

Vinod Kothari & Company

**Vinod Kothari Consultants
P Ltd**

**Academy of Financial
Services P Ltd**

**1006-1009 Krishna
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**

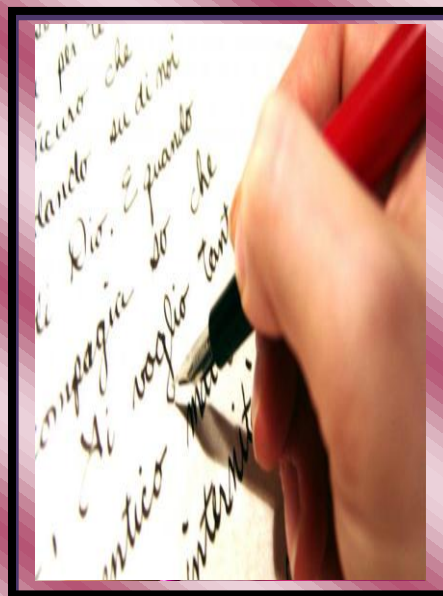
SPARSH....

Touches

AUGUST, 2015

In this Issue:

-  **Editorial**
-  **Our Articles Published**
-  **Sessions/ Lectures taken by
Mr. Vinod Kothari & Company**
-  **Our Corner**
-  **Contact Us**



Editorial

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

The more difficulties one has to encounter, within and without, the more significant and the higher in inspiration his life will be.

- Horace Bushnell

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

editor@vinodkothari.com



Articles Published

- Article on ‘Finally some exemptions to private companies’ by Mr. Vinod Kothari published in Sarthi – magazine on the 40th regional conference of the ICAI.
- Article on “Birthday gift for managerial personnel turning 70 - No automatic disqualification of managerial personnel after the age of 70 years – High Court interprets section 196 of Companies Act, 2013” by Aditi Jhunjhunwala and Aman Nijhawan got published in Taxmann’s Corporate Professionals Today- Volume 33; Issue 7
- Article on Independent Directors in Private Debt-Listed Companies by Niddhi Parmar got published in IndiaCorpLaw.
- Article on Loans to directors and related entities-allowed worldwide, restricted in India by Dipanjali Nagpal got published in Taxmann’s Corporate Professionals Today- Volume 33; Issue 7
- Article on The combinations of KMP positions in a company – unravelling a mystery by Barsha Dikshit got published in SEBI and Corporate Laws- Volume 131; Issue 4



Sessions/Lectures taken/Events attended

- *Mr. Vinod Kothari was a guest speaker at the All India CA Conference on the theme “CAs- Catalysing India’s Growth” at the Institute of Chartered Accountants of India, Bhubaneswar on August 1, 2015.*
- *Mr. Vinod Kothari deliberated at the half day workshop on ‘How to improve Corporate Governance through Secretarial Standards’ at Hindustan Club on August 14 , 2015.*
- *Mr. Vinod Kothari was a panelist at the panel discussion in the regional conference of the Institute of Chartered Accountants of India on August 22 , 2015.*
- *Ms. Nidhi Bothra deliberated on ‘Regulatory Insight, Capital Market and opportunities’ at the 48th Executive Development Programme organized by the Eastern India Regional Council on August 3, 2015.*
- *Ms. Vinita Nair deliberated at the Thane Chapter of The Institute of Company Secretaries of India on “Practical Aspects of Issuance Of Debentures.” On August 1 , 2015.*

Upcoming Workshops

Innovative Bonds and Securitisation Summit, **Mumbai**


Half Day Workshop on SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015, **Kolkata**

Articles Published

‘Finally some exemptions to private companies’

-published in Sarthi – magazine on the 40th regional conference of the ICAI

40TH REGIONAL CONFERENCE OF EIRC




FINALLY SOME EXEMPTIONS TO PRIVATE COMPANIES

CA Vinod Kothari

Company Secretary and Chartered Accountant

vinod@vinodkothari.com



March 31, 2015 being the financial year-end, a lot has already been done by the 9 lakhodd private companies by way of never-before compliances under the Companies Act 2013. Ever since July 2014 when the draft of the exempting notification was placed before the Parliament, the corporate sector in the country, primarily the small and medium companies, and the thousands of foreign-owned or controlled companies which are mostly private companies, have been anxiously waiting for this notification. However, as the archaic process of exempting notifications requires, a copy of the draft notification had to be placed on the floor of the Parliament for minimum of 30 business days, and then one more session of the Parliament had to end before the notification could have been issued.

Finally, with the completion of the Budget session of the Parliament, the decks were cleared for the exempting notification for 4 different classes of companies – private companies, sec 8 companies, government companies and Nidhi companies. Needless to say, the private company exempting notification is the most important, as this covers nearly 90% of the companies by number. This write-up discusses the major changes brought out by the Notification for private companies.

