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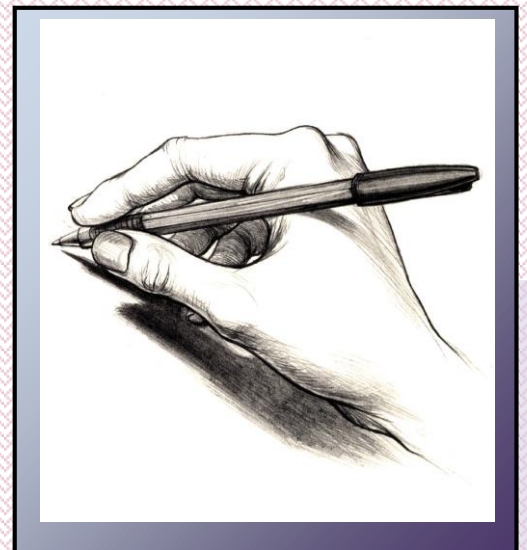
# SPARSH.....

***Touches***

*March, 2015*

## **In this Issue:**

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-  **Our Articles Published**
-  **Sessions taken by Mr. Vinod Kothari**
-  **Our Corner**
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## Editorial

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



*"The Secret of getting ahead is getting started".*

**-Mark Twain**

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 success and appreciation by all.

With this thought of dedication and hard work, we come again with "Sparsh".

*Stay in touch with us through SPARSH!!*

*Editor:*

*- Nikita Snehil*

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## Articles Published

- ▶ SAT Order in the DLF Case: Controlling SEBI's Punitive Vehemence, by Vinod Kothari, published in IndiaCorpLaw
- ▶ Taxation of investment vehicles: Will the Budget set right the distortions – II, by Vinod Kothari & Nidhi Bothra, published in MoneyLife
- ▶ Union Budget 2015 – 2016: Some fair and some despair for the NBFCs, by Nidhi Bothra & Abhirup Ghosh, published in LawStreetIndia, Taxsutra
- ▶ Rule Change for E-Voting, by Nidhi Bothra & Vinita Nair, published in IndiaCorpLaw
- ▶ Act before it's too late: Section 74 scares all!, by Aditi Jhunjunwala, published in TaxGuru
- ▶ Pass-through for AIFs in Budget, 2015: Is it a farce?, by Nidhi Bothra & Saurav Malpani, published in e-Copy of Corporate Professionals Today
- ▶ FCRA: CSR by foreign companies, by Swati Rampuria, published in IndiaCorpLaw
- ▶ Guide to Staff Loans under the Companies Act, 2013, by Munmi Phukon, published in IndiaCorpLaw
- ▶ Taxation of investment vehicles: Will the Budget set right the distortions – I, by Vinod Kothari & Nidhi Bothra, published in Moneylife
- ▶ 'More the merrier: MCA widens scope of undertaking CSR activities', by Aditi Jhunjunwala, published in Taxmann's Corporate Professionals Today
- ▶ 'Criminal liability of Corporate Officers- Supreme Court Takes a negative view', by Aditi Jhunjunwala & Prachi Narayan, published in SCL Magazine
- ▶ 'Make in India' will fail without a better Companies Act, by Nivedita Shankar, published in Moneylife.
- ▶ Truth is lending, Is The RBI blending? by Neha Somani, published in Moneylife.

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



## Sessions/Lectures taken/Events attended

- *A session at 46<sup>th</sup> EDP by ICSI on Regulatory Insight, Capital Markets, and opportunities on 25<sup>th</sup> February, 2015 at ICSI by Nidhi Bothra*
- *A session at 47<sup>th</sup> Executive Development Programme organized by ICSI on Regulatory Insight, Capital Markets, and opportunities, on 24<sup>th</sup> March, 2015*
- *Nidhi Bothra was the speaker for Seminar on NBFC - Revised regulatory framework on Wednesday, 25<sup>th</sup> March 2015*
- *Participation by Neha Somani in the Cultural Event at the 4<sup>th</sup> Annual Students Conference being organised by the Hooghly*

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

Rounding up Company Law in 6 Sessions, Batch II

Treasury Management for NBFCs

Workshop on Corporate Debt Restructuring, Mumbai

Workshop on Regulations for NBFCs, Mumbai

Cashflow Modeling for Securitisation, Mumbai



# Articles Published

## **‘SAT Order in the DLF Case: Controlling SEBI’s Punitive Vehemence’**

**By Vinod Kothari**  
**Published in IndiaCorpLaw**

The order of the Securities Appellate Tribunal (SAT) in the case of DLF Limited makes interesting reading, not because it is the first of its kind passing strictures against the vehement use of punitive powers by SEBI, but it provides an important opportunity to reflect on the question whether massive penal powers in financial statutes are to be used in sync with the gravity of the matter, or can simply be deployed casually?

