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# **SPARSH.....**

***Touches***

***May, 2015***

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Mr. Vinod Kothari &  
Associates**
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# Editorial

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



“Even if you’re on the right track, you’ll get run over if you just sit there.”

–Will Rogers

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:*

*- Pammy Jaiswal*

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## **Articles Published**

- Benami Transactions Bill, 2015 –An antidote for black money by Vinod Kothari published in Taxmann’s Corporate Professionals Today-Vol 33,Issue 2
- Will RBI’s fraud reporting framework detect frauds? by Nidhi Bothra and Shruti Agarwal published in Moneylife.
- SS 1: Whether a step towards better governance? by Aditi Jhunjhunwala and Niddhi Parmar published in Taxmann’s Corporate Professionals Today- Vol 33, Issue 2
- SEBI Circular Directs Companies to Identify Insiders Among Outsiders” by Vinita Nair and Aman Nijhawan published in Indiancorplaw
- Tough Companies Act creating a shift towards LLP ? by Shruti Agarwal published in Moneylife.
- Article on the Companies Amendment Act, 2015 byTeam Vinod Kothari & Company published in TaxGuru.



## ***Sessions/Lectures taken/Events attended***

- *Mr. Vinod Kothari deliberated at the Half Day Workshop on Secretarial Audit at the Eastern India Regional Council of the Institute of Company Secretaries of India on 2<sup>nd</sup> May, 2015.*
- *Program for young practitioners was attended by Mr. Vinod Kothari at the Eastern India Regional Council of the Institute of Company Secretaries of India on 9<sup>th</sup> May, 2015.*
- *Mr. Vinod Kothari attended the National Seminar on Secretarial Audit hosted by the the Eastern India Regional Council of the Institute of Company Secretaries of India, Bhubneshwar on 16<sup>th</sup> May, 2015.*
- *Mr. Vinod Kothari deliberated at the seminar on Covergence of Company Law and Securities Law at the Eastern India Regional Council of the Institute of Company Secretaries of India on 31<sup>st</sup> May, 2015.*
- *Ms Nidhi Bothra deliberated at the seminar for Revised Regulatory Framework for NBFCs hosted by the Direct Taxes Professional's Association on 27<sup>th</sup> May, 2015.*
- *Seminar on implementation of the Companies Act, 2013 and Secretarial Standards 1 was attended by Ms Aditi Jhunjhunwala as speaker at the Institute of Chartered Accountants of India. Asansol on 31<sup>st</sup> May, 2015.*

## Our Forthcoming Workshops

Pricing and Management of Credit Risk, **Mumbai**

2 Days Workshop on Leasing (In-house) , **Mumbai**

Two Days Crash Course on the Companies Act, 2013 covering  
Secretarial Standards and Prohibition of Insider, Trading  
Regulations, **Delhi**

Two Days Crash Course on the Companies Act, 2013 covering  
Secretarial Standards and Prohibition of Insider Trading  
Regulations, **Mumbai**

Half Day Workshop on Secretarial Standards and SEBI (PIT) Regulations, **Kolkata**

2 Days Workshop on Leasing (In-house), **Chennai**

One Day Workshop on Investing in Corporate Debentures, **Mumbai**

## Articles Published

### **Benami Transactions Bill, 2015 –An antidote for black money**

*-by Vinod Kothari published in Taxmann's Corporate Professionals Today-Vol 33,Issue 2*

Benami transactions in India can be traced back to year 1915. Sir George Farewell in the Privy Council had observed that a dealing like benami was common amongst the Hindus and Mohammedans in India. He further observed that it was unobjectionable and had a curious resemblance to the doctrine of the English Law. Benami transactions were causing a concern for the regulatory authorities due to various reasons as discussed in this article. Accordingly, the Benami Transactions (Prohibition) Act, 1988 (the Act) was enacted to prohibit benami transactions.

During the administration of the Act, it was found that the provisions of the aforesaid Act were inadequate to deal with benami transactions as the Act did not—(i) contain any specific provision for vesting of confiscated property with Central Government; (ii) had any provision for an appellate mechanism against an action taken by the authorities under the Act, while barring the jurisdiction of a civil court; (iii) conferred the powers of the civil court upon the authorities for its implementation; and (iv) provided for adequate enabling rule making powers.