Compliance burden reduced: filing of board resolutions waived for private companies

One of the major relaxations for private companies is exemption from filing Board resolutions under sec 179 (3). This section, whose philosophical foundations are difficult to understand anyways, requires companies to file some 14 items of board resolutions with the Registrar of Companies in form called MGT 14, has completely been exempted in case of private companies, by snapping the connection between sec. 117 (3) (g) and sec 179 (3). Therefore, private companies will now need to file only MGT 14 in case of special resolutions. In terms of compliance burden, this is a major relief.

Note, however, that sec 179 (3) itself has not been exempted. That is, wherever there is a matter being one of the items listed in this sub-section, the resolution of the board will still be required. All that is exempted is that there will be no need to file a resolution with the Registrar. This despite, the exemption from filing is a major relief as private company board minutes are a matter of internal issue.


Participation of interested directors: Section 184

Yet another related exemption is sec 184 (2). This section provides that the directors of a private company will refrain from participating in a board meeting where a matter in which they are interested is to be discussed. This is absolutely counter-intuitive in case of private companies, which actually do not have any independent directors, and therefore, it is unexpected that there will be any director who is uninterested in the matter. The original draft of the notification did not provide an exemption from section 184 (2) but the final text does provide the exemption. The final notification thankfully retains the same with the condition that interested director may participate only after disclosure of his interest. However, curiously, one of the most burdensome disclosures in case of private companies – disclosures by all directors about their shareholdings, and every time there is a change therein – still remains intact [section 184 (1)]


“Birthday gift for managerial personnel turning 70 - No automatic disqualification of managerial personnel after the age of 70 years – High Court interprets section 196 of Companies Act, 2013” –

by Aditi Jhunjhunwala and Aman Nijhawan got published in Taxmann's Corporate Professionals Today- Volume 33; Issue 7

CORPORATE LAWS



ADITI JHUNJHUNWALA
CS



AMAN NIJHAWAN
Research Analyst
Vinod Kothari & Co.

Birthday gift for managerial personnel turning 70

No automatic disqualification of managerial personnel after the age of 70 years
– High Court interprets section 196 of Companies Act, 2013

Introduction

1. The Companies Act, 2013 (Act, 2013) which was once thought to be a boon for corporate sector has continued to be nightmarish for the corporate sector. The new law has brought in several unresolved issues, which is very evident from more than 3 dozen clarifications and/or orders and continuous amendments to the notified rules issued by the MCA. Since its enactment, i.e., since September 12, 2013, the Act has been interpreted in various ways by scholars but its loose drafting continues to create chaos.

Where a provision is unclear we have to depend on judicial precedents for application of the same. However, with the enforcement of the Act of 2013, as of now we barely have one or two precedents under the Act, therefore, not much is there to fall back upon. With majority trying to interpret the tied knots of the provisions of the Act, 2013 the Bombay High Court has recently come up with an interesting and reasoned judgment in the case of *Sridhar Sundararajan v. Ultramarine & Pigments Ltd.*¹ on July 16, 2015 whether a Managing Director appointed before the enforcement of Act, 2013 can continue in his office on attaining the age of 70 years, keeping in mind the provision of section 196(3)(a)? We barely have judicial pronouncements on the Act of 2013 and the handful ones we have, we find that the courts have used contextual interpretation.

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597

To read full article please refer to- Taxmann's Corporate Professionals Today
- Volume 33; Issue 7 and the article can also be viewed on our
website: india-financing.com

Independent Directors in Private Debt-Listed Companies

– by Niddhi Parmar got published in [IndiaCorpLaw](#).