This post is not intended to cover the facts of the case, but on significant points on which ruling has been given by the Securities Appellate Tribunal (SAT). A brief review of facts has been given because the judgement itself has been inspired, at least in part, by the stark facts surrounding the case. Author needs to submit that this article is no endorsement or evaluation of the business practices followed by real estate companies, which may encompass different shades of gray, replete with cash deals, unfair practices and so on. However, that commercial dispute between a party having a land deal with an alleged affiliate of the company should have been raked up before SEBI, SEBI should have, 7 years after the closure of the issue, with absolutely no evidence of any investor damage due to the alleged non-disclosure, passed strict penal orders, is a matter of great interest.

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



## 'Taxation of investment vehicles: Will the Budget set right the distortions - II'

By Vinod Kothari & Nidhi Bothra  
Published in MoneyLife

Will Finance Minister Arun Jaitley provide some clarity on different and confused tax provisions, especially for investment vehicles such as mutual funds, trusts and private equities in the Budget 2015?

All over the world, there are clear rules for being eligible for pass-through status, but unfortunately, the principles on representative taxation in India have never been designed to tax collective investment devices. The least what Finance Minister Arun Jaitley should do, in Budget 2015, is to set right the highly distorted scene of taxation of investment vehicles, especially when international investors are invariably flummoxed about tax uncertainty. These vehicles include the private equity (PE) funds and venture capital funds (VCFs), collectively called alternative investment funds (AIFs), securitisation vehicles, real estate investment trusts (REITs) and infrastructure investment trusts (InvITs).

A recent ruling of the Bangalore ITAT in the case of M/s India Advantage Fund –VII vs. Dy. Commissioner of Income Tax, examined the general representative tax principles in India, conditions of taxation of an AOP, tests for determinacy of beneficiaries in case of a trust, and was particularly helpful in expanding/ extending the benefit of a CBDT circular issued recently on 28 July 2014.

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





## 'Union Budget 2015 - 2016: Some fair and some despair for the NBFCs'

By Nidhi Bothra & Abhirup Ghosh  
Published in LawStreetIndia, Taxsutra

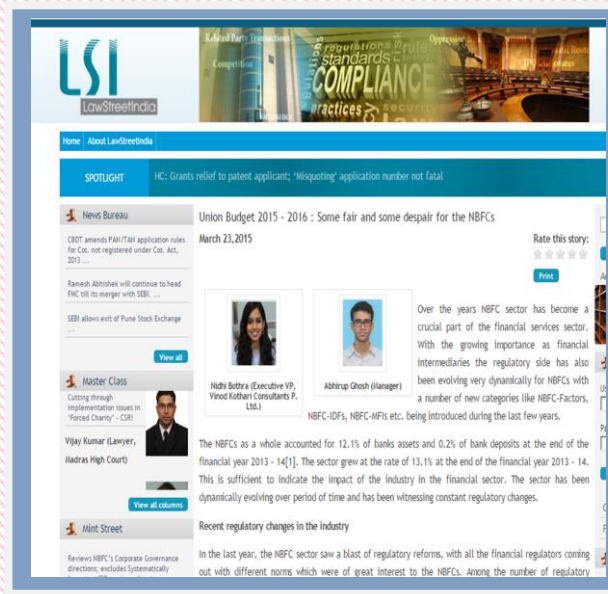
Over the years NBFC sector has become a crucial part of the financial services sector. With the growing importance as financial intermediaries the regulatory side has also been evolving very dynamically for NBFCs with a number of new categories like NBFC-Factors, NBFC-IDFs, NBFC-MFIs etc. being introduced during the last few years.