To view full article click refer to Taxmann's Corporate Professionals Today \_Vol-33\_Issue 2.



## Will RBI's fraud reporting framework detect frauds?

-by Nidhi Bothra and Shruti Agarwal published in [Moneylife](#).

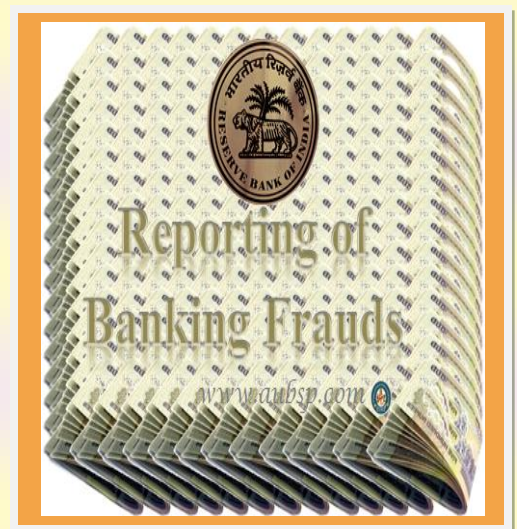
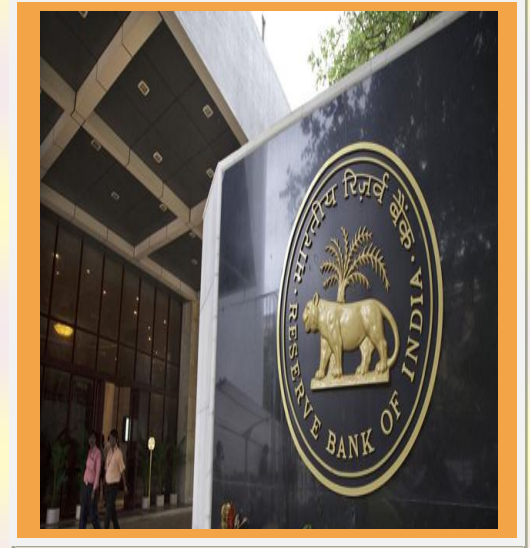
The framework will certainly pose many hassles even for the business houses, as some of the items mentioned in the list are only early warning signals, which cannot be treated as fraudulent in nature, unless proved.

The Reserve Bank of India (RBI) vide a notification dated 7 May 2015 had set up a framework for dealing with loan frauds for banks and for fraud risk management in banks. The framework has come into immediate effect.

The framework, which requires banks to red flag accounts showing early warning signals, might be a welcome change for the lenders, but not sure how far will it be welcomed by the India Inc. The framework will certainly pose many hassles even for the business houses, as some of the items mentioned in the list of Early Warning Signals (EWS) cannot be treated as fraudulent in nature, unless the same is proved.

The penal provisions under the framework will be as that under the wilful defaulter. The borrowers who have defaulted in making payments and have committed fraud will be debarred from raising institutional finance from scheduled commercial banks, Development Financial Institutions; Government owned NBFCs, and investment institutions for five years.

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



## SS 1: Whether a step towards better governance?

*-by Aditi Jhunjhunwala and Niddhi Parmar published in Taxmann's Corporate Professionals Today- Vol 33, Issue 2*

Section 118 of the Companies Act, 2013 (Act 2013/Act) deals with the procedure for minutes of the proceedings of general meetings and board meetings. Sub-section (10) requires that every company must observe secretarial standards on general and board meetings, as may be approved by the Central Government.

More than a year after enforcement of the section, the Institute of Company Secretaries of India (ICSI) and the Ministry of Corporate Affairs (MCA) have finally approved of and come up with the text of the Secretarial Standard 1- Meeting of Board of Directors (hereinafter referred to as SS1) and Secretarial Standard 2 - General Meetings (hereinafter referred to as SS2). The final text was introduced on April 24, 2015.

We shall discuss the important features of SS1 along with comparison with provisions under Act 2013 and/or the Listing Agreement (hereinafter referred to as the LA) in the following paras:

### Applicability

The Standard prescribes a set of principles for convening and conducting Meetings of the Board of Directors and matters related thereto. It is applicable to the Meetings of Board of Directors of all companies, except One Person Company (OPC).

