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# SPARSH.....

***Touches***

***July . 2015***

## **In this Issue:**

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Mr. Vinod Kothari &  
Associates**
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# Editorial

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

Start by doing what's necessary, then what's possible; and suddenly you are doing the impossible."

– Saint Francis of Assisi

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**

- Finally some exemptions to private companies by Vinod Kothari and Aditi Jhunjhunwala published in IndiaCorpLaw and SEBI and Corporate Laws.
- Article on Subordinated debentures – A Capital Supporting Instrument by Vinita Nair published in IndiaCorpLaw.
- Article on Checks and Balances on Related Party Transactions by Nivedita Shankar and Abhirup Ghosh got published on Journal on Governance.
- Article on Stringent norms for change in control for the NBFCs by Abhirup Ghosh got published on Moneylife.
- Article on Who should be the addressee to Auditor's Report by Nitu Poddar got published in the Magazine of the Institute of Company Secretaries of India- Volume 2015-16; Issue No. 2 of 2015-16.
- Article on Whether a nominee director is accustomed to act as per instructions coming from his nominator- a perplexity! by Munmi Phukon got published in the Magazine of the Institute of Company Secretaries of India- Volume 2015-16; Issue No. 2 of 2015-16.



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

- *Mr. Vinod Kothari deliberated at the seminar on The Companies Act, 2013 at the Chamber of Commerce on July 17, 2015.*
- *Ms. Nidhi Bothra and Mr. Abhirup Ghosh attended the study circle meeting organized by the Association of Corporate Advisors & Executives (ACAE) at Eastern India Regional Council July 30, 2015.*
- *Ms. Nivedita Shankar attended the study circle meeting on exemption to private companies at the Eastern India Regional Council of the Institute of Company Secretaries of India on July 25, 2015.*

## WORKSHOPS CONDUCTED

In-house Workshop on Leasing, **Mumbai**

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

Real Estate Investment Trusts, **Mumbai**

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

## Our Forthcoming Workshop

Securitsation Summit , **Mumbai**



## Articles Published

Finally some exemptions to private companies  
-by Vinod Kothari and Aditi Jhunjhunwala published in [IndiaCorpLaw](#) and  
SEBI and Corporate Laws Magazine Vol 131 Issue 1.



## Subordinated Debentures – A Capital Supporting Instrument

-by Vinita Nair published in [IndiaCorpLaw](http://IndiaCorpLaw.com)



**IndiaCorpLaw**

A blog containing a periodic review of topics of interest in corporate and commercial law that in

Saturday, July 11, 2015

### Subordinated debentures – A Capital Supporting Instrument

[The following guest post is contributed by Vinita Nair of Vinod Kothari & Co. The author may be contacted at [vinita@vinodkothari.com](mailto:vinita@vinodkothari.com)]

Non Banking Financial Companies (NBFCs) in India are always seeking sources of raising funds. Capital is costly and therefore NBFCs rely more on public funds. Public funds as defined under the Systemically Important Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2015 (the "2015 Directions") include funds raised directly or indirectly through public deposits, commercial papers, debentures, inter-corporate deposits and bank finance but excludes funds raised by issue of instruments compulsorily convertible into equity shares within a period not exceeding 5 years from the date of issue.

Debentures can be classified into various types based on several parameters viz. transferability, convertibility, tenure, public participation, security, seniority, coupon and rate of return. On the basis of seniority, debentures can be classified as Senior debt and Subordinated debt. Subordinated debt is even included for meeting regulatory capital requirements.

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## Checks and Balances on Related Party Transactions

-by Nivedita Shankar and Abhirup Ghosh got published on Journal on Governance.

