEBI's recent proposal towards “wilful defaulters”. This guest post discusses in detail the current regime imposed by the RBI and also comments briefly on the SEBI proposal as well as relevant case law on the topic.

The multifarious attempts of the Reserve Bank of India (RBI) in dealing with wilful defaulters gets further weight by the Securities and Exchange Board of India (SEBI) proposing to completely bar such “freeloaders” from tapping financial markets.

The RBI has already put in place plethora of norms, be it with regard to the recovery process or the categorisation of borrowers as non-cooperative or wilful. SEBI's move to further ostracize wilful defaulters makes it clear that the intent is to choke all sources of funds, close all avenues that may be available and send such defaulters on a financial exile forever.

This post is an attempt to analyse the requirement of such stringent norms for recovery of loans and whether barring such freeloaders from financial markets will help decrease the levels of non-performing assets (NPAs) in the economy.

*To view the full article click [here](#)*



## “Taking Care of Children: Companies Act imposes obligations pertaining to Subsidiaries”

By CS Aditya Shah  
Published in Tax Guru

A Company incorporated under the statute has an identity of its own, which is different from its members and shareholders, etc. A subsidiary company is an incorporated entity which has an identity of its own, which shall be separate from its holding company. Generally, holding company need not interfere into the business of its subsidiary company; however under The Companies Act, 2013, a holding company, in certain circumstances, would be required to oversee the activities of its subsidiary company. Since various provisions under Companies Act, 2013 cast obligation upon the holding company to keep itself in loop with the activities of the subsidiary, especially pertaining to those where conflict of interest may arise whenever such activity requires independence. Further Revised Clause 49 of the listing agreement also provides for listed holding company to oversee the business activities of its subsidiary company.

Holding companies, which can also be term Parent Company in relation to its subsidiary company, can also require to behave like a parent for subsidiary company. Since there are obligations casted upon the holding company to re-view the work done by its subsidiary company, in certain case, and certain activities done by subsidiary company either in present or past would affect holding company in one or the other way.

To view the full article click [here](#)



## **“Borrowers beware, as the Bank is always right!”**

**By Abhirup Ghosh  
Published in Moneylife**

The RBI guidelines on defaulters now allow banks to classify any defaulting borrower as non-cooperative and then a wilful defaulter

With sweeping regulations being made by the Reserve Bank of India (RBI) on recovery of loans and non-performing assets (NPAs), the new mantra now seems to be “the Bank is always right”. Gone are the days of prioritising the interest of the customers. Now a borrower will have to obey to what his banker says else his fate is in the hands of the bank.

The RBI and its various guidelines has compartmentalised the hall of shame for the defaulting borrowers of the banks. The compartments are – defaulting borrower, a non-cooperative borrower and lastly there is wilful defaulter. Each of these compartments have their own set of norms and own set of surprises.

When an entity or an individual borrows money from the bank and defaults in repaying the borrowed money, banks classify them as defaulters and initiate actions for recovery of loans. The special enactments empowering banks and financial institutions to proceed against the Defaulters are Recovery of Debts Due to Banks and Financial Institutions, 1990 (RDDBFI) and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI).

To view the full article click [here](#)





## “SEBI Amendment in case of Foreign Venture Capital Investors”

By Neha Somani  
Published in Moneylife

As per an amendment to its regulations, the Securities and Exchange Board of India (SEBI) has substituted the definition of “Venture Capital Undertaking.”

According to the definition stated in Regulation 2(m) of the Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000, “Venture Capital Undertaking” meant a domestic company, not having its shares listed on any recognised stock exchange in India; engaged in the business of providing services, production or manufacture of articles or things, with central government’s approval by notification in the Official Gazette. It excluded the activities or sectors of the negative list, mentioned hereunder:

- Non-Banking Financial Companies (NBFCs) [Except those registered with the Reserve Bank of India and categorised as Equipment Leasing or Hire Purchase Companies].
- Gold financing (Except the companies engaged in gold financing for jewellery).
- Activities that have been disallowed under the industrial policy of Government of India.
- Any other activity specified by the Securities and Exchange Board of India (SEBI) in consultation with the Government of India.

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With this amendment, the bottleneck for investment in the infrastructure sector through the FVCIs route has been removed

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- Any other activity specified by the Securities and Exchange Board of India (SEBI) in consultation with the Government of India.