To view full article refer to Taxmann's  
Corporate Professionals Today Vol-33 Issue 2

### Clarification on Applicability of Secretarial Standards



INSTITUTE OF COMPANY SECRETARIES OF INDIA

[www.simpletaxindia.net](http://www.simpletaxindia.net)



## ***“SEBI Circular Directs Companies to Identify Insiders Among Outsiders”***

***- by Vinita Nair and Aman Nijhawan published in [Indiancorplaw](#).***

The Securities and Exchange Board of India (‘SEBI’) rolled out the SEBI (Prohibition of Insider Trading) Regulations, 2015 (the ‘Regulations, 2015’) on January 15, 2015 which will come into force on the 120th date of its publication in Official Gazette i.e. on May 15, 2015. The Regulations, 2015 are based on the report of a High Level Committee set up under the Chairmanship of Mr. N K Sodhi, former Chief Justice of High Courts of Kerala and Karnataka and former Presiding Officer of the Securities Appellate Tribunal on December 7, 2013.

Insider trading refers to trading in securities of a company by its directors, employees or other insiders based on “unpublished price sensitive information” (‘UPSI’). Such dealings by insiders erode the investors' confidence in the integrity of the management and are unhealthy for the capital markets. The Regulations, 2015 inter-alia mandate every listed company and every market intermediary registered with SEBI to formulate a Code of Conduct (‘CoC’) [Regulation 9] to regulate, monitor and report trading by its employees and other connected persons. Additionally, every other person who is required to handle UPSI in the course of business operations is also required to frame a CoC.

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



## Tough Companies Act creating a shift towards LLP ?

*-by Shruti Agarwal published in [Moneylife](#).*

**Due to a heavier regulatory burden and complexity in filing issues, many existing companies are shifting to the LLP model. Besides taxation benefits, for LLPs, there are barely one or two periodic filing every year compared with loads of paperwork for companies.**

It has almost been more than a year since the 58-year old Companies Act, 1956 (Act 1956) has been repealed and replaced by the Companies Act 2013 (Act 2013). While the law makers had intended to gift a modular law to the Indian economy, the stringent provisions imposed a setback to the implementation of the same. Post implementation dozens of amendments, circulars, notifications were issued by the Ministry to mend loopholes in the provisions of the Act 2013.

Amidst all this, the repercussions of regulatory bottlenecks are clearly visible in the drop in incorporation of companies and a steep rally in the incorporation of limited liability partnerships (LLPs) in India. The increase in the compliance burden has to a great extent curbed the incorporation of companies in India. Seemingly, it is not human any more to err, looking at the rigorous myriad penal provisions inserted in Act 2013. Not only has the Act 2013 disheartened the market participants from floating new companies, it has also has influenced a trend of de-corporatisation in the country.

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



***Article on the Companies Amendment Act, 2015***  
***-by Team Vinod Kothari & Company got published in [TaxGuru](#).***

**The Companies Act is considered to be the ‘Gita’ for the Indian corporate world; it is the basic piece of legislation that shapes the way in which business is carried out and conducted in the country. However, the Companies Act, 2013, (‘Act’) which was notified on 29th August, 2013 was a far cry from this expectation.**

Though the Act is the principal piece of legislation, most of the gap-fillings in the Act were left in the hands of a subordinate legislation which was supposed to be introduced in the form of Rules, empowering the MCA to mould the law of the land at its discretion. With most of the determining factors left to be decided by way of Rules, in spirit, the Act itself became a subordinated law.

The Act consists of 470 sections, of which 283 sections and 22 sets of Rules corresponding to such sections have so far been brought into force in two phases – one on 12th September, 2013 and the other on 1st April, 2014. Due to such hurried implementation of the Act, many loopholes and ambiguous provisions remained unattended, which created massive difficulties and interpretational issues for the corporate world. The Rules that were introduced to supplement the Act, were an attempt to rewrite the Act itself and did a poor job of stitching together the gaps left in the Act. The Rules created various inconsistencies with the provisions of the Act which left the business environment baffled with the thought of how to cope up with new piece of poor legislation.

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



## Our Corner

Happy Birthday To Nitu Poddar, Saurav Malpani,  
and Surbhi Jaiswal



13 Focus on capabilities, Opportunities will follow



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