### CHECKS AND BALANCES ON RELATED PARTY TRANSACTIONS

ABHIRUP GHOSH AND NIVEDITA SHANKAR

*With the enactment of the Companies Act, 2013 ('Act, 2013'), Indian companies have been forced to sit up and take note of transactions with their related parties. The situation is graver for listed companies since the definition of 'related parties' is wider in the Equity Listing Agreement and so is the scope of transactions. With the recent incidence of scams in India and the effect of frauds on the revenues and goodwill of a company, companies cannot afford to take related party transaction easily anymore. Under the Companies Act, 1956, it was fairly easy to enter into such transactions since the definition of related parties and the scope of transactions was limited. The Act, 2013 has not only enlarged the definition of 'related parties' but has also widened the scope of transactions covered. In fact, under the Equity Listing Agreement, virtually any transaction with related parties is covered, whether financial or otherwise. The Article also discusses the regime of related parties in various parts of the world like United States, United Kingdom, Hong Kong, Singapore and Malaysia.*

*The Article further discusses the provisions pertaining to related parties under the provisions of Act, 2013 and compares the same with the provisions of Equity Listing Agreement which came into effect from October 1, 2014. Additionally, novel additions such as voting at general meetings, exemptions to transactions entered into on arm's length basis and in the ordinary course of business have also been discussed. Keeping the discussion in mind, we have concluded the Article with a detailed account of the many approvals required for undertaking a related party transaction.*

#### CONTENTS

- I. Introduction
- II. Who all are related parties to a company?
- III. RPTs under the bygone regime
- IV. Global Laws
- V. How RPTs are to be governed under the new regime of the Act, 2013?
- VI. The saviour
- VII. Transactions covered by revised clause 49 of listing agreement

## Stringent norms for change in control for the NBFCs

-by Abhirup Ghosh got published on [Moneylife](http://Moneylife.com).

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## Stringent norms for change in control for the NBFCs

0 Comments. Be the first to comment.

+ COMMENT

ABHIRUP GHOSH | 13/07/2015 07:02 PM |



The revised directions are much more stringent, putting additional burden on the smaller companies, as they will have to rush to the RBI every time there is a change in their board

The Reserve Bank of India, on 9th July, 2015, came out with the fine print of the revised



## Who should be the addressee to Auditor's Report

-by Nitu Poddar published in the Magazine of the Institute of Company Secretaries of India- Volume 2015-16; Issue No. 2 of 2015-16

ARTICLE

EASTERN INDIA REGIONAL COUNCIL





### Who should be the addressee to Auditor's Report?

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With the coming into force of the Companies Act 2013 many questions have arisen and clarifications sought. This article addresses one such pertinent query.

Prior to the Companies Act, 2013, the auditor's report pertaining to standalone financial statement of a company was addressed to the members of the company and the auditor's report pertaining to the consolidated financial statement was addressed to the board of directors of the company.

We hereby discuss whether the same practice can be continued in the regime of Companies Act, 2013.

**Applicable provisions of Law**

Before the discussion proceeds, one must peruse the following provisions of law and applicable Standard on Auditing (SA):

**Section 129 of Companies Act, 2013 ("Act, 2013"):**

3) Where a company has one or more subsidiaries, it shall, in addition to financial statements provided under sub-section (2), prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement under sub-section (2):

XXX

4) The provisions of this Act applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements referred to in

sub-section (3)

Section 137 of Act, 2013:

1) A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed within the time specified under section 403:

XXX

Section 143 of Act, 2013:

2) The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statements which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under sub-section (11) and to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

## Whether a nominee director is accustomed to act as per instructions coming from his nominator- a perplexity!

–by Munmi Phukon published in the Magazine of the Institute of Company Secretaries of India- Volume 2015-16; Issue No. 2 of 2015-16.



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### Whether a nominee director is accustomed to act as per instructions coming from his nominator - a perplexity!

It is no news that the Companies Act, 2013 ('Act') has left unattended many ambivalences. Although there were numerous clarifications brought by the Ministry by way of circulars, notifications and removal of difficulties orders since September, 2013 (the first phase of implementation of certain provisions of Act), there is still a lot left to be done and seeing the frequency with which the Ministry has been coming out with clarifications, it is almost as if people are anticipating a new clarification every day.