The NBFCs as a whole accounted for 12.1% of banks assets and 0.2% of bank deposits at the end of the financial year 2013 - 14[1]. The sector grew at the rate of 13.1% at the end of the financial year 2013 - 14. This is sufficient to indicate the impact of the industry in the financial sector. The sector has been dynamically evolving over period of time and has been witnessing constant regulatory changes.

### Recent regulatory changes in the industry

In the last year, the NBFC sector saw a blast of regulatory reforms, with all the financial regulators coming out with different norms which were of great interest to the NBFCs. Among the number of regulatory changes brought in the Reserve Bank of India (RBI), elaborate guidelines and norms on corporate restructuring for the NBFCs created a lot of buzz. In addition, the enactment of the Companies Act, 2013 (CA 2013) also had many things to offer to the NBFC.

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





## **'Rule Change for E-Voting'**

**By Nidhi Bothra & Vinita Nair**  
**Published in IndiaCorpLaw**

Under the erstwhile system of holding general meetings, the resolutions were put to vote by way of show of hands or a poll could be demanded. Since only such members who were present at the meeting either themselves or through proxy could vote, the system demanded members to be present themselves or through proxy.

The new refurbished rules however facilitated members to vote on resolutions to be taken up at the general meeting without having to be present themselves. They could now vote from the remotest location in the country if they had internet access and exercise their right to vote.

With the introduction of the e-voting system for specified class of companies, the concept of show of hands becomes irrelevant. Members could vote through e-voting system and at the meeting the Chairman could put the resolution to poll.

The rules on e-voting system posed challenges of the own when introduced last year and the Ministry of Corporate Affairs (MCA) was forced to make it optional considering the barrage of queries and clarifications the rules demanded. Reading of the amendments has the potential of raising several further queries on the changes. Rule 20 as applicable on e-voting has been substituted by the new provisions as introduced by the amendment of 2015.

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



## 'Act before it's too late: Section 74 scares all!'

By Aditi Jhunjunwala

Published in TaxGuru

One of the provisions of Companies Act, 2013 (Act 2013/Act) which has almost got sleepless nights to all as we are approaching 31<sup>st</sup> March is the provisions of section 74. With the introduction of section 74 which was notified on April 01, 2014, any deposit accepted by a Company had to be repaid in terms of section 74 (1). But are all the companies in a position to do it? What if the companies cannot repay? Below we discuss the shortcomings faced by companies for complying with section 74.

### What will constitute to be deposit?

Section 2 (31) of the Act, 2013 defines "deposit" to include-

*"any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India."*

Rule 2 (1) of the Companies (Acceptance of Deposit) Rules, 2014 prescribes the exclusions as to what will not constitute as deposit.

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



**'Pass-through for AIFs in Budget, 2015: Is it a farce?'**  
**By Nidhi Bothra & Saurav Malpani**  
**Published in e-Copy of Corporate Professionals Today**

## **Pass-through for AIFs in Budget, 2015: Is it a farce?**



**NIDHI BOTHRA**  
Executive Vice President,  
Vinod Kohari Consultants  
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**SAURAV MALPANI**  
Manager,  
Vinod Kohari Consultants  
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### **Introduction**

1. In order to create distinct private pooled investment vehicles to concessionalise VCFs, SME Funds, Social Venture Funds and other funds collecting money from investors which were not regulated by any of the SEBI Regulations, SEBI came out with the concept paper on Alternative Investment Funds Regulation on August 1, 2011. The concept paper was accompanied by a draft set of regulations: SEBI (AIF) Regulations, 2011 which were then formalized into SEBI (Alternative Investment Funds) Regulations, 2012 on May 21, 2012.

AIFs include funds established or incorporated in India in the form of trusts, companies, limited liability partnerships or a body corporates which pool funds from investors for making further investments for the benefit of the investors. Post the regulations coming into effect, all AIFs are mandatorily required to get themselves registered with the SEBI as per the Regulations.

### **Categorization of AIFs**

2. The regulations have categorized AIFs into three categories of funds:

- (a) **Category I AIFs** - Which include venture capital funds, SME funds, social venture funds, etc.