With the new amendment dated 30 December 2014, the new definition encompasses Core Investment Companies (CICs) in the infrastructure sector, Asset Finance Companies (AFCs) and Infrastructure Finance Companies (IFCs) through the Foreign Venture Capital Investors (FVCIs) route, which were excluded before.

Leasing as a proportion of total asset finance is negligible. The inclusion of NBFCs categorised as Equipment Leasing or Hire Purchase Companies did not hold much significance practically because they were unpopular concepts, contributing a meagre share to the total asset finance. The previous regulations were at loggerheads with the practical scenario.



## “SEBI eases and Standardizes Regulations for Securitised debt Instrument”

By Neelu Singh  
Published in Tax Guru”

With the increasing demand and requirement of securitisation process for various receivables SEBI in its Board Meeting held on 21<sup>st</sup> January, 2015 has approved amendments Securities in and Exchange Board of India (Public offer and Listing of Securitised Debt Instruments) Regulations, 2008, (which is awaited for the circular) where they rationalised and clarified the roles and responsibilities of trustees and on the other hand tried to enhance the confidence of our investors in securitisation transactions as well.

### Definitions:

Securities and Exchange Board of India (Public offer and Listing of Securitised Debt Instruments) Regulations, 2008 has defined the various terms.

According to Regulation 2(1)(r) “securitisation” means acquisition of debt or receivables by any special purpose distinct entity from any originator or originators for the purpose of issuance of securitised debt instruments to investors based on such debt or receivables and such issuance;

According to Regulation 2(1)(s) “securitised debt instrument” means any certificate or instrument, by whatever name called, of the nature referred to in sub-clause (ie) of clause (h) of section 2 of the Act issued by a special purpose distinct entity; According to Regulation 2(1)(w) “trustee” means a trustee of a special purpose distinct entity.

*To view the full article click [here](#)*





## “RBI reviews ODI provisions by a proprietorship concern/ unregistered partnership firm in India”

By Niddhi Parmar

Published in onlinelawsolutions.com”

Subsequent to amending the FEMA (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004 (ODI guidelines) with respect to Overseas Direct Investments by proprietorship concern / unregistered partnership firm in India vide notification No. FEMA. 325/RB-2014 dated November 12, 2014<sup>[1]</sup> effective from January 05, 2014<sup>[2]</sup> (date of publication in the Official Gazette), the Reserve Bank of India (RBI) thereafter issued RBI/2014-2015/419 A.P. (DIR Series) Circular No. 59 dated January 22, 2015<sup>[3]</sup> specifying the terms and conditions required to be complied with for considering the proposal of ODI, by a proprietorship concern/ unregistered partnership firm in India.

Under the ODI guidelines, the Regulation 19A relating to Overseas Investment - Proprietorship Concern was Inserted vide notification No. FEMA.164/2007-RB dated October 9, 2007<sup>2</sup> effective from March 27, 2006. As per the Amended Regulation the criteria mentioned in Schedule II<sup>2</sup> stands deleted and that the same will be prescribed by the Reserve Bank from time to time.

The table represented below shows comparison between Extant and the Amended Regulations.

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**Comparison between Extant and the Amended Regulations**

Extant Regulation	Amended Regulation
Proprietary / unregistered partnership firm in India being a recognised Star Export House with a proven track record and a consistently high export performance, <b>satisfying the criteria as per Schedule II</b> of the Notification may set up a JV/MCS outside India with the prior approval of the Reserve Bank.	A proprietorship concern or an unregistered partnership firm in India, <b>satisfying the criteria for Overseas Direct investment as prescribed by the Reserve Bank from time to time</b> , may set up / acquire a Joint Venture (JV) / Wholly Owned Subsidiary (WOS) outside India with the prior approval of the Reserve Bank.
Criteria for considering investment proposals outside India by established proprietorship or unregistered partnership exporter firms, Under Schedule II was as under:	The revised terms and conditions are required to be complied with for considering the proposal of ODI, by a proprietorship concern / unregistered partnership firm in India, by the Reserve Bank under the

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## Our Corner

# Happy Birthday Swati Rampuria and Prachi Narayan







# We wish you a very Happy Saraswati Puja





# The Trip to Gangtok







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