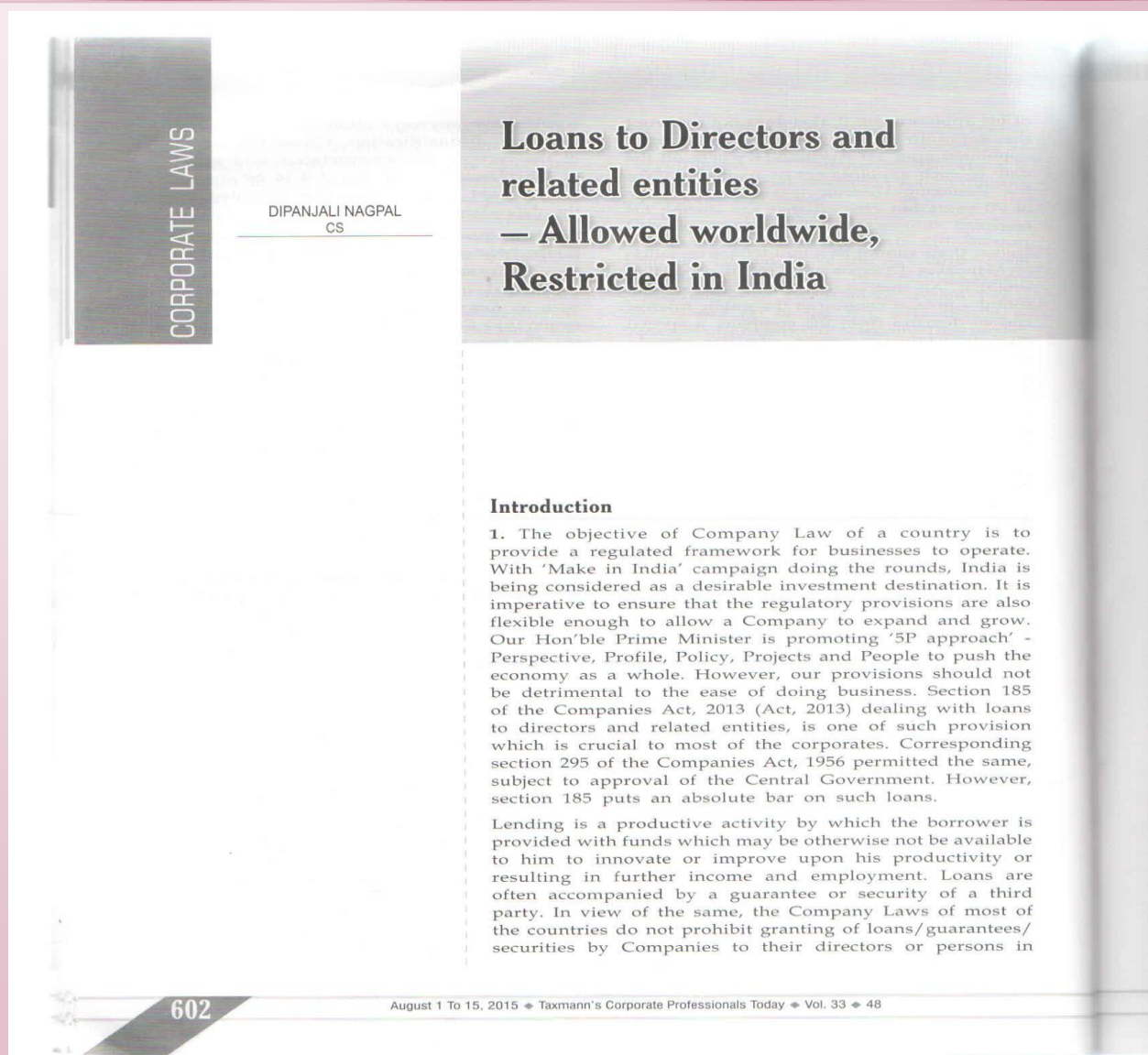


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Loans to directors and related entities- allowed worldwide, restricted in India

-by Dipanjali Nagpal got published in Taxmann's Corporate Professionals Today- Volume 33; Issue 7



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The combinations of KMP positions in a company – unravelling a mystery

-by Barsha Dikshit got published in SEBI and Corporate Laws- Volume 131; Issue 4

2015]

THE COMBINATIONS OF KMP POSITIONS IN A COMPANY

93

[2015] 131 SCL 93 (Mag.)

THE COMBINATIONS OF KMP POSITIONS IN A COMPANY - UNRAVELLING A MYSTERY

BARSHA DIKSHIT*

Introduction

1. There is a perplexity with regard to the co-existence of certain executive posts in a company. The term 'Chief Executive Officer' ('CEO') was not defined in the Companies Act, 1956. However, Companies Act, 2013 ('Act, 2013') has not only defined a CEO but has also brought the post under the definition of KMP. Thus, the role and importance of the post of a CEO has become critical and worthy of discussion. Now the question arises whether a company can legally have a combination of two executive posts borne by two different individuals simultaneously?

Various combinations of executive posts

2. Hereinbelow we discuss on the various combinations a company can have with respect to its executive posts:

2.1 CEO and Managers - Before the discussion proceeds, one must peruse the following definitions:-

2.1.1 Definition of Chief Executive Officer under Section 2(18) of the Act, 2013 - "Chief Executive Officer" means an officer of a company, who has been designated as such by it.

2.1.2 Definition of manager under Section 2(53) of the Companies Act, 2013 - "manager" means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not.

2.1.3 Meaning of the expression "Substantial power of management" - Explanation to section 2(54) elucidates the meaning of the phrase 'Substantial power of management'. The expression has been defined to not include administrative acts of routine nature, such as power to affix common seal or to draw and endorse any cheque on account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share. Although the meaning is inclusive in nature, yet it is clear from the meaning of the expression that routine functions will not qualify to be exercise of substantial powers of management.

2.1.4 Analysis - It is clear from the very nomenclature that the CEO is intended to be the "Chief" of the executive posts of a Company who sits at the top of

*Company Secretary.

Our Corner

Mr. Vinod Kothari at the half day workshop on the 'How to improve Corporate Governance through Secretarial Standards' at Hindustan Club





Moments of the session taken by Ms. Vinita Nair at the Thane Chapter, ICSI





Our Corner Continued

Zumba Performance by our colleague **CA Vijayalaxmi Agarwal** at Sangvi Moments 2015



Congratulations!!

Our Colleague Shruti Agarwal was the *best participant* at the 48th Executive Development Programme of the Eastern India Regional Council of the Institute of Company Secretaries of India ! !

Contact Us



**1006-1009, 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