## 'FCRA: CSR by foreign companies'

By Swati Rampuria

Published in IndiaCorpLaw

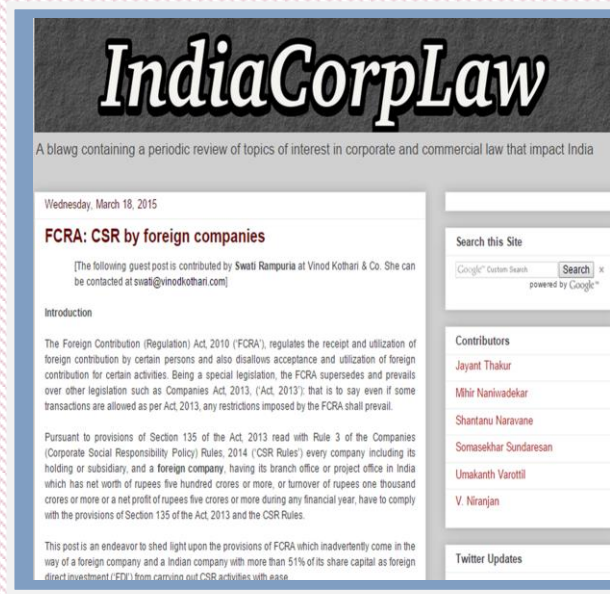
### Introduction

The Foreign Contribution (Regulation) Act, 2010 ('FCRA'), regulates the receipt and utilization of foreign contribution by certain persons and also disallows acceptance and utilization of foreign contribution for certain activities. Being a special legislation, the FCRA supersedes and prevails over other legislation such as Companies Act, 2013, ('Act, 2013'): that is to say even if some transactions are allowed as per Act, 2013, any restrictions imposed by the FCRA shall prevail.

Pursuant to provisions of Section 135 of the Act, 2013 read with Rule 3 of the Companies (Corporate Social Responsibility Policy) Rules, 2014 ('CSR Rules') every company including its holding or subsidiary, and a **foreign company**, having its branch office or project office in India which has net worth of rupees five hundred crores or more, or turnover of rupees one thousand crores or more or a net profit of rupees five crores or more during any financial year, have to comply with the provisions of Section 135 of the Act, 2013 and the CSR Rules.

This post is an endeavor to shed light upon the provisions of FCRA which inadvertently come in the way of a foreign company and a Indian company with more than 51% of its share capital as foreign direct investment ('FDI') from carrying out CSR activities with ease.

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





## **‘Guide to Staff Loans under the Companies Act, 2013’**

**By Munmi Phukon**

**Published in IndiaCorpLaw**

One of the incongruities in the Companies Act, 2013 (Act, 2013) has been section 186 which subjected companies to certain threshold limits while giving loans to any person or other body corporate. However, the provisions were not explicit as to whether the term ‘any person’ under section 186(2)(a) of Act, 2013 also covered employees and thereby employee loans. Since the enforcement of the section 186 was followed by rules, the provisions created an ambiguous situation, thereby giving rise to doubts in the minds of those subject to the provisions.

Finally, the Ministry of Corporate Affairs (MCA) has come up with a clarification on March 10, 2015 by way of a General Circular No. 04/2015 (‘March 10 Circular’) stating that the provisions of section will not be applicable to staff loans and advances, provided the same is given in accordance with the conditions of service and remuneration policy for whom such policy is required to be formulated. Here is an analysis:

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



## **‘Taxation of investment vehicles: Will the Budget set right the distortions - I’**

**By Vinod Kothari & Nidhi Bothra**

**Published in Moneylife**

**Financial markets are hopeful that the Budget will clarify different and confused tax provisions regarding investment vehicles such as mutual funds, trusts and private equities.**

All over the world, there are clear rules for being eligible for pass-through status, but unfortunately, the principles on representative taxation in India have never been designed to tax collective investment devices. These principles have been created over the years to tax trusts where tax payers may create pools of assets/income which beneficially belong to a tax payer, but are not legally his. Therefore, there are situations where such a “representative assessee” is required to pay tax at maximum marginal rate (MMR) which defeats the purpose of these collective investment vehicles at the first place.

The least what Finance Minister Arun Jaitley should do, in Budget 2015, is to set right the highly distorted scene of taxation of investment vehicles.

The full article can be viewed [here](#).





## 'More the merrier: MCA widens scope of undertaking CSR activities'

By Aditi Jhunjunwala

Published in Taxmann's Corporate Professionals Today

### CORPORATE LAWS

## More the merrier : MCA widens scope of undertaking CSR activities



CS, ADITI JHUNJUNWALA  
Senior Associate,  
Vinod Kothari & Co.