The phrase 'accustomed to act' is one of the ambiguous concepts of the Act which have been used in a number of places of the Act. However, the Act conspicuously falls short of defining the same.

**Relevant provisions of Law**

Section 2(76) defines a related party with reference to a company to mean as follows:

(i), (ii), (iii), (iv), (v) XXX

(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) XXX [emphasis supplied]

Further, section 185 also makes a reference to the term. Reproducing below the relevant part of the said section below:

185(1) Save as otherwise provided in this Act, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

XXX

**Explanation** - For the purposes of this section, the expression to any other person in whom director is interested means-

(a), (b), (c), (d) XXX

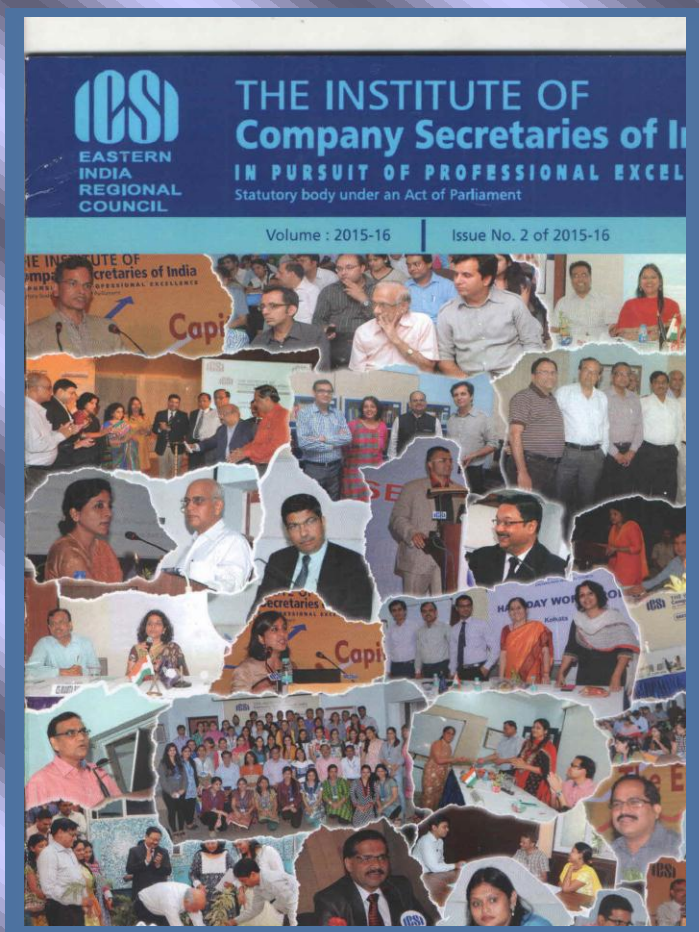
(e) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company

On a clear reading of the provisions of both of these sections it can be well concluded that these provisions are there in the law to ensure that no conflict of interest arises to a particular transaction whereby personal benefit accrues to directors of the company. Since directors are sitting in a position of trustees for the shareholders, hence, they are expected to use their fiduciary powers in the best interest of the shareholders and the company. Having said so, the major perplexity that appears here is whether we can take a view and deduce that a nominee director is accustomed to act as per his nominator and does not use his own discretion at the time of taking decisions



# Participations and Publications

The newsletter of the Institute of Company Secretaries of India – EIRC had contributions from our firm





# Our Corner

**Ms. Nidhi Bothra and Mr. Abhirup Ghosh at the Study Circle Meeting hosted by the ACAE Chartered Accountants on July 30, 2015**



**Ms. Nivedita Shankar at the Study Circle Meeting of the Institute of Company Secretaries of India- EIRC**



**A refreshing vacation spent in the so called  
“Kashmir of Orissa, *Daringbari*”  
by the team of Vinod Kothari & Company !**







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