### Introduction

1. The general echo is that the Act is a bunch of stringent and anti-business provisions. It is only followed by excessive delegation by way of Rules. The net result is more and more issuance of circulars/notifications/clarificatory orders, that too with ambiguity. Section 135 and the CSR Rules were notified to come into effect from April 1, 2014, but a number of clarifications by way of circulars and notifications were issued pre- and post-April 1, 2014.

Now, MCA vide its notification dated January 19, 2015<sup>1</sup> has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 (CSR Rules/The Rules) to extend the scope of companies through which CSR activities could be undertaken by a company falling under section 135 (hereinafter referred to as the eligible company). In the following paras the amendment in 2015 as well as briefly the amendments during 2014 in these rules have been discussed.

### 2. Amendments

2.1 Sub-rule (2) of Rule 4 to be substituted as follows : For the words "established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise" the

words "established under section 8 of the Act by the Company, either singly or along with its holding or subsidiary or associate company, or along with any other company or holding or subsidiary or associate company of such other company, or otherwise." shall be substituted.

In the proviso to clause (i) for the words "not established by the company or its holding or subsidiary or associate company" the words "not established by the company, either singly or along with its holding or

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## 'Criminal liability of Corporate Officers- Supreme Court Takes a negative view'

By Aditi Jhunjhunwala & Prachi Narayan

Published in SCL Magazine

94

SCL - MAGAZINE

[Vol. 129

[2015] 129 SCL 94 (Mag.)

### CRIMINAL LIABILITY OF CORPORATE OFFICERS - SUPREME COURT TAKES A NEGATIVE VIEW

ADITI JHUNJHUNWALA\* & PRACHI NARAYAN\*\*

#### Introduction

1. Crime is no more archetypal where only individuals are considered to be criminals. Now it has an overarching making corporates and legal entities amenable to criminal prosecutions.

For long the view has been that corporates cannot commit crimes as they lack *mens rea* or criminal intent-the fundamental ingredient of any criminal prosecution. So, under such circumstances the questions arise: (1) whether corporates could be prosecuted of criminal offences, and (2) whether directors or employees could be held vicariously liable for the criminal acts of the company, as the company itself could not be prosecuted criminally?

This article is an attempt to reflect upon the above questions in light of the recent Supreme Court's ruling in case of *Sunil Bharti Mittal v. Central Bureau of Investigation*<sup>1</sup> wherein a similar issue was vehemently dealt with by the Apex Court.

#### What is Vicarious Liability?

2. Vicarious liability has its roots in law of torts. A tort is a civil wrong committed against a person (including legal entities and companies) rather than a State. Black's Law dictionary defines vicarious liability as under:

"the imposition of liability on one person for the actionable conduct of another, based solely on the relationship between the two persons;"

This concept is based on the latin maxim "respondeat superior," meaning "let the master answer". A prime example of vicarious liability would be the responsibility of the principal for acts done by its agent or the employer's responsibility for acts of its employee. The doctrine could be well applied to civil cases where the likelihood of damages suffered is taken into consideration rather the intent behind the damages, as opposed to criminal cases where intent plays the driving mechanism.

#### What is Corporate Criminal Liability?

3. There is no concept of vicarious liability under criminal jurisprudence as crimes require *mens rea*, that is - a guilty mind. Early common law had a general belief that corporations or corporates could not be held criminally liable as they had no mind of their own that could have a wicked intent. This sufficiently provided enough cushioning to the corporates, as the most challenging obstacle to impose any criminal liability on corporations was the difficulty of attributing *mens rea* to an artificial person.

\*Company Secretary.

\*\*Advocate.

1. <http://judis.nic.in/supremecourt/imgs1.aspx?filename=42239>

SEBI AND CORPORATE LAWS □ FEBRUARY 15 - FEBRUARY 28, 2015 □ 196



## “‘Make in India’ wil fail without a better Companies Act”

By Nivedita Shankar  
Published in MoneyLife

**Between April-December 2014, new companies incorporated have dropped by over 40%. By subjecting private companies to restrictions on lending, restrictions on dealing with related parties, the new Companies Act has completely throttled the need to ease doing business in India**

The ambitious ‘Make in India’ campaign by Prime Minister Narendra Modi to make India a manufacturing hub will increase investment and employment. One would expect that this will mean an increase in the number of companies being incorporated since foreign investment in India through companies is common and preferred. However, as per data available on the Ministry of Corporate Affairs’ (MCA) website the number of new companies incorporated between April to December 2014 has dropped by over 40% over the corresponding period in the last year.

On the contrary, the number of limited liability partnerships (LLPs) incorporated has gone up by 67% during the same period. Companies Act was made onerous by the Congress-led government. The difficulty of doing business in India affects foreign direct investment or FDI. The provisions of FDI framed by the Reserve Bank of India (RBI) allow investment in India only through a company under the automatic route.

To view full article click [here](#)



## 'Truth in lending: Is the RBI bending?'

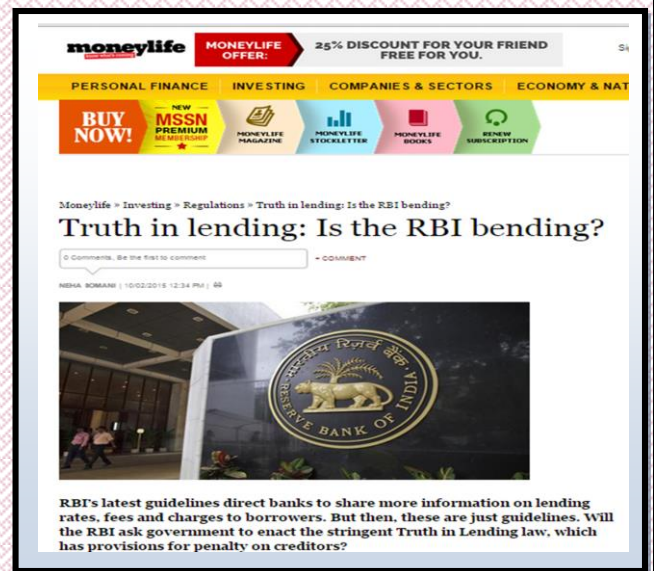
By Neha Somani  
Published in MoneyLife

**RBI's latest guidelines direct banks to share more information on lending rates, fees and charges to borrowers. But then, these are just guidelines. Will the RBI ask government to enact the stringent Truth in Lending law, which has provisions for penalty on creditors?**

Last month, the Reserve Bank of India (RBI) asked banks to disclose to borrowers, more information on lending rates and fees on their websites. With these guidelines to be implemented from 1 April 2015, the central bank hopes to promote transparency in banking operations, especially in lending activities.

By having a uniform standard for presenting the terms of consumer credit, individuals have a much easier time of comparing and thus, choosing the best credit option. Instead of things being shielded and hidden from the consumer, this gives power back to borrowers as they need to make informed choices about credit. Before the concept of truth-in-lending came into picture, consumers were not able to compare the interest rates and loan costs, properly. Frauds and scams were therefore, rampant because the lenders used to take advantage of the fact that the consumers were not able to make comparison between the credit options.

To view full article click [here](#)



## Hall of Fame

- 🏆 **Mr. Vinod Kothari was quoted in The Economic Times, in the article- RBI tightens grip on non-banking finance companies, approval needed for takeovers:** *"What the RBI is now seeking to do is to consider even routine changes in directorships as a case of change of control, which is so unrealistic," said Vinod Kothari, an NBFC expert".*

To read full article Click [here](#).

- 🏆 **Mr. Vinod Kothari was quoted in The Hindu, in the article- Moving out of public domain:** *Vinod Kothari, a company law practitioner, points out the advantages for the private company versus the public company under the new Companies Act. "A private company need not have independent directors, need not have an audit committee or the managerial remuneration is not capped when compared to a public company. This along with the proposed amendments makes life more easy as a private company," he adds.*

To read full article Click [here](#).

- 🏆 **Nidhi Bothra is now a part of the study circle committee at ICSI, EIRC Chapter.**





## Some captured moments



### **Photographs of Seminar Revised Regulatory Framework for NBFC - held on 31<sup>st</sup> March 2015**



### **Photographs of Seminar on NBFC - Recent Changes held on 25th March 2015**



### **Photographs of Seminar on Draft Computation Standard held on 27th March 2015**





## Our Corner

Happy Birthday to Nidhi Bothra, Nivedita Shankar &  
Aditi Jhunjhunwala





Happy Holi.....!!!!!!



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